2015-2016

HOUSE
JUDICIARY II

MINUTES

HOUSE COMMITTEE ON JUDICIARY II
2015 – 2016 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. John M. Blust Chair	Gennie Thurlow Committee Assistant	733-5781	2208 LB	49
Rep. Jonathan C. Jordan Chair	Kevin King Committee Assistant	733-7727	420 LOB	42
Rep. John Faircloth Vice Chair	Becky Bauerband	733-5877	613 LOB	39
Rep. Rick Glazier Vice Chair	Megan Lewis	733-5601	1021 LB	71
Rep. Pat Hurley Vice Chair	Deborah Holder	733-5865	532 LOB	10
Rep. Chuck McGrady Vice Chair	Laura Bone	733-5956	304 LOB	28
Rep. Henry Michaux, Jr. Vice Chair	Anita Wilder	715-2528	1227 LB	11
Rep. Paul Stam Vice Chair	Anne Murtha	733-2962	612 LOB	5
Rep. Dana Bumgardner	Margie Penven	733-5809	2119 LB	40
Rep. Debra Conrad	Clark Riemer	733-5787	606 LOB	44
Rep. Joe Sam Queen	Gregory Lademann	715-3005	1017 LB	103
Rep. Robert T. Reives, II	Veronica Green	733-0057	1323 LB	104
Rep. Stephen Ross	Laura Spratley	733-5820	2221 LB	37
Rep. Jason Saine	Laura Puryear	733-5782	1326 LB	26
Rep. Brad Salmon	Katie Stanley	715-3026	1319 LB	107

Susan L. Sitze
Tawanda Foster
Brad Krehely
Committee Counsel
545 LOB
Phone: 733-2578

HOUSE COMMITTEE ON JUDICIARY II
2015-2016 SESSION



Rep. John M. Blust
Chair



Rep. Jonathan Jordan
Chair



ep. John Faircloth
Vice Chair



Rep. Rick Glazier
Vice Chair



Rep. Pat Hurley
Vice Chair



Rep. Chuck McGrady
Vice Chair



Rep. Henry Michaux Jr.
Vice Chair



Rep. Paul Stam
Vice Chair



Rep. Dana Bumgardner



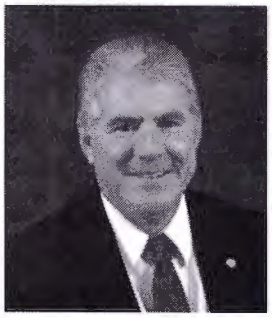
Rep. Debra Conrad



Rep. Joe Sam Queen



Rep. Robert T. Reives, II



Rep. Stephen Ross



Rep. Jason Saine



Rep. Brad Salmon

ATTENDANCE

House Committee on Judiciary II

DATES	2-4-15	3-3-15	3-10-15	3-17-15	3-24-15	3-31-15	4-14-15	4-21-15	4-22-15	4-23-15	4-28-15	4-29-15 -1:00 PM	4-29-15 -6:45 PM	5-6-15	5-12-15
Rep. Jonathan C. Jordan – Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. John M. Blust– Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. John Faircloth – Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Rick Glazier – Vice Chair		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Pat Hurley – Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Chuck McGrady – Vice Chair	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Henry Michaux Jr. – Vice Chair	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Paul Stam – Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Dana Bumgardner	✓	✓	✓	✓		✓				✓	✓		✓	✓	✓
Rep. Debra Conrad	✓	✓	✓			✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Joe Queen		✓	✓	✓		✓	✓	✓			✓	✓	✓		✓
Rep. Robert Reives, II	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Stephen Ross		✓	✓	✓	✓	✓	✓	✓		✓		✓	✓		✓
Rep. Jason Saine			✓								✓				
Rep. Brad Salmon	✓	✓	✓	E	✓	✓	✓	✓	✓	✓	✓	✓			✓

ATTENDANCE

House Committee on Judiciary II

DATES	6-2-15	6-23-15	6-30-15	7-28-15	8-4-15	8-18-15									
Rep. Jonathan C. Jordan – Chair	✓	✓	✓	✓	✓	✓									
Rep. John M. Blust– Chair	✓	✓	✓	✓	✓	✓									
Rep. John Faircloth – Vice Chair	✓	✓	✓	✓	✓	✓									
Rep. Rick Glazier – Vice Chair	✓	✓	✓	✓	✓	✓									
Rep. Pat Hurley – Vice Chair	✓	✓	✓	✓	✓	✓									
Rep. Chuck McGrady – Vice Chair	✓	✓		✓	✓	✓									
Rep. Henry Michaux Jr. – Vice Chair			✓	✓	✓	✓									
Rep. Paul Stam – Vice Chair	✓	✓	✓	✓	✓	✓									
Rep. Dana Bumgardner	✓	✓	✓	✓	✓	✓									
Rep. Debra Conrad	✓	✓	✓	✓	✓	✓									
Rep. Joe Queen	✓	✓	✓		✓	✓									
Rep. Robert Reives, II	✓	✓		✓	✓										
Rep. Stephen Ross	✓		✓	✓	✓	✓									
Rep. Jason Saine															
Rep. Brad Salmon	✓	✓		✓	✓	✓									

House Committee on Judiciary II
Wednesday, February 4, 2015 at 10:00 AM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 10:00 AM on February 4, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Salmon, and Stam attended. Janice Paul and Bill Patterson (Research Staff Counsel), Hope Chadwick and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 10:00 AM. He introduced the pages and Sergeants at Arms (Attachment II). The chair then introduced the members of the committee. The following bills were considered:

Edition One of House Bill 3 and the summary are provided (Attachment III and Attachment IV)
HOUSE BILL 3: A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROHIBIT CONDEMNATION OF PRIVATE PROPERTY EXCEPT FOR A PUBLIC USE, TO PROVIDE FOR THE PAYMENT OF JUST COMPENSATION WITH RIGHT OF TRIAL BY JURY IN ALL CONDEMNATION CASES, AND TO MAKE SIMILAR STATUTORY CHANGES.

Chairman Jordan recognized Representative McGrady, the primary sponsor of the bill, to speak on the Constitutional provisions of the bill.

House Bill 3 proposes an amendment to the North Carolina Constitution to prohibit condemnation of private property except for a public use, requires the payment of just compensation for the property taken, requires the compensation to be determined by jury trial, if requested by any party, and changes the statutory purpose for which property may be taken by eminent domain from "public use or benefit" to "public use".

The chair then recognized Bill Patterson to explain the sections of the bill.

Section 1 proposes to amend the North Carolina Constitution by adding a new Section 19.1 to Article I. The new section would prohibit the taking of private property by eminent domain except for a public use. The proposed amendment also requires that just compensation be paid and that the amount be determined by a jury if requested by any party.

Section 2 provides that the amendment shall be submitted to the voters of the State at the statewide election on May 3, 2016.

Section 3 provides that if a majority of the voters favor the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, who shall then enroll the amendment. The amendment would become effective upon certification and apply to takings occurring after that date.

Section 4 amends G.S. 40A-3 to change the purpose for which private, local public, and other public condemnors may condemn property from "public use or benefit" to "public use".
In addition, Section 4 modifies the types of construction for which private condemnors may acquire property for the public use, by replacing "telegraphs" and "telephones" with "communication facilities," adding "facilities related to the distribution of natural gas," and inserting "natural" before "gas" in the list of commodities for the transportation of which private condemnors may construct pipelines or mains on condemned property.

Section 5 amends G.S. 40A-3 to add a new subsection (d) providing that private condemnors, local public condemnors, and other public condemnors subject to G.S. 40A-3 shall have and may exercise the power of eminent domain to acquire property for the connection of any customer or customers.

Representative Stam's handout is provided (Attachment V)
Chairman Jordan recognized Representative Stam, sponsor of the bill, to speak on the statutory provisions of the bill.

After a lengthy discussion, the chair recognized Representative Stam who motioned for a favorable report on the bill. The motion passed on a unanimous voice vote.

There being no further business the Chairman Jordan adjourned the meeting at 9:37 AM.

Representative Jonathan C. Jordan, Chair
Presiding

Hope Chadwick, Committee Clerk

House Committee on Judiciary II
Wednesday, February 4, 2015, 10:00 AM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 3	Eminent Domain.	Representative McGrady Representative Stam Representative Lewis Representative Goodman

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

HB **3** Eminent Domain.

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

TOTAL REPORTED: 1

CMR2-V-1

I

VISITOR REGISTRATION SHEET

Judiciary II Committee — 2/4/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lowell Lackey	Rep. Goodman / Intern
Anna Beavon Gravely	NC Family Action
Marion Fundl	Y+L Gates
BRUCE THOMPSON	PARKER POE
Rick Zechini	Williams Mullen
Rhian Merwald	Williams Mullen
Carr McLamb	Troutman Sanders
Sandy Sands	NP
Reston Jones	NCDOT
Alex Bowen	CCS
Dirk Gorham	[illegible]

VISITOR REGISTRATION SHEET

Judiciary II Committee — 2/4/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	Electricities
Lauren Coffey	Policy 116 W. Jones St.
[illegible]	Nelson Mullins
TJ Bugbee	NP
Whitney Christensen	Ward & Smith, P.A.
Jaz Tunnell	Piedmont Natural Gas
[illegible]	TI
Susanna Davis	NCFA
[illegible]	Mayor Town of Mooresville
Julie White	NCMMC
Jackie Cowart	NSS

VISITOR REGISTRATION SHEET

Judiciary II Committee
Name of Committee

2/4/15
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J. Jackson	NCGA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Judiciary II Committee — 2/4/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
[illegible]	"
Todd Baker	NC Advocates for Justice
Isabel Villa Garza	NCAR
Edgar Miller	CTNC
Jeff Tiesler	WUNC Radio

VISITOR REGISTRATION SHEET

Judiciary II Committee — 2/4/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conf. of DAs
Carmen Hooker	MLA
Rob Kaylor	Kaylor Law Firm
Rose Williams	NCLM
[illegible]	[illegible]
Daniel Baum	Troutman Sanders
Tonya Hodson	Troutman Sanders
MARK BIBBS	Long Leaf Pine Consulting
JERRY SCHILL	NC Fisheries Assoc.
Casandra Skinner	NCACC
[illegible]	RANC - NCMA -

VISITOR REGISTRATION SHEET

Judiciary II Committee — 2/4/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Delgrosso	Brubaker + Assoc.
Grady McCallie	NC Conservation Network.
Sarah Bales	Brubaker & Assoc.
Hayden Barquess	FSP
Jonathan Brubaker	Brubaker + Assoc
Chris McClure	Brooks Pierce
Molly Diggins	Sierra Club
Andy Walsh	Smith Anderson
Susan Kim	Duke Energy
Heather Robinson	MCZMA
Meredith Ritho	Love's

Wednesday, February 4 JUDICIARY II	**Room** 421	**Time** 10:00 am

Name	County	
Leah Abrams	Orange	Graig R. Meyer
Kat Benson	Wake	Grier Martin
Nick Everage	Randolph	Allen McNeill
Nikolas Frederick	Iredell	Rena W. Turner
Joshua Kohr	Craven	Michael Speciale
Carolyn MacLeod	Orange	Graig R. Meyer
Seth Norwood	Guilford	Jon Hardister
Alyson Taylor	Richmond	Ken Goodman
Caleb Welborn	Lee	Brad Salmon

Committee Sergeants at Arms

NAME OF COMMITTEE House Judiciary II

DATE: 2/4/15 Room: 421

House Sgt-At Arms:

1. Name: Young Bae
2. Name: Charles Godwin
3. Name: Joe Austin
4. Name: Ray Cooke
5. Name:

Senate Sgt-At Arms:

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 3

Short Title:	Eminent Domain.	(Public)
Sponsors:	Representative McGrady (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

January 28, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROHIBIT CONDEMNATION OF PRIVATE PROPERTY EXCEPT FOR A PUBLIC USE, TO PROVIDE FOR THE PAYMENT OF JUST COMPENSATION WITH RIGHT OF TRIAL BY JURY IN ALL CONDEMNATION CASES, AND TO MAKE SIMILAR STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article I of the North Carolina Constitution is amended by adding a new section to read:

"**Sec. 19.1. Eminent domain.**

Private property shall not be taken by eminent domain except for a public use. Just compensation shall be paid and shall be determined by a jury at the request of any party."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide election to be conducted on May 3, 2016, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment to prohibit condemnation of private property except for a public use and to provide for the payment of just compensation with right of trial by jury in all condemnation cases."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. The amendment set out in Section 1 of this act becomes effective upon certification and applies to takings after that date.

SECTION 4.(a) G.S. 40A-3(a) reads as rewritten:

"(a) Private Condemnors. – For the public ~~use or benefit,~~ use, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by ~~law.~~law:

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, ~~telegraphs,~~

~~telephones,~~communication facilities, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, facilities related to the distribution of natural gas, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, natural gas, limestone or minerals. Land condemned for any liquid pipelines shall:

a. Not be less than 50 feet nor more than 100 feet in width; and

b. Comply with the provisions of G.S. 62-190(b).

The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

…."

SECTION 4.(b) G.S. 40A-3(b) reads as rewritten:

"(b) Local Public Condemnors – Standard Provision. – For the public ~~use or benefit,~~ use, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following ~~purposes.~~purposes:

…."

SECTION 4.(c) G.S. 40A-3(b1) reads as rewritten:

"(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public ~~use or benefit,~~ use, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following ~~purposes.~~purposes:

…."

SECTION 4.(d) G.S. 40A-3(c) reads as rewritten:

"(c) Other Public Condemnors. – For the public ~~use or benefit,~~ use, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated ~~purposes.~~purposes:

…."

SECTION 5. G.S. 40A-3 is amended by adding a new subsection to read:

"(d) Connection of Customers. – For the public use, private condemnors, local public condemnors, and other public condemnors in subsections (a), (b), (b1), and (c) of this section shall possess the power of eminent domain and may acquire by purchase, gift, or condemnation any property for the connection of any customer or customers."

SECTION 6. Sections 4 and 5 of this act become effective when this act becomes law and apply to takings occurring on or after that date. The remainder of this act is effective when it becomes law.

IV

HOUSE BILL 3: Eminent Domain

2013-2014 General Assembly

Committee:	House Judiciary II	**Date:**	February 3, 2015
Introduced by:	Reps. McGrady, Stam, Lewis, Goodman	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 3 proposes an amendment to the North Carolina Constitution to prohibit condemnation of private property except for a public use, requires the payment of just compensation for the property taken, requires the compensation to be determined by jury trial, if requested by any party, and changes the statutory purpose for which property may be taken by eminent domain from "public use or benefit" to "public use".***

CURRENT LAW:

The right of citizens in North Carolina to receive just compensation for property taken by eminent domain for public use is guaranteed under both the United States Constitution and the North Carolina Constitution.

The 5th Amendment to the United States Constitution states that private property shall not "be taken for public use without just compensation." Article I, Section 19 of the North Carolina Constitution states that "[n]o person shall be…in any manner deprived of his … property, but by the law of the land." The North Carolina Supreme Court has ruled that the fundamental right to just compensation for property taken by eminent domain arises from this section.[1] In addition, Section 1 of the 14th amendment to the United States Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law."

The North Carolina Supreme Court has recognized several tests to determine if a particular taking is permissible, including "public use", "public purpose" and "public benefit."[2]

Our Supreme Court has held that the General Assembly "has the right to determine what portion of this power it will delegate to public or private corporations."[3] The General Assembly has enacted various statutes authorizing the use of eminent domain to acquire property by condemnation for "public use or benefit" under certain circumstances.

Chapter 40A of the General Statutes provides condemnation procedures for private condemnors, local public condemnors and other public condemnors. G.S. 40A-3 provides the list of specific purposes for which the power may be used by those condemnors. Other State agencies are granted the power of eminent domain for specified purposes in other Chapters of the General Statutes, such as the Department of Transportation under Chapter 136.

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[1] Long v. City of Charlotte, 306 N.C. 187, 293 S.E.2d 101 (1982).

[2] *See, e.g,* Carolina Telephone and Telegraph Co. v McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988), *and* Piedmont Triad Airport Authority V. Urbine, 354 N.C. 336, 554 S.E.2d 331 (2001).

[3] Carolina Telephone and Telegraph Co. v McLeod, supra, 321 N.C. at 429, 364 S.E.2d at 401.

The North Carolina Supreme Court has ruled that there is no State Constitutional right to a jury trial on the issue of compensation for property taken by eminent domain.[4] State statutes, however, do authorize a jury trial on the issue of compensation for the taking of property. G.S. 40A-29, 136-109.

In 2006, the General Assembly amended State law to repeal local acts that had broadened the purposes for which eminent domain may be used beyond those set forth in G.S. 40A-3, and to limit the use of eminent domain for certain revenue bond projects. S.L. 2006-224. The act was in part, a response to the U.S. Supreme Court decision in the case of Kelo v. City of New London (2005), discussed below in the Background section of this summary.

BILL ANALYSIS:

Section 1 proposes to amend the North Carolina Constitution by adding a new Section 19.1 to Article I. The new section would prohibit the taking of private property by eminent domain except for a public use. The proposed amendment also requires that just compensation be paid and that the amount be determined by a jury if requested by any party.

Section 2 provides that the amendment shall be submitted to the voters of the State at the statewide election on May 3, 2016.

Section 3 provides that if a majority of the voters favor the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, who shall then enroll the amendment. The amendment would become effective upon certification and apply to takings occurring after that date.

Section 4 amends G.S. 40A-3 to change the purpose for which private, local public, and other public condemnors may condemn property from "public use or benefit" to "public use".

In addition, Section 4 modifies the types of construction for which private condemnors may acquire property for the public use, by replacing "telegraphs" and "telephones" with "communication facilities," adding "facilities related to the distribution of natural gas," and inserting "natural" before "gas" in the list of commodities for the transportation of which private condemnors may construct pipelines or mains on condemned property.

Section 5 amends G.S. 40A-3 to add a new subsection (d) providing that private condemnors, local public condemnors, and other public condemnors subject to G.S. 40A-3 shall have and may exercise the power of eminent domain to acquire property for the connection of any customer or customers.

EFFECTIVE DATE: Sections 4 and 5 of this act become effective when this act becomes law and apply to takings occurring on or after that date. The remainder of this act is effective when it becomes law.

BACKGROUND: In 2005, the U.S. Supreme Court decided the case of Kelo v. City of New London, 545 U.S. 469 (2005). The case held that the State of Connecticut could constitutionally condemn private property for the purpose of transferring some of the property to a third party for economic development purposes. The court found that the redevelopment plan pursuant to which the condemnation and transfer occurred was a public use. The court also reaffirmed its broad interpretation of the term "public purpose" as meeting the requirements of "public use." Attached is a summary of the case prepared by Steve Rose, former Principal Legislative Analyst in the Research Division.

Brad Krehely and Giles Perry, Staff Attorneys in the Research Division, substantially contributed to this summary.

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[4] Kaperonis v. NC State Highway Commission, 260 N.C. 587, 133 S.E.2d 464 (1963).

Kelo v. City of New London-Overview

545 U.S. 469 (2005)

BACKGROUND: The City of New London was in economic distress and sought to establish and carry out a comprehensive economic development plan as authorized by state statute. The target area was not considered blighted. Certain residents refused to sell and the city proceeded to condemn those properties through the use of eminent domain powers granted by the state statute.

COURT CASE: The case eventually reached the United States Supreme Court where the key question was whether or not the use of the properties in question was for a "public use" as required by the Fifth Amendment to the U.S. Constitution based upon the substantial positive effect that was sought to be achieved for the local economy by the redevelopment plan's positive effect on the local economy. In a 5-4 decision the Court held that the intended use was a "public use," which the Court has long interpreted to mean a "public purpose." The fact that a public purpose would be achieved by transferring some of the property in question to a private party to carry out the development does not matter as long as it is part of a comprehensive plan of redevelopment aimed at producing the public purpose of economic recovery, and as long as the main purpose of the condemnation is not merely to place one person's property in the hands of another.

The dissent maintained that the use of eminent domain in question crossed the line of "public use" and presented a situation where eminent domain could be used to take property from one person in order to give it to another simply because the recipient proposed a use that was in some way better for the public.

The majority opinion emphasized that whether or not the power of eminent domain was authorized in a particular situation was a matter of state law and not the Constitution. The majority opinion stated that the Constitution merely sets the limits that the purpose is for a "public use" and that the owner is paid just compensation.

Important points made in the opinion of the Court:

- A public purpose meets the requirement of "public use," and the Court has interpreted it this way since 1896.
- "Public purpose" will be interpreted broadly.
- The Court would give great deference to legislative judgment as to the need involved and the method of achieving it.
- The comprehensive character of the plan and the substantial deliberation involved in its adoption is significant in determining that its purpose was to benefit the public.
- Promoting economic development is a traditional and long accepted function of government.
- It is permissible to achieve a public purpose by transferring property into the hands of a private party (citing the Court's 1954 decision in *Berman v. Parker* and its 1984 decision in *Hawaii Housing Authority v. Midkiff*).
- Nothing in the decision precludes any state from placing further restrictions on its eminent domain powers.

Prepared by Steve Rose, former Principal Legislative Analyst in the Research Division.

V

I'd rather be a hammer

Than a nail household. It gets clobbered in the end.

Apr 4th 2007 | *beijing* | The Economist - from the print edition



IN CHINA, people who refuse to allow their homes to be demolished by developers are called "nail households". Most end up being chased away by the developers' thugs or forcibly removed by police. But in recent weeks determined resistance by a couple in the south-western city of Chongqing turned a struggle for private-property rights into a *cause célèbre*. They have now reached agreement with the developers. But the debate will simmer on.

On April 2nd, a bulldozer demolished the two-story hotpot restaurant that had also once been home to Yang Wu and his wife Wu Ping. Pictures such as the one above had acquired iconic status in China. On websites and in some of the country's more daring newspapers, they symbolised rare defiance by ordinary citizens in the face of the government-orchestrated onslaught of China's relentless urban redesign.

As a condition of moving out, the couple had demanded a property in the high-rise residential and commercial complex planned for the site. The developers, they said, were offering money—and not enough. After more than two years of wrangling, an agreement was reached this week, giving the couple property and cash worth more in total than their old house. Many in China

would see this as victory. Despite laws requiring fair compensation, people forced to make way for construction projects often receive less than their properties are worth.

The couple's fight caught the Chinese media's attention just as the country's legislature was debating a new law aimed at protecting private-property rights. The law was adopted on March 16th and will come into effect on October 1st. The government's handling of the case was widely portrayed as a crucial test of the new law's effectiveness. The law is vague on compensation as well as on many other issues, but officials hope it will be a reassurance to the country's fast-growing middle class.

Debate over the case has strayed beyond property-related issues. A slogan displayed by the couple on their house hinted at wider concerns. "The state respects and preserves human rights," it said, citing a 2004 constitutional amendment ignored, in the couple's view, by government-backed developers.

The press has questioned the government's right to cite ill-defined "public interest" as an excuse for knocking down homes. Some, however, have also pointed out that at least the house was allowed to stand while the dispute continued. That, at least, was progress.

House Committee on Judiciary II
Tuesday, March 3, 2015 at 1:00 PM
Room 421, Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 3, 2015, in Room 421. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Queen, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:01 PM. The Chairman recognized the sergeants-at-arms and introduced the pages.

The first item on the agenda was **House Bill 31 0.00 Alcohol Restriction-All DWI**. Representative Conrad made the motion to bring the Proposed Committee Substitute before the committee. Representative Jackson was recognized to present the bill. There was a brief discussion, after which Representative Stam made a motion for a favorable report for the Proposed Committee Substitute with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

The next bill presented was **House Bill 32 Amend Habitual DWI**. Representative Salmon made the motion to bring the Proposed Committee Substitute before the committee. Representative Jackson was recognized to present the bill. After a brief discussion, Representative McGrady made a motion for a favorable report for the Proposed Committee Substitute with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

The third bill presented was **House Bill 38 Judicial Efficiency/Effect. Admin. of Justice**. Representative Davis was recognized to present the bill. There was a brief discussion, after which Representative Glazier made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report and was re-referred to the Committee on Appropriations.

The last bill presented was **House Bill 59 Clarify Report Admissibility**. Representative Queen made the motion to bring the Proposed Committee Substitute before the committee. Representative Faircloth was recognized to present the bill. After a brief discussion, Representative McGrady made a motion for a favorable report for the Proposed Committee Substitute with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

The meeting adjourned at 1:25 PM.

Respectfully submitted,

John M. Blust
Representative John M. Blust, Chairman
Presiding

Jennie L. Thurlow
Jennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, March 3, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 31	0.00 Alcohol Restriction-All DWI.	Representative Jackson
HB 32	Amend Habitual DWI.	Representative Jackson
HB 38	Judicial Efficiency/Effect. Admin. of Justice.	Representative Davis Representative Burr
HB 59	Clarify Report Admissibility.	Representative Faircloth Representative Stam Representative Glazier

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:54 PM on Friday, February 27, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, March 3, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 31	0.00 Alcohol Restriction-All DWI.	Representative Jackson
HB 32	Amend Habitual DWI.	Representative Jackson
HB 38	Judicial Efficiency/Effect. Admin. of Justice.	Representative Davis Representative Burr
HB 59	Clarify Report Admissibility.	Representative Faircloth Representative Stam Representative Glazier

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE AND RE-REFERRED

HB **38** Judicial Efficiency/Effect. Admin. of Justice.

Draft Number:	None
Serial Referral:	**APPROPRIATIONS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Davis

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **31** 0.00 Alcohol Restriction-All DWI.

Draft Number:	H31-PCS40079-SA-2
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jackson

HB **32** Amend Habitual DWI.

Draft Number:	H32-PCS40080-SA-3
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jackson

HB **59** Clarify Report Admissibility.

Draft Number:	H59-PCS20050-SA-4
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Faircloth

TOTAL REPORTED: 4

CMR19-V-3

Committee Sergeants at Arms

NAME OF COMMITTEE House Comm. on Judiciary II

DATE: 3/3/2015 Room: 421

House Sgt-At Arms:

1. Name: Charles Godwin
2. Name: Dean Marshbourne
3. Name: Rey Cooke
4. Name:
5. Name:

Senate Sgt-At Arms:

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

Pages

Tuesday, March 3 JUCICIARY II	Room 415	Time 1:00 pm

Name	County	Sponsor
Lauren Trivette	Bladen	William D. Brisson
Drew West	Buncombe	Michele D. Presnell

VISITOR REGISTRATION SHEET

House Comm. on Judiciuary II — Name of Committee

3/3/2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ole Madsen	hear4NC.org Supply, NC
Penny Burke	School of Gov
Donna Clark	School of Govt.
Mildred Spearman	NCAOC
Fred Baggett	NC Police Chiefs
Kim Crank	UCBH
Meghan Cook	OITS
Joe John	STATE CRIME LAB
Mary Catherine Green	NC Beer & Wine Wholesalers Assn
Todd Burke	NC Network for L.L.
Phillip Isley	BMD

VISITOR REGISTRATION SHEET

House Comm. on Judiciuary II — 3/3/2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Skinner	NCACC
Mark Bibbs	Longleaf Pine Consulting

VISITOR REGISTRATION SHEET

House Comm. on Judiciuary II — Name of Committee

3/3/2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Judy Minor	Mediation Network of N.C.
Elizabeth Bik	BP
Chris McClure	BP
Thomas Wat	[illegible]
Reston Jones	NCDOT
McNeil Clement	Atty @ Law for Rent
Chris Agnew	DOJ
Peg Dorer	Conf of DAs
Rivon Merwald	Williams Mullen
Debbie Jones	DMV
Maggie P. Thomas	DOT IT

VISITOR REGISTRATION SHEET

House Comm. on Judiciuary II — 3/3/2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hope Mongiovi	NCDOT
Jeffrey Zimmerman	NCDOT
Robert Sawyer	NC DMV
David Foxler	NC DMV
TJ Bugbee	NF
John McMillan	MPOs

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 31
PROPOSED COMMITTEE SUBSTITUTE H31-CSSA-2 [v.2]

3/1/2015 4:47:22 PM

Short Title: 0.00 Alcohol Restriction-All DWI. (Public)

Sponsors:

Referred to:

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A 0.00 ALCOHOL CONCENTRATION RESTRICTION ON ALL RESTORATION OF LICENSES REVOKED FOR AN IMPAIRED DRIVING OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-17.8(b) reads as rewritten:

"(b) **(Effective until December 1, 2016)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of ~~0.04 or greater;~~greater than 0.00;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

(b) **(Effective December 1, 2016)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of ~~0.04 or greater:~~greater than 0.00;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 2. G.S. 20-19(c3) reads as rewritten:

"(c3) **(Effective until December 1, 2016)** Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of ~~0.04 or more~~greater than 0.00 at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle

with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, habitual impaired driving, G.S. 20-138.5, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c3) **(Effective December 1, 2016)** Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was

revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of ~~0.04 or more~~greater than 0.00 at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

SECTION 3. This act becomes effective July 1, 2016, and applies to offenses committed on or after that date.

HOUSE BILL 31:
0.00 Alcohol Restriction-All DWI

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 3, 2015
Introduced by:	Rep. Jackson	**Prepared by:**	Susan Sitze
Analysis of:	PCS to First Edition H31-CSSA-2		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 31 would require a 0.00 alcohol concentration restriction on all restoration of licenses revoked for an impaired driving offense.***

CURRENT LAW: When a person's driver's license is revoked after an impaired driving conviction, upon restoration of the license an alcohol concentration restriction is placed on the person's driver's license. Violation of that restriction results in an additional one year revocation of the license. Under current law that restriction is as follows:

- 0.04 for a first restoration for a "regular" DWI offense (or any substantially similar offense in another state or in federal court).
- 0.00 for a second or subsequent restoration for a "regular" DWI offense (or any substantially similar offense in another state or in federal court).
- 0.00 for any restoration for DWI in a commercial vehicle, habitual DWI, driving while less than 21 years old after consuming drugs or alcohol, felony death by vehicle, manslaughter or negligent homicide resulting from impaired driving, or after a revocation for violating an alcohol concentration restriction (any substantially similar offense in another state or in federal court).

Some persons convicted of impaired driving offenses are required to drive only vehicles with an ignition interlock system installed, and as part of that requirement are given an alcohol concentration restriction for the ignition interlock. Violation of that restriction by blowing a greater alcohol concentration on the ignition interlock is charged as driving while license revoked. Under current law that restriction is as follows:

- 0.04 if the only reason an ignition interlock system is required is because the person had an alcohol concentration of 0.15 or more at the time of the underlying impaired driving offense.
- 0.00 if the ignition interlock is required because the person has previous impaired driving convictions within 7 years or the person was sentenced at the Aggravated Level One punishment level for the underlying impaired driving offense.
- 0.00 if the ignition interlock is required because the person had an alcohol concentration of 0.15 or more AND the underlying conviction was for DWI in a commercial vehicle, driving while less than 21 years old after consuming alcohol or drugs, felony death, felony aggravated serious injury or felony serious injury by motor vehicle, or manslaughter or negligent homicide resulting from impaired driving.

O. Walker Reagan
Director



Research Division
(919) 733-2578

BILL ANALYSIS:

The PCS to **House Bill 31** would amend the two instances where the alcohol concentration restriction is 0.04 to make the alcohol concentration restrictions for both ignition interlock systems (Section 1 of the bill) and restoration of a driver's license after an impaired driving conviction (Section 2 of the bill) 0.00 in all cases.

EFFECTIVE DATE: This act becomes effective July 1, 2016, and applies to offenses committed on or after that date.

HOUSE BILL 31

Short Title:	0.00 Alcohol Restriction-All DWI.	(Public)
Sponsors:	Representative Jackson (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A 0.00 ALCOHOL CONCENTRATION RESTRICTION ON ALL RESTORATION OF LICENSES REVOKED FOR AN IMPAIRED DRIVING OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-17.8(b)(3)a. reads as rewritten:

"(b) Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

...

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of ~~0.04~~0.00 or greater;"

SECTION 2. G.S. 20-19(c3)(1) reads as rewritten:

"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of ~~0.04~~0.00 or more at any relevant time after the driving;"

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 32
PROPOSED COMMITTEE SUBSTITUTE H32-CSSA-3 [v.1]

3/1/2015 4:52:47 PM

Short Title: Amend Habitual DWI. (Public)

Sponsors:

Referred to:

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF HABITUAL IMPAIRED DRIVING.

The General Assembly of North Carolina enacts:

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

"**§ 20-138.5. Habitual impaired driving.**

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

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.



HOUSE BILL 32:
Amend Habitual DWI

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 3, 2015
Introduced by:	Rep. Jackson	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H32-CSSA-3		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 32 would amend the offense of Habitual Impaired Driving by reducing the number of prior offenses required, and providing that once an offender is convicted of Habitual Impaired Driving any future offenses will also be prosecuted as Habitual offenses.***

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

BILL ANALYSIS: The PCS for House Bill 32 would amend the number of prior convictions required for habitual impaired driving to only require 2 prior convictions within the 10 years preceding the current offense. Additionally, the PCS would provide that if a person has previously been convicted of habitual impaired driving, any new offense shall also be habitual impaired driving.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

* H 3 2 - S M S A - 6 C S S A - 3 - V 1 *

Research Division
(919) 733-2578

HOUSE BILL 32

Short Title:	Amend Habitual DWI.	(Public)
Sponsors:	Representative Jackson (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF HABITUAL IMPAIRED DRIVING.

The General Assembly of North Carolina enacts:

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

"**§ 20-138.5. Habitual impaired driving.**

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

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 38

Short Title:	Judicial Efficiency/Effect. Admin. of Justice.	(Public)
Sponsors:	Representatives Davis and Burr (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II, if favorable, Appropriations.	

February 4, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE JUDICIAL EFFICIENCY AND THE EFFECTIVE ADMINISTRATION OF JUSTICE BY REDUCING THE NUMBER OF RECIPIENTS OF HARD COPIES OF THE APPELLATE DIVISION REPORTS DISTRIBUTED AT STATE EXPENSE, ESTABLISHING THE JOINT SELECT STUDY COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, DIRECTING THE STATE HIGHWAY PATROL TO STUDY THE FEASIBILITY AND COST-EFFECTIVENESS OF CONTRACTING WITH LOCAL BUSINESSES TO PERFORM MAINTENANCE ON STATE HIGHWAY PATROL VEHICLES IN LIEU OF REQUIRING THE VEHICLES TO BE TAKEN TO A REGIONAL MAINTENANCE FACILITY, DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A CASE MANAGEMENT SYSTEM FOR CIVIL CASES IN SUPERIOR COURT, DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A WRITTEN, COMPREHENSIVE POLICY FOR THE MANAGEMENT OF INFORMATION TECHNOLOGY RESOURCES, DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THE APPOINTMENT AND SUPERVISION OF MAGISTRATES, PROVIDING A MECHANISM FOR ENFORCING PAYMENT OF THE CRIMINAL MEDIATION FEE, AND PROVIDING FOR MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

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 other named entities ~~and to educational institutions of instruction,~~ as follows:

~~Governor, Office of the~~	~~1~~
~~Lieutenant Governor, Office of the~~	~~1~~
~~Secretary of State, Department of the~~	~~2~~
~~State Auditor, Department of the~~	~~1~~
~~Treasurer, Department of the State~~	~~1~~
~~Superintendent of Public Instruction~~	~~1~~
Office of the Attorney General	~~11~~4
~~State Bureau of Investigation~~	~~1~~
~~Agriculture and Consumer Services, Department of~~	~~1~~

~~Labor, Department of~~	~~1~~
~~Insurance, Department of~~	~~1~~
~~Budget Bureau, Department of Administration~~	~~1~~
~~Property Control, Department of Administration~~	~~1~~
~~State Planning, Department of Administration~~	~~1~~
~~Environment and Natural Resources, Department of~~	~~1~~
~~Revenue, Department of~~	~~1~~
~~Health and Human Services, Department of~~	~~1~~
~~Juvenile Justice, Division of~~	~~1~~
~~Commission for the Blind~~	~~1~~
~~Transportation, Department of~~	~~1~~
~~Motor Vehicles, Division of~~	~~1~~
~~Utilities Commission~~	~~8~~
~~Industrial Commission~~	~~11~~
~~State Human Resources Commission~~	~~1~~
~~Office of State Human Resources~~	~~1~~
~~Office of Administrative Hearings~~	~~2~~
~~Community Colleges, Department of~~	~~38~~
~~Department of Commerce~~	~~1~~
~~Commission of Correction~~	~~1~~
~~Parole Commission~~	~~1~~
Archives and History, Division of	1
~~Public Safety, Department of~~	~~2~~
Cultural Resources, Department of	3
Legislative ~~Building~~ Library	~~2~~1
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
~~Judges of the Superior Court~~	~~1 ea.~~
Clerks of the Superior Court	1 ea.
~~District Attorneys~~	~~1 ea.~~
~~Emergency and Special Judges of the Superior Court~~	~~1 ea.~~
Supreme Court Library	~~AS MANY AS REQUESTED~~5
Appellate Division Reporter	1
~~University of North Carolina, Chapel Hill~~	~~71~~
~~University of North Carolina, Charlotte~~	~~1~~
~~University of North Carolina, Greensboro~~	~~1~~
~~University of North Carolina, Asheville~~	~~1~~
~~North Carolina State University, Raleigh~~	~~1~~
~~Appalachian State University~~	~~1~~
~~East Carolina University~~	~~1~~
~~Fayetteville State University~~	~~1~~
~~North Carolina Central University~~	~~17~~
~~Western Carolina University~~	~~1~~
~~Duke University~~	~~17~~
~~Davidson College~~	~~2~~
~~Wake Forest University~~	~~25~~
~~Lenoir Rhyne College~~	~~1~~
~~Elon College~~	~~1~~
~~Campbell University~~	~~25~~
~~Federal, Out-of-State and Foreign Secretary of State~~	~~1~~

~~Secretary of Defense~~	~~1~~
~~Secretary of Health, Education and Welfare~~	~~1~~
~~Secretary of Housing and Urban Development~~	~~1~~
~~Secretary of Transportation~~	~~1~~
~~Attorney General~~	~~1~~
United States Department of Justice	1
~~Internal Revenue Service~~	~~1~~
~~Veterans' Administration~~	~~1~~
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
~~Federal District Attorneys resident in North Carolina~~	~~1 ea.~~
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1
Cherokee Supreme Court, Eastern Band of Cherokee Indians	1

The Administrative Officer of the Courts shall develop a process through which all other persons or entities may obtain copies of the appellate division reports by purchase. The purchase price shall represent the actual cost to the State of publication and shipping.

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports.

(b) The appellate division reports shall be made available by electronic means, at no cost to the recipient, through publication in a downloadable format on a publicly available Web site."

SECTION 2.(a) The Joint Select Study Committee on the Preservation of Biological Evidence is established. The membership shall be as follows:

(1) Three members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) The Attorney General or the Attorney General's designee.

(4) The Director of the North Carolina State Crime Laboratory or the Director's designee.

(5) The Director of the Administrative Office of the Courts or the Director's designee.

(6) The President of the North Carolina Association of Clerks of Superior Court or the President's designee.

(7) The President of the North Carolina Association of Chiefs of Police or the President's designee.

(8) The President of the North Carolina Sheriffs' Association or the President's designee.

(9) The President of North Carolina Advocates for Justice or the President's designee.

(10) One North Carolina district attorney appointed by the Speaker of the House of Representatives.

(11) One North Carolina district attorney appointed by the President Pro Tempore of the Senate.

(12) One public member appointed by the Speaker of the House of Representatives.

(13) One public member appointed by the President Pro Tempore of the Senate.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Committee to serve as cochair. The Committee shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 2.(b) The Committee shall review matters related to the preservation of DNA and biological evidence, including:

(1) The costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence.

(2) Emerging technologies with regard to the retention and preservation of biological evidence.

(3) Procedures for the interagency transfer of biological evidence.

(4) Any other topic the Committee believes is related to its purpose.

SECTION 2.(c) Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work.

SECTION 2.(d) The Committee shall submit a final report on the results of its study, including any proposed legislation, to the General Assembly on or before April 1, 2016. The Committee shall file a copy of its report with the President Pro Tempore's office, the Speaker's office, and the Legislative Library. The Committee shall terminate on April 1, 2016, or upon the filing of its final report, whichever occurs first.

SECTION 3. The Department of Public Safety shall study the feasibility and cost-effectiveness of contracting with local businesses to perform maintenance on State Highway Patrol vehicles in lieu of requiring the vehicles to be taken to a regional maintenance facility. The Department of Public Safety shall report the results of this study to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2016.

SECTION 4. The Administrative Office of the Courts shall study and develop a case management system for civil cases in superior court designed to make more efficient use of superior court time and resources, including a more flexible designation of mixed sessions. The study shall consider a system that would allow exceptional cases to be assigned to a superior court judge to oversee the case, including scheduling of pretrial hearings, motions hearings, and trial of the case. The Administrative Office of the Courts shall report on the study and the system developed as a result of the study to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2016.

SECTION 5. The Administrative Office of the Courts shall develop a written, comprehensive policy for the management of information technology resources that includes specific guidelines for the distribution and maintenance of information technology hardware. The Administrative Office of the Courts shall report on this policy to the Joint Legislative Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight Committee on Information Technology by March 1, 2016.

SECTION 6. The Administrative Office of the Courts shall study the current law for the appointment and supervision of magistrates. The study shall consider whether supervision of magistrates should be the responsibility of some person other than the chief district court judge and shall address whether any other changes should be made to the process for appointing and supervising magistrates. The Administrative Office of the Courts shall report the results of this study to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2016.

SECTION 7. G.S. 7A-38.7 reads as rewritten:

"**§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the sum of sixty dollars ($60.00) per mediation to support the services provided by the community mediation centers and the Mediation Network of North Carolina. Prior to mediation, the parties shall be notified of the fee and the fee shall be paid as part of any mediation that results in dismissal. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the Mediation Network of North Carolina. The Mediation Network may retain up to three dollars ($3.00) of this amount as an allowance for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case. The court may waive or reduce a fee assessed under this section only upon entry of a written order, supported by findings of fact and conclusions of law, determining there is just cause to grant the waiver or reduction.

(b) No criminal case shall be dismissed through referral to mediation unless the full amount of the dispute resolution fee as required by subsection (a) of this section is paid within 45 days of the completion of the mediation. If payment has not been made within that time, the case shall be remanded back to the court for disposition. Before providing the district attorney with a dismissal form, the community mediation center shall require proof that the defendant has paid the dispute resolution fee as required by subsection (a) of this section and shall attach the receipt to the dismissal form."

SECTION 8.(a) The catch line of G.S. 7A-38.4A reads as rewritten:

"**§ 7A-38.4A. Settlement procedures in ~~district court~~family financial actions.**"

SECTION 8.(b) G.S. 7A-38.4A(c) reads as rewritten:

"(c) Any chief district court judge in a judicial district may order a mediated settlement conference or may order another settlement procedure, as provided under subsection (g) of this section, for any action pending in that district involving issues of equitable distribution, alimony, child or post separation support, or claims arising out of contracts between the parties under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate other district court judges or administrative personnel to issue orders implementing those settlement procedures. However, local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted by the Supreme Court."

SECTION 8.(c) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.4B. Settlement procedures in district court general civil actions.**

(a) The General Assembly finds that a system of settlement events should be established to facilitate the settlement of district court civil actions, other than those involving family issues covered by the provisions of G.S. 7A-38.4A, in order to make that litigation more economical, efficient, and satisfactory to the parties, their representatives, and the State. District courts should be able to require parties to those actions and their representatives to attend a pretrial mediated settlement conference or other settlement procedure conducted under this section and rules adopted by the Supreme Court to implement this section.

(b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

(c) The chief district court judge, or that person's designee, in a judicial district may order a mediated settlement conference or may order another settlement procedure, as provided under subsection (g) of this section, for any district court civil action, other than those involving family issues covered by the provisions of G.S. 7A-38.4A and issues exempted by the rules of the Supreme Court implementing this section. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate other district court judges or administrative personnel to issue orders implementing those

settlement procedures. However, local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted by the Supreme Court.

(d) The parties to a district court action where a mediated settlement conference or other settlement procedure is ordered, their attorneys, and other persons or entities with authority, by law or contract, to settle a party's claim, shall attend the mediated settlement conference or other settlement procedure, unless the rules ordering the settlement procedure provide otherwise. No party or other participant in a mediated settlement conference or other settlement procedure is required to make a settlement offer or demand that the party or participant deems contrary to that party's or participant's best interests. Parties who have been victims of domestic violence may be excused from physically attending or participating in a mediated settlement conference or other settlement procedure.

(e) Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause, fails to attend or fails to pay any or all of the mediator's or other neutral's fee in compliance with this section is subject to the contempt powers of the court and monetary sanctions imposed by a district court judge. A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and upon any person against whom sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order making findings of fact and conclusions of law. An order imposing sanctions is reviewable upon appeal, and the entire record shall be reviewed to determine whether the order is supported by substantial evidence.

(f) The parties to a district court action in which a mediated settlement conference is to be held under this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules adopted by the Supreme Court, a mediator shall be appointed by a district court judge.

(g) A chief district court judge, or that judge's designee, at the request of a party and with the consent of all parties, may order the parties to attend and participate in any other settlement procedure authorized by rules adopted by the Supreme Court or adopted by local district court rules, in lieu of attending a mediated settlement conference. Neutrals acting under this section shall be selected and compensated in accordance with rules adopted by the Supreme Court. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law. Nothing herein shall prohibit the parties from participating in mediation at a community mediation center operating under G.S. 7A-38.5.

(h) Mediators and other neutrals acting under this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court under G.S. 7A-38.2.

(i) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court shall set out a method whereby a party found by the court to be unable to pay the costs of settlement procedures is afforded an opportunity to participate without cost to that party and without expenditure of State funds.

(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except in any of the following:

(1) Proceedings for sanctions under this section.

(2) Proceedings to enforce or rescind a settlement of the action.

(3) Disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals.

(4) Proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

(k) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate in settlement procedures conducted under this section. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards. The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission.

(l) An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operating under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. The administrative fee shall be set by the Director of the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

(m) The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the chief district court judge of any district to report statistical data about settlement procedures conducted under this section for administrative purposes.

(n) Nothing in this section or in rules adopted by the Supreme Court implementing this section shall restrict a party's right to a trial by jury.

(o) The Supreme Court may adopt rules to implement this section."

SECTION 9. Sections 3 through 6 of this act become effective July 1, 2015. Section 7 of this act becomes effective October 1, 2015, and applies to criminal cases referred to mediation on or after that date. Section 8 of this act becomes effective July 1, 2015, and applies to actions filed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 38:
Judicial Efficiency/Effect. Admin. of Justice

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Appropriations	**Date:**	February 24, 2015
Introduced by:	Reps. Davis, Burr	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 38 makes changes to several statutes relating to courts and justice agencies.

BILL ANALYSIS:

Section 1 Appellate Reports

Section 1 of the bill would amend G.S. 7A- 343.1 which requires the Administrative Officer of the Courts to distribute, at State expense, copies of the appellate division reports. The statute prescribes who receives the hard copies. It also stipulates how many copies each named entity receives. For example, the Office of the Governor currently receives 1 copy and the Office of the Attorney General receives 11 copies.

This section would reduce substantially the number of recipients and copies. It would require the Administrative Officer of the Courts to develop a process through which all other persons or entities may purchase copies of the reports; the purchase price must represent the actual cost to the State for publication and shipping. The bill would also require that the appellate division reports be available in a downloadable format on a website at no cost to the recipient.

This section is effective when it becomes law.

Section 2 Preservation of Biological Evidence

Pursuant to G.S. 15A-268, which provides for the preservation of biological evidence in criminal investigations, the term "biological evidence" includes the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in a criminal investigation. The statute provides all records documenting the possession, control, storage, and destruction of evidence related to a criminal investigation or prosecution of certain felony offenses must be retained.

Section 2 of the bill would establish a Joint Select Committee on the Preservation of Biological Evidence to review matters related to the preservation of DNA and biological evidence, including emerging technologies, procedures for interagency transfer of biological evidence, and costs associated with development of guidelines for the retention and preservation of biological evidence. Members of the committee would include appointees of the President Pro Tempore of the Senate and the Speaker of the House, representatives of State law enforcement and judicial entities, and representatives of specified law enforcement associations. The Committee would be required to submit its final report on or before March 1, 2016.

This section is effective when it becomes law.

Section 3 Highway Patrol Vehicle Maintenance

Section 3 of the bill would require the Department of Public Safety to study the feasibility and cost-effectiveness of contracting with local businesses to perform maintenance on State Highway Patrol vehicles in lieu of requiring the vehicles to be taken to a regional maintenance facility. The Department shall report the results of the study to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2016.

This section becomes effective July 1, 2015.

Section 4 Civil Case Management

Section 4 of the bill would direct AOC to study and develop a case management system for civil cases in superior court designed to make more efficient use of superior court time and resources, including a more flexible designation of mixed sessions. The study shall consider a system allowing exceptions cases to be assigned to a superior court judge to oversee the case. AOC shall report to the Joint Legislative Oversight committee on Justice and Public Safety by March 1, 2016.

This section becomes effective July 1, 2015.

Section 5 AOC IT Policy

Section 5 of the bill would direct AOC to develop a written, comprehensive policy for the management of information technology resources that includes specific guidelines for the distribution and maintenance of information technology hardware. AOC shall report to the Joint Legislative Oversight Committees on Justice and Public Safety and Information Technology by March 1, 2016.

This section becomes effective July 1, 2015.

Section 6 Magistrate Study

Section 6 of the bill would require AOC to study the appointment and supervision of magistrates. The study shall consider whether supervision of magistrates should be the responsibility of some person other than the chief district court judge and shall address whether any other changes should be made to the process for appointing and supervising magistrates. AOC shall report to the Joint Legislative Oversight committee on Justice and Public Safety by March 1, 2016.

This section becomes effective July 1, 2015.

Section 7 Enforce Criminal Mediation Fee

For each criminal case that is resolved through referral to a community mediation center, a dispute resolution fee of $60.00 per mediation is assessed. The fee supports the services provided by the community mediation centers and the Mediation Network of North Carolina. Fees must be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the Mediation Network of North Carolina. The Mediation Network may retain up to $3.00 of this amount for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case. The court may waive or reduce a fee assessed if there is a written order determining there is just cause to grant the waiver or reduction. Before providing the district attorney with a dismissal form, the community mediation center must require proof that the defendant has paid the dispute resolution fee and must attach the receipt to the dismissal form.

Section 7 of the bill would provide that no criminal case shall be dismissed through referral to mediation unless the full amount of the dispute resolution fee is paid within 45 days of the completion of the mediation. If payment has not been made within that time, the case must be remanded back to the court for disposition.

This section becomes effective October 1, 2015, and applies to criminal cases referred to mediation on or after that date.

Section 8 District Court Mediated Settlement

G.S. 7A-38.4A currently provides for mediated settlement conferences to be ordered in district court civil cases involving family issues, such as equitable distribution, alimony or support.

Section 8 of the bill would provide for mediated settlement conferences in all district court civil actions.

Sections 8(a) and (b) would make conforming changes to G.S. 7A-38.4A to reflect its application only to family financial actions.

Section 8(c) would create a new G.S. 7A-38.4B to authorize mediated settlement conferences in all other district court civil actions. The bill would allow the court to order the parties to participate in a mediated settlement conference or other settlement procedure authorized by the Supreme Court. The Supreme Court would be given the authority to adopt rules governing the proceedings and the standards for mediators and other neutrals used in settlement procedures.

The new statute is modeled on and similar to the existing statutes for mediated settlement conferences in family financial actions in district court (G.S. 7A-38.4A) and superior court civil actions (G.S. 7A-38.1).

This section becomes effective July 1, 2015, and applies to actions filed on or after that date.

EFFECTIVE DATE: The effective dates of each section are as noted above.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 59
PROPOSED COMMITTEE SUBSTITUTE H59-CSSA-4 [v.1]

3/2/2015 5:13:42 PM

Short Title: Clarify Report Admissibility. (Public)

Sponsors:

Referred to:

February 9, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ADMISSIBILITY OF REPORTS OF FORENSIC AND CHEMICAL ANALYSIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-58.20 reads as rewritten:

"**§ 8-58.20. Forensic analysis admissible as evidence.**

...

(f) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court to the use of the laboratory report and affidavit within the time allowed by this section, then the objection shall be deemed waived and the laboratory report and affidavit shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise at the proceeding when offered. If, however, a written objection is filed, this section does not apply and the admissibility of the evidence shall be determined and governed by the appropriate rules of evidence.

(g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic Analysis Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of evidence that has been subjected to forensic analysis performed as provided in subsection (b) of this section, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (a) of this section.

(3) The provisions of this subsection may be utilized by the State only if (i) the State notifies the defendant at least 15 business days before any proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement and (ii) the defendant fails to file a written notification with the court, with a copy to the State, at least five business

days before the proceeding that the defendant objects to the introduction of the statement into evidence.

(4) In lieu of the notice required in subdivision (3) of this subsection, the State may include the statement with the laboratory report and affidavit, as provided in subsection (d) of this section.

(5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement.

(6) Upon filing a timely objection, the admissibility of the statement shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

..."

SECTION 2. G.S. 15A-1225.3(b) reads as rewritten:

"(b) Remote Testimony Authorized. – In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote testimony if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full laboratory report package provided to the district attorney.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony.

(3) The defendant's attorney of record, or the defendant if that person has no attorney, 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 testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony."

SECTION 3. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

...

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services (DHHS), are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. For the purposes of this section, a "laboratory approved for chemical analysis" by the DHHS includes, but is not limited to, any hospital laboratory approved by DHHS pursuant to the program resulting from the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA).

The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

...

(c5) The testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings, and in any court, if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by subsections (c1) and (c3) of this section.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the chemical analysis into evidence using remote testimony.

(3) The defendant's attorney of record, or the defendant if that person has no attorney, 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 testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony.

The method used for remote testimony authorized by this subsection shall allow the trier of fact and all parties to observe the demeanor of the analyst as the analyst testifies in a similar manner as if the analyst were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the analyst.

Nothing in this section shall preclude the right of any party to call any witness. Nothing in this subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose.

...."

SECTION 4. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

...

(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court

tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

...

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

...."

SECTION 5. This act is effective when it becomes law and applies to notices of intent to introduce a statement or report provided by the State on or after that date.

HOUSE BILL 59:
Clarify Report Admissibility

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 3, 2015
Introduced by:	Reps. Faircloth, Stam, Glazier	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H59-CSSA-4		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 59 clarifies the admissibility of reports of forensic and chemical analysis.

CURRENT LAW: Several statutes in current law allow the admission of a statement or report of forensic or chemical analysis in a criminal trial either without the personal appearance of the analyst, or with the analyst being allowed to testify remotely. These admissions are allowed only after notice by the State of the intent to admit the statement or report and failure by the defendant to file an objection to the admission of the report.

BILL ANALYSIS: The PCS for House Bill 59 would amend each of the statutes allowing admission of a statement or report of forensic or chemical analysis by clarifying that if the State provides the required notice and the defendant does not object within the required time, the "objection shall be deemed waived".

EFFECTIVE DATE: This act is effective when it becomes law and applies to notices of intent to introduce a statement or report provided by the State on or after that date.

O. Walker Reagan
Director

H59-SMSA-7 CSSA-4 -V1

Research Division
(919) 733-2578

HOUSE BILL 59

Short Title:	Clarify Report Admissibility.	(Public)
Sponsors:	Representatives Faircloth, Stam, and Glazier (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary II.	

February 9, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ADMISSIBILITY OF REPORTS OF FORENSIC AND CHEMICAL ANALYSIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1225.3(b) reads as rewritten:

"(b) Remote Testimony Authorized. – In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote testimony if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full laboratory report package provided to the district attorney.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony.

(3) The defendant's attorney of record, or the defendant if that person has no attorney, 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 testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony."

SECTION 2. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

...

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services (DHHS), are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. For the purposes of this section, a "laboratory approved for chemical analysis" by the DHHS

includes, but is not limited to, any hospital laboratory approved by DHHS pursuant to the program resulting from the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA).

The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

...

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

...

(c5) The testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings, and in any court, if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by subsections (c1) and (c3) of this section.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the chemical analysis into evidence using remote testimony.

(3) The defendant's attorney of record, or the defendant if that person has no attorney, 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 testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony.

The method used for remote testimony authorized by this subsection shall allow the trier of fact and all parties to observe the demeanor of the analyst as the analyst testifies in a similar manner as if the analyst were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the analyst.

Nothing in this section shall preclude the right of any party to call any witness. Nothing in this subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose.

...."

SECTION 3. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

...

(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory,

Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

...."

SECTION 4. This act is effective when it becomes law and applies to notices of intent to introduce a statement or report provided by the State on or after that date.

House Committee on Judiciary II
Tuesday, March 10, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 10, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, Michaux, Queen, Reives, Ross, Saine, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Hope Chadwick, Kevin King, and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:07 PM. He introduced the pages and Sergeants at Arms (Attachment II). The following bills were considered:

The Proposed Committee Substitute of House Bill 79 and a summary are provided (Attachment III and Attachment IV)
HOUSE BILL 79: A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS PERTAINING TO CIVIL NO-CONTACT ORDERS TO CLARIFY THAT A KNOWING VIOLATION OF A CIVIL NO-CONTACT ORDER IS PUNISHABLE BY CIVIL OR CRIMINAL CONTEMPT.

Chairman Jordan recognized Representative Blust, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Glazier, the primary sponsor of the bill, to speak on the bill.

House Bill 79 would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt. The Proposed Committee Substitute amends G.S. 1-294 to provide that when an appeal is perfected, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure.

Chairman Jordan recognized Toby Hampson and Matt Leerburg, members of the legislative committee for the Appellate Practice Section Council of the NC Bar Association, as available to answer questions on the bill.

After a short discussion, the chair recognized Representative Blust who motioned for a favorable report of the proposed committee substitute, unfavorable as to the original bill. The motion passed on a unanimous voice vote.

A summary of House Bill 113 is provided (Attachment V)
HOUSE BILL 113: A BILL TO BE ENTITLED AN ACT TO PROTECT NORTH CAROLINA'S STUDENTS BY INCREASING THE CRIMINAL PENALTY FOR THE COMMISSION OF CERTAIN SEX OFFENSES COMMITTED AGAINST A STUDENT BY A PERSON WHO IS SCHOOL PERSONNEL AND TO ESTABLISH A PROCEDURE FOR INSTITUTIONS OF HIGHER EDUCATION TO OBTAIN A LIST OF STUDENTS AND EMPLOYEES

Chairman Jordan recognized Representative Hastings, the primary sponsor of the bill, to speak on the bill.

House Bill 113 would increase the criminal penalty for the commission of certain sex offenses committed against a student by a person who is school personnel and to establish a procedure for institutions of higher education to obtain a list of students and employees at the institution who are registered as sex offenders.

The chair recognized Representative Stam, who moved to amend the bill on page 2, line 11 by rewriting the line to read: "information for any registrant who has stated that the registrant is a student or employee, or expects to" (Attachment VI). The motion passed without dissent.

The chair recognized Representative Stam, who moved to amend the bill on page 1, line 28 through page 2, line 2 by deleting that section in its entirety. And by renumbering the remaining sections accordingly. And on page 2, line 17 by deleting "Sections 2 through 4" and inserting "Sections 2 and 3". (Attachment VII). The motion passed without dissent.

After a short discussion, the chair recognized Representative Glazier who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

A summary of House Bill 134 is provided (Attachment VIII, IX)
HOUSE BILL 134: A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A MINOR WHO IS SOLICITING AS A PROSTITUTE IS IMMUNE FROM PROSECUTION FOR THE OFFENSE OF SOLICITATION OF PROSTITUTION.

Chairman Jordan recognized Representative Blust, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Glazier, the primary sponsor of the bill, to speak on the bill.

House Bill 134 would provide that a minor who is soliciting as a prostitute is immune from prosecution for the offense of solicitation of prostitution.

Under current law, a minor charged with prostitution under G.S. 14-204 is exempt from prosecution and is treated as an undisciplined juvenile. House Bill 134 would exempt minors from prosecution for solicitation of prostitution under G.S. 14-205.1 in the same manner that they are currently exempt from the charge of prostitution.

After a short discussion, the chair recognized Representative Conrad who moved to give a favorable report to the original bill. The motion passed on a unanimous voice vote.

A summary of House Bill 109 is provided (Attachment X)
HOUSE BILL 109: A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR HONESTY IN ADVERTISING AND MARKETING OF THE NORTH CAROLINA STATE LOTTERY.

Chairman Jordan recognized Representative Stam, the primary sponsor of the bill, to speak on the bill. The chair noted that House Bill 109 is on the agenda for discussion only and will be on the agenda next week for a vote.

House Bill 109 would make various changes to the advertising and marketing of the North Carolina State Lottery.

Chairman Jordan recognized Jaime King Fuquay of the North Carolina Education Lottery, to answer questions on the bill.

There being no further business the Chairman Jordan adjourned the meeting at 2:03 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **79** — Allow Civil & Criminal Contempt/50C Violation.

Draft Number:	H79-PCS30074-RN-1
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Glazier

HB **134** — Soliciting Prostitution/Immunity for Minors.

Draft Number:	H134-PCS30072-SA-11
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Glazier

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **113** — Protect Our Students Act.

Draft Number:	H113-PCS30073-SA-12
Serial Referral:	**FINANCE**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Hastings

TOTAL REPORTED: 3



I

VISITOR REGISTRATION SHEET

House Judiciary II — 03/10/15

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wren Penny-Hren	NCHFA
Daig Miskiw	PSG
Fred Steen III	Governor's Office
Hayden Bourgeois	FSP
John Del Grosso	Brubaker + Assoc
Sarah Bokes	Brubaker + Assoc
Jon Brubaker	Brubaker + Assoc
[illegible]	Police Chiefs Assn
Leanne Winner	NCSBA
Bruce Muldowney	NCSBA
Ole Madsen	hear4nc.org

VISITOR REGISTRATION SHEET

House Judiciary II — 03/10/15

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Blanton	Rep. McGrady
G. Lane	NCGA
Brad Hagen	NCEL
Sara Pennue	NC Sent. Comm.
Jon Skinner	NCACC
Jane Royall	NC Family Policy Council
Tonya Horton	TSS
Philip Isley	
Whitney Christensen	Ward & Smith, P.A.
Rev. Mark Creech	CAL
Isabel Villa-Garcia	NCAR

VISITOR REGISTRATION SHEET

House Judiciary II — 03/10/15

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCEL
[signature]	School of Law
[signature]	NCASA

VISITOR REGISTRATION SHEET

House Comm. on Judiciary II — 3/1//2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Campbell	scientific Games
Phoebe Landon	Brooks Pierce
Rhonda Toda	DOA -
Martha Jenkins	DCR
Zane Stilwell	NCSBE
Wendy Kelly	Focus Carolina
Cody Thomas	Focus Carolina

VISITOR REGISTRATION SHEET

House Comm. on Judiciary II — 3/1//2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	Troutman Sanders
Chris Agnew	DOJ
Bill Quinn	New Frame LLC
Christy Jones	New Frame LLC
Norma Jinnette Hollen	DCIA
Susan Harrelson	NCSSWA
Matthew Leerberg	Smith Moore Leatherwood LLP
Toby Hampson	Wyrick Robbins.
Butch Gunnells	NC Bev
Ken Council	NCBA
Douglas Holroad	NCSBA

II

Committee Sergeants at Arms

NAME OF COMMITTEE House Comm. on Judiciary II

DATE: 3/10/2015 Room: 421

House Sgt-At Arms:

1. Name: Charles Godwin
2. Name: Dean Marshbourne
3. Name: David Linthicum
4. Name:
5. Name:

Senate Sgt-At Arms:

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

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 79
PROPOSED COMMITTEE SUBSTITUTE H79-CSRN-1 [v.1]

3/9/2015 6:32:00 PM

Short Title: Contempt for 50C/ Scope of Stay for Appeals. (Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CIVIL NO-CONTACT ORDERS TO CLARIFY THAT A KNOWING VIOLATION OF A CIVIL NO-CONTACT ORDER IS PUNISHABLE BY CIVIL OR CRIMINAL CONTEMPT AND CLARIFYING THE SCOPE OF STAY ON PROCEEDINGS WHEN A CASE IS ON APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-10 reads as rewritten:

"**§ 50C-10. Violation.**

A knowing violation of an order entered pursuant to this Chapter is punishable ~~as contempt of court.~~by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

SECTION 2. G.S. 1-294 reads as rewritten:

"**§ 1-294. Scope of stay; security limited for fiduciaries.**

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced ~~therein;~~ therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars ($50,000), where it would otherwise exceed that sum."

SECTION 3. Section 1 of this act becomes effective October 1, 2015, and applies to orders entered on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 79
PROPOSED COMMITTEE SUBSTITUTE H79-PCS30074-RN-1

Short Title: Contempt for 50C/Scope of Stay for Appeals. (Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CIVIL NO-CONTACT ORDERS TO CLARIFY THAT A KNOWING VIOLATION OF A CIVIL NO-CONTACT ORDER IS PUNISHABLE BY CIVIL OR CRIMINAL CONTEMPT AND CLARIFYING THE SCOPE OF STAY ON PROCEEDINGS WHEN A CASE IS ON APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-10 reads as rewritten:

"**§ 50C-10. Violation.**

A knowing violation of an order entered pursuant to this Chapter is punishable ~~as contempt of court.~~by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

SECTION 2. G.S. 1-294 reads as rewritten:

"**§ 1-294. Scope of stay; security limited for fiduciaries.**

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced ~~therein;~~ therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars ($50,000), where it would otherwise exceed that sum."

SECTION 3. Section 1 of this act becomes effective October 1, 2015, and applies to orders entered on or after that date. The remainder of this act is effective when it becomes law.

IV

HOUSE BILL 79:
Contempt for 50C/Scope of Stay for Appeals

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 10, 2015
Introduced by:	Reps. Glazier, Stevens, Zachary, Davis	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H79-CSRN-1		Committee Counsel

SUMMARY: ***House Bill 79 would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt. The Proposed Committee Substitute amends G.S. 1-294 to provide that when an appeal is perfected, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure.***

CURRENT LAW:

I. Civil No-Contact Orders

Chapter 50C of the General Statutes addresses civil no-contact orders. A civil no-contact order is a court order which is designed to protect an individual from nonconsensual sexual conduct or stalking that has been committed by someone who is not involved a "personal relationship" under 50B-1(b).[i]

A judge may order the following types of relief under civil no-contact orders: (1) order the respondent not to visit or otherwise interfere with the victim, (2) order the respondent to cease stalking, abusing, or harassing the victim, (3) order the respondent not to contact the victim, and (4) order other relief deemed necessary by the court. G.S. 50C-5(b). Civil no-contact orders may be temporary (effective for not more than 10 days) or permanent (effective for up to one year) G.S. 50C-8(a)-(b). Violations of civil no-contact orders are punishable as "contempt of court." G.S. 50C-10.

II. Criminal and Civil Contempt

"The line of demarcation between civil and criminal contempt is hazy at best." *Blue Jeans Corporation v. Amalgamated Clothing Workers of America, AFL-CIO*, 275 N.C. 503, 507-8 (1969). Generally, criminal contempt is used to punish a person for violating a court order or interrupting or disrespecting the court. Civil contempt is intended to make someone obey a court order. *Id.* Sometimes, a defendant's conduct may warrant either civil criminal contempt. A person cannot be held in both civil and criminal contempt for the same conduct, and the judge must choose one or the other. G.S. 5A-12(d) and G.S. 5A-21(c).

Criminal contempt may be imposed for specific grounds including, interruption of court proceedings, disrespect for the court, disobedience of the court's order, refusal to be sworn or answer questions, and any act specified in the General Statutes as grounds for criminal contempt. G.S. 5A-11(a). The standard of proof for criminal contempt is proof beyond a reasonable doubt. G.S. 5A-15(f). Generally, the punishment for criminal contempt is censure, imprisonment up to 30 days, a fine of not more than $500 or a combination of the three. G.S. 5A-12.

Civil contempt is designed to coerce the defendant to comply with an order of the court. Failure to comply with an order of the court is a continuing civil contempt. G.S. 5A-21(a). An order of the court holding a person in contempt must specify how the person may purge himself of the contempt. G.S. 5A-

22(a). The standard of proof is a preponderance of the evidence. The only sanction that the court may impose for civil contempt is imprisonment until the defendant complies with the court order. G.S. 5A-21.[ii] The total period of imprisonment for the same act of disobedience shall not exceed 12 months. *Id.*

BILL ANALYSIS:

Section 1 of the PCS would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt.

Section 2 of the PCS amends G.S. 1-294 to provide that when an appeal is perfected, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure.

EFFECTIVE DATE: Section 1 becomes effective October 1, 2015, and applies to orders entered on or after that date. The remainder of the act is effective when it becomes law.

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[i] G.S. 50B covers domestic violence protective orders and applies to personal relationships "wherein the parties involved:
(1) Are current or former spouses;
(2) Are persons of opposite sex who live together or have lived together;
(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
(4) Have a child in common;
(5) Are current or former household members;
(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

[ii] For additional information on the difference between criminal and civil contempt, see "Contempt" by Michael Crowell, UNC School of Government, December 2013.

V

HOUSE BILL 113:
Protect Our Students Act

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	March 10, 2015
Introduced by:	Reps. Hastings, Presnell, R. Turner, Bishop	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 113 would increase the criminal penalty for the commission of certain sex offenses committed against a student by a person who is school personnel and to establish a procedure for institutions of higher education to obtain a list of students and employees at the institution who are registered as sex offenders.

CURRENT LAW:

For purposes of Sections 2-4 of the bill, "school personnel" includes:

- Any employee of a local board of education whether full-time or part-time.
- Any independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel.
- Substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.
- Any person who volunteers at a school or a school-sponsored activity.

For purposes of Section 5 of the bill, "institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college or university. Persons required to register as a sex offender must state whether they are a student or employee, or expect to become a student or employee within a year, of any institution of higher education.

BILL ANALYSIS:

Section 1 provides that the act would be known as the "Protect Our Students Act".

Section 2 of the bill would increase the penalty for a defendant who engages in vaginal intercourse or a sexual act with a student, when the defendant is school personnel (not a teacher, school administrator, student teacher, school safety officer, or coach) and is less than four years older than the student, from a Class A1 misdemeanor to a Class I felony.

Section 3 of the bill would increase the penalty for a defendant who takes indecent liberties with a student and is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is school personnel and at least four years older than the student, from a Class I felony to a Class H felony.

Section 4 of the bill would increase the penalty for a defendant who takes indecent liberties with a student, when the defendant is school personnel (not a teacher, school administrator, student teacher, school safety officer, or coach) and is less than four years older than the student, from a Class A1 misdemeanor to a Class I felony.

Section 5 of the bill would allow an institution of higher education to obtain, from the Sheriff of the county in which the institution is located, a report of all the persons on the sex offender registry who

have stated that they are a student or employee, or expect to become a student or employee of that institution.

EFFECTIVE DATE: This act becomes effective December 1, 2015. Sections 2 through 4 of this act apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 113
PROPOSED COMMITTEE SUBSTITUTE H113-PCS30073-SA-12

Short Title: Protect Our Students Act. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA'S STUDENTS BY INCREASING THE CRIMINAL PENALTY FOR THE COMMISSION OF CERTAIN SEX OFFENSES COMMITTED AGAINST A STUDENT BY A PERSON WHO IS SCHOOL PERSONNEL AND TO ESTABLISH A PROCEDURE FOR INSTITUTIONS OF HIGHER EDUCATION TO OBTAIN A LIST OF STUDENTS AND EMPLOYEES AT THE INSTITUTION WHO ARE REGISTERED AS SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. This act may be cited as the "Protect Our Students Act".

SECTION 2. G.S. 14-27.7(b) reads as rewritten:

"(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a ~~Class A1 misdemeanor.~~ Class I felony. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

SECTION 3. G.S. 14-202.4(b) reads as rewritten:

"(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a ~~Class A1 misdemeanor.~~Class I felony."

SECTION 4. G.S. 14-208.15 is amended by adding a new subsection to read:

"(c) Upon request of an institution of higher education, the Sheriff of the county in which the educational institution is located shall provide a report containing the registry information for any registrant who has stated that the registrant is a student or employee, or

expects to become a student or employee, of that institution of higher education. The Department of Public Safety shall provide each sheriff with the ability to generate the report from the statewide registry. The report shall be provided electronically without charge. The institution of higher education may receive a written report upon payment of reasonable duplicating costs and mailing costs."

SECTION 5. This act becomes effective December 1, 2015. Sections 2 and 3 of this act apply to offenses committed on or after that date.

VI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 113 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Stam
Sen.)

moves to amend the bill on page 2, line 11

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"information for any registrant who has stated that the registrant is a student or employee, or expects to"

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 113 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Stam

moves to amend the bill on page 1, line 28 through page 2, line 2

( ) WHICH CHANGES THE TITLE

by deleting that Section in its entirety.

and by renumbering the remaining sections accordingly

and on page 2, line 17

by deleting "Sections 2 through 4" and inserting "Sections 2 and 3"

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 134
PROPOSED COMMITTEE SUBSTITUTE H134-CSSA-11 [v.1]

3/9/2015 6:38:11 PM

Short Title: Soliciting Prostitution/Immunity for Minors. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MINOR WHO IS SOLICITING AS A PROSTITUTE IS IMMUNE FROM PROSECUTION FOR THE OFFENSE OF SOLICITATION OF PROSTITUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-205.1 reads as rewritten:

"**§ 14-205.1. Solicitation of prostitution.**

(a) Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony. Any person who willfully solicits a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class E felony. Punishment under this section may include participation in a program devised for the education and prevention of sexual exploitation (i.e. "John School"), where available. A person who violates this subsection shall not be eligible for a disposition of prayer for judgment continued under any circumstances.

(b) Immunity From Prosecution for Minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor who is soliciting as a prostitute, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

SECTION 2. This act is effective when it becomes law and applies to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 134
PROPOSED COMMITTEE SUBSTITUTE H134-PCS30072-SA-11

Short Title: Soliciting Prostitution/Immunity for Minors. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MINOR WHO IS SOLICITING AS A PROSTITUTE IS IMMUNE FROM PROSECUTION FOR THE OFFENSE OF SOLICITATION OF PROSTITUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-205.1 reads as rewritten:

"**§ 14-205.1. Solicitation of prostitution.**

(a) Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony. Any person who willfully solicits a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class E felony. Punishment under this section may include participation in a program devised for the education and prevention of sexual exploitation (i.e. "John School"), where available. A person who violates this subsection shall not be eligible for a disposition of prayer for judgment continued under any circumstances.

(b) Immunity From Prosecution for Minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor who is soliciting as a prostitute, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

SECTION 2. This act is effective when it becomes law and applies to violations occurring on or after that date.

IX

HOUSE BILL 134:
Soliciting Prostitution/Immunity for Minors

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 10, 2015
Introduced by:	Reps. Glazier, Davis, Hamilton, McGrady	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H134-CSSA-11		

SUMMARY: House Bill 134 would provide that a minor who is soliciting as a prostitute is immune from prosecution for the offense of solicitation of prostitution.

CURRENT LAW: A minor charged with prostitution under G.S. 14-204 is exempt from prosecution and is treated as an undisciplined juvenile.

BILL ANALYSIS: House Bill 134 would exempt minors from prosecution for solicitation of prostitution under G.S. 14-205.1 in the same manner that they are currently exempt from the charge of prostitution.

EFFECTIVE DATE: This act is effective when it becomes law and applies to violations occurring on or after that date.

O. Walker Reagan
Director

H134-SMSA-13 CSSA-11 -V1

Research Division
(919) 733-2578

HOUSE BILL 109:
Lottery Act Clarified

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 10, 2015
Introduced by:	Reps. Stam, Glazier, Hardister	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 156 would make various changes to the advertising and marketing of the North Carolina State Lottery.

CURRENT LAW: Chapter 18C of the General Statutes establishes and governs the North Carolina Lottery. A lottery is any lottery game or series of lottery games operated under Chapter 18C. A lottery game is "any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those prizes and does not utilize a video gaming machine." G.S. 18C-103.

The Lottery Commission was created to oversee the operation of a lottery in North Carolina. The Lottery Commission is located within the Department of Commerce for budgetary purposes, but otherwise is a self-supporting, revenue raising agency of the State. The Lottery Commission consists of nine members, appointed by the Governor, and the General Assembly through the appointments bill. The Lottery Commission has a wide range of powers and duties, including specifying types of lottery games, prescribing the nature of lottery advertising, specifying the number and value of cash prizes, among others.

Currently, the nature of lottery advertising must comply with the following:

- All advertising must include resources for responsible gaming information
- No advertising may intentionally target specific groups or economic classes
- No advertising may be misleading, deceptive, or present any lottery game as a means of relieving any person's financial or personal difficulties
- No advertising may have the primary purpose of inducing persons to participate in the Lottery.
- Be tastefully designed and presented in a manner to minimize the appeal of lottery games to minors.
- The use of cartoon characters or of false, misleading, or deceptive information is prohibited.
- Must include the actual or estimated overall odds of winning the game if the advertising is promoting the sale of lottery tickets or shares for a particular game.

With respect to lottery tickets, each ticket in a particular game:

- Shall have printed on it a unique number distinguishing it from every other ticket in that lottery game.
- Shall have printed on it an abbreviated form of the game-play rules, including resources for responsible gaming information.
- May have printed on it a depiction of one or more cartoon characters, whose primary appeal is not to minors.

- Shall have printed on it the overall estimated odds of winning prizes if the game uses preprinted winners.

BILL ANALYSIS:

Section 1 modifies the authority of the Lottery Commission with respect to lottery advertising to add the following new requirements:

- Advertising which states the probability of winning a prize must not omit the value of the lowest prize to be won.
- Advertising which states the odds of winning a prize must, at a minimum, disclose the odds of winning the prize with the largest value.
- No advertising or sponsorship may take place in connection with any high school or high school sporting event.

Section 2 provides that each State department or agency receiving lottery funding must use its established communications channels to inform the public about amounts received and activities supported by of lottery proceeds.

Section 3 does all of the following:

- Limits the types of lottery games to draw-style and instant scratch off games, unless the General Assembly approves.
- Prohibits the use of one or more cartoon characters in lottery games using tickets, regardless of whether the characters' primary appeal is to minors.
- Provides that any Web site that the Lottery Commission maintains or establishes (was "all advertising promoting the sale of lottery tickets or shares for a particular game") must include the overall odds of winning each lottery game.
- Requires the Commission to post on its Web site a tabulation of the estimated number of prizes of each prize denomination that are expected to be awarded in each lottery game ***and*** the estimated odds of winning each prize.

Section 4 provides that no advertising of a North Carolina game shall refer to the role of the independent certified public accountant or auditor employed by a certified public accounting firm.

Section 5 makes conforming changes to G.S. 18C-152(c) to include the term "gambling."

EFFECTIVE DATE: The act becomes effective July 1, 2015.

BACKGROUND: The provisions of this bill also appeared in House Bill 156- Honest Lottery Act (2013-2014 Session). The Honest Lottery Act, which contained additional provisions that do not appear in the present bill, passed second and third readings the House of Representatives on April 11, 2013, but was not enacted in the Senate.

Erika Churchill contributed to the drafting of this summary.

House Committee on Judiciary II
Tuesday, March 17, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 17, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:02 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

Chairman Blust announced that HB 109 Lottery Act Clarified would not be heard at this meeting. It was removed from the committee agenda at the request of Representative Stam, one of the primary sponsors.

The following bill was considered:

HB 173 Omnibus Criminal Law Bill. (Representatives Stam, Faircloth, Glazier, R. Turner)

Representative Hurley made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Stam to present the bill. Representative Glazier also explained part of the bill. Representative Faircloth was also recognized to speak on parts of the bill. Two handouts were provided by Representative Stam. The Chair recognized Representative Glazier to offer two amendments. Both amendments were adopted by the committee. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the committee substitute received a favorable report.

The meeting adjourned at 1:35 PM.

Respectfully submitted,

John M. Blust
Representative John M. Blust, Chairman
Presiding

Jennie T. Hurlow
Gennie Thurlow, Committee Clerk

Corrected #1:

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 II** will meet as follows:

DAY & DATE: Tuesday, March 17, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **HB 109 Lottery Act Clarified has been removed from today's agenda.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 173	Omnibus Criminal Law Bill.	Representative Stam Representative Faircloth Representative Glazier Representative R. Turner

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:29 AM on Tuesday, March 17, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (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 II** will meet as follows:

DAY & DATE: Tuesday, March 17, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 109	Lottery Act Clarified.	Representative Stam Representative Glazier Representative Hardister
HB 173	Omnibus Criminal Law Bill.	Representative Stam Representative Faircloth Representative Glazier Representative R. Turner

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:24 PM on Thursday, March 12, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, March 17, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills:

BILL NO.	SHORT TITLE	SPONSOR
HB 109	Lottery Act Clarified.	Representative Starn Representative Glazier Representative Hardister
HB 173	Omnibus Criminal Law Bill.	Representative Stam Representative Faircloth Representative Glazier Representative R. Turner

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **173** Omnibus Criminal Law Bill.

Draft Number:	H173-PCS30105-SA-15
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Stam

TOTAL REPORTED: 1



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 173
PROPOSED COMMITTEE SUBSTITUTE H173-CSSA-15 [v.3]

3/16/2015 8:38:02 PM

Short Title: Omnibus Criminal Law Bill. (Public)

Sponsors:

Referred to:

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS CRIMINAL LAWS FOR THE PURPOSE OF IMPROVING TRIAL COURT EFFICIENCY.

The General Assembly of North Carolina enacts:

PART I. EXTEND THE PERIOD OF TIME TO AVOID THE COURT COSTS FOR FAILURE TO PAY

SECTION 1.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

...

(6) For support of the General Court of Justice, the sum of two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146, and the sum of fifty dollars ($50.00) is payable by a defendant who fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive the fee for failure to appear. These fees shall be remitted to the State Treasurer.

...."

SECTION 1.(b) G.S. 20-24.2(a) reads as rewritten:

"(a) The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

(1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or

(2) Fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment."

SECTION 1.(c) This section becomes effective July 1, 2015, and applies to fees assessed on or after that date.

PART II. DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT ON CERTAIN ORDERS OF REMAND FROM SUPERIOR COURT

SECTION 2. The Administrative Office of the Courts, in consultation with the Conference of Clerks of Superior Court, shall make any necessary modifications to its information systems to maintain records of all cases in which the defendant in a criminal case withdraws an appeal for trial de novo in superior court and the superior court judge has signed an order remanding the case to the district court and shall report on those remanded cases to the Chairs of the Senate Appropriations Committee on Justice and Public Safety, the Chairs of the House Appropriations Committee on Justice and Public Safety, and the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year. The report shall (i) include the total number of remanded cases and also the total number of those cases for which the court has remitted costs and (ii) aggregate those totals by the district in which they were granted and by the name of each judge ordering remand. The Administrative Office of the Courts may obtain any information that may be needed from individual clerks of superior court in order to make the modifications necessary to maintain the records required under this section.

PART III. REVISE THE LAW AUTHORIZING A CHIEF DISTRICT COURT JUDGE TO DESIGNATE CERTAIN MAGISTRATES TO APPOINT COUNSEL/AUTHORIZE MAGISTRATES TO ACCEPT GUILTY PLEAS AND ENTER JUDGMENT FOR OFFENSE OF INTOXICATED AND DISRUPTIVE IN PUBLIC

SECTION 3.(a) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation ~~may only be given to magistrates who are duly licensed attorneys and~~ does not give any magistrate the authority ~~to: (i)~~ to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense ~~Services; or (ii) accept a waiver of counsel.~~Services.

...."

SECTION 3.(b) G.S. 7A-292 reads as rewritten:

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

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:

...

(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel and acceptance of waivers of counsel pursuant to Article 36 of this Chapter.

...."

SECTION 3.(c) G.S. 14-444 reads as rewritten:

"**§ 14-444. Intoxicated and disruptive in public.**

(a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

(1) Blocking or otherwise interfering with traffic on a highway or public vehicular area, or

(2) Blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building, or

(3) Grabbing, shoving, pushing or fighting others or challenging others to fight, or

(4) Cursing or shouting at or otherwise rudely insulting others, or

(5) Begging for money or other property.

(b) Any person who violates this section shall be guilty of a Class 3 misdemeanor.~~Notwithstanding the provisions of G.S. 7A-273(1), a magistrate is not empowered to accept a guilty plea and enter judgment for this offense.~~"

PART IV. MODIFY WHEN A NEW SENTENCING HEARING MUST BE HELD IN DISTRICT COURT ON AN IMPLIED CONSENT CONVICTION FOR WHICH THE APPEAL TO SUPERIOR COURT HAS BEEN WITHDRAWN

SECTION 4.(a) G.S. 20-38.7(c) reads as rewritten:

"(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, ~~the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When~~ when an appeal is withdrawn or a case is remanded back to district court, the sentence imposed by the district court is vacated and the district court shall hold a new sentencing hearing and shall consider any new ~~convictions.~~convictions unless one of the following conditions is met:

(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the defendant has certified to the clerk, in writing, that the defendant has not been convicted of an implied consent offense after the date of the district court judgment being appealed.

(2) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1431(g), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the prosecutor has certified to the clerk, in writing, that the prosecutor consents to the withdrawal and remand and has no new sentencing factors to offer the court."

SECTION 4.(b) This section becomes effective October 1, 2015, and applies to appeals filed on or after that date.

PART V. CONFORM STATE LAW WITH THE UNITED STATES SUPREME COURT DECISION IN HALL V. FLORIDA

SECTION 5. G.S. 15A-2005 reads as rewritten:

"**§ 15A-2005. ~~Mentally retarded defendants;~~ Intellectual disability; death sentence prohibited.**

(a) (1) The following definitions apply in this section:

a. ~~Mentally retarded.~~ Intellectual disability. – A condition marked by ~~Significantly~~ significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18.

b. Significant limitations in adaptive functioning. – Significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills.

c. Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below.

(2) The defendant has the burden of proving significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that ~~mental retardation~~ intellectual disability was manifested before the age of 18. An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning; however, it is not sufficient, without evidence of significant limitations in adaptive functioning and without evidence of manifestation before the age of 18, to establish that the defendant ~~is mentally retarded.~~has an intellectual disability. An intelligence quotient of 70, as described in this subdivision, is approximate and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude the defendant from being able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior shall be applied in the determination of intellectual disability.

(b) Notwithstanding any provision of law to the contrary, no defendant ~~who is mentally retarded~~ with an intellectual disability shall be sentenced to death.

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant ~~is mentally retarded.~~ has an intellectual disability. The court shall order such a hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability by clear and convincing evidence. If the court determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) If the court does not find that the defendant ~~to be mentally retarded~~ has an intellectual disability in the pretrial proceeding, upon the introduction of evidence ~~of the defendant's mental retardation~~ raising the issue of intellectual disability during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant ~~is mentally retarded~~ has an intellectual disability as defined in this section. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant ~~to be mentally retarded.~~ has an intellectual disability, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant ~~is not mentally retarded~~ does not have an intellectual disability as defined by this section, the jury may consider any evidence of ~~mental retardation~~ intellectual disability presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

(h) The provisions of this section do not preclude the sentencing of ~~a mentally retarded~~an offender with an intellectual disability to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

PART VI. PROVIDE THAT THE REQUIREMENT FOR A PERSON CONVICTED OF SEXUAL BATTERY TO REGISTER AS A SEX OFFENDER IS DISCRETIONARY WITH THE COURT

SECTION 6.(a) G.S. 14-27.5A is amended by adding a new subsection to read:

"(c) When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court finds that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

SECTION 6.(b) G.S. 14-208.6(4) reads as rewritten:

"(4) "Reportable conviction" means:

...

f. A final conviction for a violation of G.S. 14-27.5A, only if the court sentencing the individual issues an order pursuant to G.S. 14-27.5A(c) requiring the individual to register."

SECTION 6.(c) G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), ~~G.S. 14-27.5A (sexual battery),~~ former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 6.(d) G.S. 50-13.1(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) or who has been convicted of an offense under G.S. 14-27.5A and ordered to register under Article 27A of Chapter 14 of the General Statutes shall disclose the conviction in the pleadings."

SECTION 6.(e) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

PART VII. AMENDMENTS TO CERTAIN LAWS REGARDING TRANSPORTATION OF AND CUSTODY ORDERS FOR PERSONS BEING INVOLUNTARILY COMMITTED

SECTION 7.(a) G.S. 122C-251(d) reads as rewritten:

"(d) ~~In~~ To the extent feasible, in providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent."

SECTION 7.(b) Part 1 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"**§ 122C-210.3. Electronic and facsimile transmission of custody orders.**

A custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered to the law enforcement officer by electronic or facsimile transmission."

PART VIII. EXPUNCTION INFORMATION MAY BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE

SECTION 8. G.S. 15A-150 reads as rewritten:

"**§ 15A-150. Notification requirements.**

(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.

(b) Notification to Other State and Local Agencies. – ~~The~~ 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. An agency receiving an order under this subsection shall expunge 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:

(1) The sheriff, chief of police, or other arresting agency.
(2) When applicable, the Division of Motor Vehicles and the Division of Adult Correction of the Department of Public Safety.
(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
(4) The Department of Public Safety.

(c) Notification to FBI. – The Department of Public Safety shall forward the order received under this section to the Federal Bureau of Investigation.

(d) 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.

(e) 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."

PART IX. DOUBLING OF BOND IS PERMISSIVE RATHER THAN MANDATORY FOR CERTAIN DEFENDANTS AND NO APPEARANCE BOND FOR FINE ONLY CLASS 3 MISDMEANORS

SECTION 9.(a) G.S. 15A-534(d3) reads as rewritten:

"(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official ~~shall~~ may require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars ($1,000)."

SECTION 9.(b) G.S. 15A-534 is amended by adding a new subsection to read:

"(b1) A person charged only with a Class 3 misdemeanor shall not be required to post an appearance bond if the judgment for the person would consist only of a fine pursuant to G.S. 15A-1340.23(d)."

SECTION 9.(c) This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

PART X. DISPOSITION OF CERTAIN PHYSICAL EVIDENCE THAT MAY CONTAIN BIOLOGICAL EVIDENCE

SECTION 10.(a) G.S. 15A-268(a5) reads as rewritten:

"(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court ~~proceeding.~~ hearing, which may include any other hearing associated with the disposition of the case."

SECTION 10.(b) G.S. 15A-268(a6) reads as rewritten:

"(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction resulting in a sentence of life without parole, until the death of the convicted person.

(3) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

(4) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.

(5) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(6) Notwithstanding the retention requirements in subdivisions (1) through (5) of this subsection, at any time after collection and prior to or at the time of disposition of the case at the trial court level, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner, the State may petition the court for retention of samples of the biological evidence in lieu of the actual physical evidence. After giving any defendant charged in connection with the case an opportunity to be heard, the court may order that the collecting agency take reasonable measures to remove or preserve for retention portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence."

SECTION 10.(c) This section becomes effective October 1, 2015.

PART XI. AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY

SECTION 11.(a) Rule 803(6) of the Rules of Evidence, Chapter 8C of the General Statutes, reads as rewritten:

"**Rule 803. Hearsay exceptions; availability of declarant immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

(6) Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business ~~activity,~~ activity and ~~if~~ (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified ~~witness,~~ witness or by a certification made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The proponent shall give advance notice of intent to offer such records to all other parties. The method of authenticating evidence allowed under this subdivision shall be confined to the records of non-parties. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

SECTION 11.(b) This section becomes effective October 1, 2015.

PART XII. CLARIFY ENHANCED PENALTY FOR VIOLATION OF PROTECTIVE ORDER

SECTION 12. G.S. 50B-4.1(d) reads as rewritten:

"(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to ~~a person who is charged with or convicted~~ convictions of a Class A or B1 felony or ~~to a person charged under~~ convictions of the offenses set forth in subsection (f) or subsection (g) of this section."

PART XIII. ALLOW EXTENSION OF ORDER ENTERED IN STREET GANG NUISANCE ABATEMENT CASE AFTER COURT HEARING

SECTION 13. G.S. 14-50.43(d) reads as rewritten:

"(d) An order entered under this section shall expire one year after ~~entry; however, the~~ entry unless extended by the court for good cause established by the plaintiff after a hearing. The order may be modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any party if it appears to the court that one or more of the defendants is no longer engaging in criminal street gang activities."

PART XIV. AMEND CERTIFICATE OF RELIEF

SECTION 14.(a) G.S. 15A-173.2(a) reads as rewritten:

"(a) An individual who is convicted of ~~no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation,~~ criminal offenses no higher than a Class G felony, may petition the court where the individual was convicted of his or her most serious offense for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district."

SECTION 14.(b) This section becomes effective October 1, 2015, and applies to petitions filed on or after that date.

PART XV. EFFECTIVE DATE

SECTION 15. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 173

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

H173-ASA-6 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H173-CSSA-15

Date _____ ,2015

Representative Glazier

moves to amend the bill on page 3, lines 27-30
by rewriting those lines to read:

"(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 173

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

H173-ASA-7 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H173-CSSA-15

Date _____,2015

Representative Glazier

moves to amend the bill on page 7, lines 21-24
by deleting those lines;

and on page 7, line 25
by deleting "**SECTION 9.(c)**" and inserting "**SECTION 9.(b)**".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 173:
Omnibus Criminal Law Bill

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 17, 2015
Introduced by:	Reps. Stam, Faircloth, Glazier, R. Turner	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H173-CSSA-15		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 173 amends various criminal laws.

BILL ANALYSIS:

Section 1 would change from 20 days to 40 days the period of time allowed beyond the court established due date to pay a fine, penalty, or costs. This section becomes effective July 1, 2015, and applies to fees assessed on or after that date.

Section 2 would require AOC to maintain records of all criminal cases appealed for trial de novo to superior court and then withdrawn where the superior court judge has signed a remand order. The AOC would be required to report that information, including the number of cases for which costs were remitted by district and judge, to the Chairs of the House and Senate Appropriations Committees on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year.

Section 3 would allow a chief district court judge to designate any magistrate to appoint counsel and accept waivers of counsel for non-capital offenses. Currently, only magistrates who are attorneys may be designated to appoint counsel and no magistrates may accept waivers of counsel.

This section would also remove the restriction which prohibits magistrates from accepting guilty pleas and entering judgment for offenses of Intoxicated and Disruptive in Public pursuant to G.S. 14-444.

Section 4 would modify the statute requiring a new sentencing hearing in district court when the appeal for an implied consent conviction is withdrawn and remanded to only require a new sentencing hearing when there are new convictions to be considered. This section becomes effective October 1, 2015, and applies to appeals filed on or after that date.

Section 5 would conform State law to the US Supreme Court decision in *Hall v. Florida*. Specifically, this section would change the term "mentally retarded" to "intellectual disability" and would clarify that an IQ of 70 is approximate and a higher score resulting from the application of the standard error of measurement does not prevent the defendant from being able to present additional evidence of intellectual disability.

Section 6 would remove sexual battery pursuant to G.S. 14-27.5A from the list of offenses that automatically require registration as a sex offender and instead require the sentencing court to consider whether the person is a danger to the community and should be required to register as a sex offender. Sexual battery is a Class A1 misdemeanor. This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Section 7 would modify the requirement that involuntary commitment respondents have a same sex driver or attendant when being transported, to clarify that the requirement applies "to the extent

feasible". This section would also authorize custody orders for commitment to be delivered to law enforcement by electronic or facsimile transmission.

Section 8 would authorize AOC to send expunction orders by electronic or facsimile transmission to the State and local agencies required by statute to receive notice.

Section 9 would amend the conditions of pretrial release statute, G.S. 15A-534. Section 9(a) would change the current requirement that bond be doubled for anyone charged with a new crime while on pretrial release for pending charge from a mandatory requirement to a permissive authorization. Section 9(b) would add a new provision prohibiting the requirement of an appearance bond for anyone charged with only a Class 3 misdemeanor for which judgment for that person could consist of only a fine. This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

Section 10 would amend the provisions regarding retention of biological evidence to require a hearing before a defendant may waive the duty to preserve evidence and to provide a procedure to allow cumbersome evidence to be disposed of or returned to a rightful owner with only the preservation of certain portions likely to contain biological evidence. This section becomes effective October 1, 2015.

Section 11 would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony. This section becomes effective October 1, 2015.

Section 12 would clarify that the exceptions to the penalty enhancement for committing a felony while violating a domestic violence order only applies to the offense for which they are convicted.

Section 13 would allow a street gang public nuisance order under G.S. 14-50.43 to be extended beyond one year by the court for good cause.

Section 14 would make clarifying changes to the Certificate of Relief statute regarding who may petition and where the petition should be made. This section becomes effective October 1, 2015, and applies to petitions filed on or after that date.

EFFECTIVE DATE: Except as otherwise noted, this act is effective when it becomes law.

HOUSE BILL 173

Short Title:	Omnibus Criminal Law Bill.	(Public)
Sponsors:	Representatives Stam, Faircloth, Glazier, and R. Turner (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS CRIMINAL LAWS FOR THE PURPOSE OF IMPROVING TRIAL COURT EFFICIENCY.

The General Assembly of North Carolina enacts:

PART I. EXTEND THE PERIOD OF TIME TO AVOID THE COURT COSTS FOR FAILURE TO PAY

SECTION 1.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

...

(6) For support of the General Court of Justice, the sum of two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146, and the sum of fifty dollars ($50.00) is payable by a defendant who fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive the fee for failure to appear. These fees shall be remitted to the State Treasurer.

...."

SECTION 1.(b) G.S. 20-24.2(a) reads as rewritten:

"(a) The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

(1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or

(2) Fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment."

SECTION 1.(c) This section becomes effective July 1, 2015, and applies to fees assessed on or after that date.

PART II. DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT ON CERTAIN ORDERS OF REMAND FROM SUPERIOR COURT

SECTION 2. The Administrative Office of the Courts, in consultation with the Conference of Clerks of Superior Court, shall make any necessary modifications to its information systems to maintain records of all cases in which the defendant in a criminal case withdraws an appeal for trial de novo in superior court and the superior court judge has signed an order remanding the case to the district court and shall report on those remanded cases to the Chairs of the Senate Appropriations Committee on Justice and Public Safety, the Chairs of the House Appropriations Committee on Justice and Public Safety, and the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year. The report shall (i) include the total number of remanded cases and also the total number of those cases for which the court has remitted costs and (ii) aggregate those totals by the district in which they were granted and by the name of each judge ordering remand. The Administrative Office of the Courts may obtain any information that may be needed from individual clerks of superior court in order to make the modifications necessary to maintain the records required under this section.

PART III. REVISE THE LAW AUTHORIZING A CHIEF DISTRICT COURT JUDGE TO DESIGNATE CERTAIN MAGISTRATES TO APPOINT COUNSEL/AUTHORIZE MAGISTRATES TO ACCEPT GUILTY PLEAS AND ENTER JUDGMENT FOR OFFENSE OF INTOXICATED AND DISRUPTIVE IN PUBLIC

SECTION 3.(a) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation ~~may only be given to magistrates who are duly licensed attorneys and~~ does not give any magistrate the authority ~~to: (i)~~ to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense ~~Services; or (ii) accept a waiver of counsel.~~Services.

...."

SECTION 3.(b) G.S. 7A-292 reads as rewritten:

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

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:

...

(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel and acceptance of waivers of counsel pursuant to Article 36 of this Chapter.

...."

SECTION 3.(c) G.S. 14-444 reads as rewritten:

"**§ 14-444. Intoxicated and disruptive in public.**

(a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

(1) Blocking or otherwise interfering with traffic on a highway or public vehicular area, or

(2) Blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building, or

(3) Grabbing, shoving, pushing or fighting others or challenging others to fight, or

(4) Cursing or shouting at or otherwise rudely insulting others, or

(5) Begging for money or other property.

(b) Any person who violates this section shall be guilty of a Class 3 misdemeanor.~~Notwithstanding the provisions of G.S. 7A-273(1), a magistrate is not empowered to accept a guilty plea and enter judgment for this offense.~~"

PART IV. AMEND THE LAW REGARDING ACCESS TO FEDERAL CRIMINAL INFORMATION BY CJLEADS

SECTION 4. G.S. 143B-426.38A(g) reads as rewritten:

"(g) Provisions on Privacy and Confidentiality of Information.

(1) Status with respect to certain information. – The State CIO and the GDAC shall be deemed to be all of the following for the purposes of this section:

a. With respect to criminal information, and to the extent allowed by federal law, a criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice ~~professionals.~~professionals and State-appointed public defenders who are permanent employees of the State of North Carolina. However, in no event shall State-appointed public defenders have access to nonpublic information about unserved warrants, victims, or witnesses.

..."

PART V. CONFORM STATE LAW WITH THE UNITED STATES SUPREME COURT DECISION IN HALL V. FLORIDA

SECTION 5. G.S. 15A-2005 reads as rewritten:

"**§ 15A-2005. ~~Mentally retarded defendants;~~ Intellectual disability; death sentence prohibited.**

(a) (1) The following definitions apply in this section:

a. ~~Mentally retarded.~~ Intellectual disability. – A condition marked by ~~Significantly~~ significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18.

b. Significant limitations in adaptive functioning. – Significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills.

c. Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below.

(2) The defendant has the burden of proving significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that ~~mental retardation~~ intellectual disability was manifested before the age of 18. An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning; however, it is not sufficient, without evidence of significant limitations in adaptive functioning and without evidence of manifestation before the age of 18, to establish that the defendant ~~is mentally retarded.~~has an intellectual disability. An intelligence quotient of 70, as described in this subdivision, is approximate and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude the defendant from being able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior shall be applied in the determination of intellectual disability.

(b) Notwithstanding any provision of law to the contrary, no defendant ~~who is mentally retarded~~ with an intellectual disability shall be sentenced to death.

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant ~~is mentally retarded.~~ has an intellectual disability. The court shall order such a hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability by clear and convincing evidence. If the court determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) If the court does not find that the defendant ~~to be mentally retarded~~ has an intellectual disability in the pretrial proceeding, upon the introduction of evidence ~~of the defendant's mental retardation~~ raising the issue of intellectual disability during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant ~~is mentally retarded~~ has an intellectual disability as defined in this section. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant ~~is not mentally retarded~~ does not have an intellectual disability as defined by this section, the jury may consider any evidence of ~~mental retardation~~ intellectual disability presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

(h) The provisions of this section do not preclude the sentencing of ~~a mentally retarded~~an offender with an intellectual disability to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

PART VI. PROVIDE THAT THE REQUIREMENT FOR A PERSON CONVICTED OF SEXUAL BATTERY TO REGISTER AS A SEX OFFENDER IS DISCRETIONARY WITH THE COURT

SECTION 6.(a) G.S. 14-27.5A is amended by adding a new subsection to read:

"(c) When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court finds that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

SECTION 6.(b) G.S. 14-208.6(4) reads as rewritten:

"(4) "Reportable conviction" means:

...

f. A final conviction for a violation of G.S. 14-27.5A, only if the court sentencing the individual issues an order pursuant to G.S. 14-27.5A(c) requiring the individual to register."

SECTION 6.(c) G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), ~~G.S. 14-27.5A (sexual battery),~~ former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 6.(d) G.S. 50-13.1(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) or who has been convicted of an offense under G.S. 14-27.5A and ordered to register under Article 27A of Chapter 14 of the General Statutes shall disclose the conviction in the pleadings."

SECTION 6.(e) This section becomes effective December 1, 2015, and applies to sentences imposed on or after that date.

PART VII. AMENDMENTS TO CERTAIN LAWS REGARDING TRANSPORTATION OF AND CUSTODY ORDERS FOR PERSONS BEING INVOLUNTARILY COMMITTED

SECTION 7.(a) G.S. 122C-251(d) reads as rewritten:

"(d) ~~In~~ To the extent feasible, in providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent."

SECTION 7.(b) Part 8 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"**§ 122C-295. Electronic and facsimile transmission of custody orders.**

A custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered to the law enforcement officer by electronic or facsimile transmission."

PART VIII. PETITION AND ORDER TO DISPOSE OF FIREARM MAY BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE

SECTION 8.(a) G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

(a) Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification. The sheriff shall maintain a record of the destruction thereof.

(4a) Repealed by Session Laws 2005-287, s. 3, effective August 22, 2005.

(4b) By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

(5) By ordering such weapon turned over to the North Carolina State Crime Laboratory's weapons reference library for official use by that agency. The Laboratory shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received.

(b) Any petition or order to dispose of a weapon may entered pursuant to this section may be transmitted electronically or by facsimile to the appropriate person, sheriff, or agency."

SECTION 8.(b) G.S. 15-11.1(b1) reads as rewritten:

"(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification. The sheriff shall maintain a record of the destruction of the firearm.

(4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance. Any petition or order to dispose of a firearm made pursuant to this subsection may be transmitted electronically or by facsimile to the appropriate person, sheriff, or law enforcement agency."

PART IX. EXPUNCTION INFORMATION MAY BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE

SECTION 9. G.S. 15A-150 reads as rewritten:

"**§ 15A-150. Notification requirements.**

(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.

(b) Notification to Other State and Local Agencies. – ~~The~~ 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. An agency receiving an order under this subsection shall expunge 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:

(1) The sheriff, chief of police, or other arresting agency.

(2) When applicable, the Division of Motor Vehicles and the Division of Adult Correction of the Department of Public Safety.

(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.

(4) The Department of Public Safety.

(c) Notification to FBI. – The Department of Public Safety shall forward the order received under this section to the Federal Bureau of Investigation.

(d) 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.

(e) 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."

PART X. DOUBLING OF BOND IS PERMISSIVE RATHER THAN MANDATORY FOR CERTAIN DEFENDANTS

SECTION 10.(a) G.S. 15A-534(d1) reads as rewritten:

"(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official ~~shall~~ may require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars ($1,000). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will

not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order."

SECTION 10.(b) This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

PART XI. DISPOSITION OF CERTAIN PHYSICAL EVIDENCE THAT MAY CONTAIN BIOLOGICAL EVIDENCE

SECTION 11.(a) G.S. 15A-268(a5) reads as rewritten:

"(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court ~~proceeding.~~ hearing, which may include any other hearing associated with the disposition of the case."

SECTION 11.(b) G.S. 15A-268(a6) reads as rewritten:

"(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction resulting in a sentence of life without parole, until the death of the convicted person.

(3) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

(4) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains ~~unsolved.~~ unsolved, unless the State certifies that charges will not be brought even if a perpetrator can be identified. At any time, after collection and prior to the filing of charges, the State may seek a judicial determination as to whether the evidence collected has biological evidence value and should be preserved, but is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner. Upon such finding, the court may order that the collecting agency take reasonable measures to remove or preserve, for retention, portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence.

(5) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(6) At any time after a defendant is charged and prior to disposition, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner, then the State and the defendant may enter into a consent motion providing for the retention of swabs or other items used for

processing evidence in lieu of the actual physical evidence and the court may order that the collecting agency take reasonable measures to remove or preserve for retention portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence.

(7) Notwithstanding the foregoing preservation requirements, at the time of conviction, the State and the defendant may enter into a consent motion providing for the destruction or return of physical evidence not offered or admitted into evidence during the criminal proceeding. The consent motion shall include an inventory of the evidence. The court may order destruction or return of any items of physical evidence inventoried in the consent motion."

SECTION 11.(c) This section becomes effective October 1, 2015.

PART XII. AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY

SECTION 12.(a) Rule 803(6) of the Rules of Evidence, Chapter 8C of the General Statutes, reads as rewritten:

"**Rule 803. Hearsay exceptions; availability of declarant immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

(6) Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business ~~activity,~~ activity and ~~if~~ (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified ~~witness,~~ witness or by a certification made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The proponent shall give advance notice of intent to offer such records to all other parties. The method of authenticating evidence allowed under this subdivision shall be confined to the records of non-parties. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

SECTION 12.(b) This section becomes effective October 1, 2015.

PART XIII. CLARIFY ENHANCED PENALTY FOR VIOLATION OF PROTECTIVE ORDER

SECTION 13. G.S. 50B-4.1(d) reads as rewritten:

"(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to ~~a person who is charged with or convicted~~ convictions of a Class A or B1

felony or ~~to a person charged under~~ convictions of the offenses set forth in subsection (f) or subsection (g) of this section."

PART XIV. ALLOW EXTENSION OF ORDER ENTERED IN STREET GANG NUISANCE ABATEMENT CASE AFTER COURT HEARING

SECTION 14. G.S. 14-50.43(d) reads as rewritten:

"(d) An order entered under this section shall expire one year after ~~entry; however, the~~ entry unless extended by the Court for good cause established by the plaintiff after a hearing. The order may be modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any party if it appears to the court that one or more of the defendants is no longer engaging in criminal street gang activities."

PART XV. AMEND CERTIFICATE OF RELIEF

SECTION 15.(a) G.S. 15A-173.2(a) reads as rewritten:

"(a) An individual who is convicted of ~~no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation,~~ criminal offenses no higher than a Class G felony, may petition the court where the individual was convicted of his or her most serious offense for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district."

SECTION 15.(b) This section becomes effective October 1, 2015, and applies to certificates issued on or after that date.

PART XVI. EFFECTIVE DATE

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

Handout HB 193 Omnibus Criminal Law Bill

Support Letter – Part IX

I am a magistrate in the 18th Judicial district, Guilford County. I am writing in support of the proposed changes to G.S. 15A-534, namely changing the language from "shall" to "may" in regards to setting secured bond on a defendant who is currently on pre-trial release. The current version of the law does not allow us discretion in setting most bonds nor does it allow us to take account of the circumstances of the new charge or the previous bond. For example, a person may have been released from a previous misdemeanor charge under an unsecured bond or a WPA. Even though they did not have to post any bond to be released previously, if they come before me on a new charge, even a misdemeanor, I still have to set them a secured bond, even if they are not a flight risk or a danger to others.

I have been troubled by the often excessive bonds the current law requires us to set. Because of these requirements, magistrates frequently have to set bonds that are unreasonable for the underlying offense. Every magistrate has a story of setting a six-figure bond for a charge of driving without a license or shoplifting due to this law. Frequently, the charge that the person is on pre-trial release for is not serious and completely unrelated to the new charge. It also comes into play if multiple charges for the same or related incidents are filed at different times, for example a drug test comes back positive a week later or the value of property taken in a larceny is determined to be a felony amount rather than misdemeanor. In these cases even though the defendant has seen a magistrate for the incident the magistrate still has to treat it as a new case for bond under the current law.

Recently I have also begun to see retaliatory warrants from citizens who have learned that we are required to set secured bonds. They have learned to exploit the law to maximize the disruption to others (e.g. by taking out complaints resulting from a single incident over a course of days rather than at one time to attempt to have the defendant arrested multiple times). Previously we would simply grant the defendant a WPA and order them to continue under previous conditions of pre-trial release, now they are held under increasing secured bonds.

I am appreciative that you have listened to the concerns of magistrates, others in the justice system and the citizens of North Carolina and are seeking to revise this law.

Handout

HB 173: OMNIBUS CRIMINAL LAW BILL:

To improve trial court efficiency from arrest to disposition

- ✓ Allow for twice the amount of time to pay court costs; increase compliance.
- ✓ Reduce the number of persons charged with driving while license revoked.
- ✓ Maintain records of all remanded cases to ensure proper procedures are followed in trial courts.
- ✓ Reduce unnecessary appeals.
- ✓ Broadening the use of magistrates to improve District Court proceedings.
- ✓ Increase the use of disposition courtrooms around the state.
- ✓ Reduce the backlog of DWI appeals by providing more options in disposition.
- ✓ Conform state law to the United States Supreme Court to ensure no intellectually disabled person can receive the death penalty.
- ✓ Allow judicial discretion in certain cases where defendant may be required to report his or her conviction.
- ✓ Extend law enforcement power in transporting patients to medical facilities while easing the process of delivery for custody orders of involuntary commitments.
- ✓ Expand electronic transmittals of court processes to increase efficiency.
- ✓ Give control back to judicial officials when making bond determinations on individual cases.
- ✓ Decrease preventable overcrowding in the local jails.
- ✓ Improve overall disposition of biological evidence.
- ✓ Increase options to use business records as evidence in court proceedings.
- ✓ Clarify penalties for domestic violence protective order violations.
- ✓ Provide more options in handling repetitive street gang activity.
- ✓ Allow broader terms for certificates of relief.
- ✓ Help defendants better reintegrate into society.

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary II

DATE: 3/18/2015 Room: 421

House Sgt-At Arms:

1. Name: Joe Crook
2. Name: Warren Hawkins
3. Name:
4. Name:
5. Name:

Senate Sgt-At Arms:

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

Tuesday, March 17 JUCICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Tonio Simms	Pitt	Speaker

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 3/18/2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meghan Cook	OITS
Mildred Spearman	NCAOC
Philip Isley	BMG
[illegible]	NCGA
Dirk Dirk	NCAJ
Rev. Mark Creech	CAL
Chas. Caldwell	Wake Public Defender
Roxann Vanebbenen	D.A.'s Office Cabarrus 19A
Peg Dorer	Conf of DAs
Barbara Moore	Conf of Clerks of Sup Ct
Mark Blum	NCBAA

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 3/18/2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCBAA
Sarah Preston	ACLU-NC
Chris Munroe	NCCAI
Athena Strong	MHU
Ian Kirkpatrick	MHU
[illegible]	UNC SOG
Fred Baggett	NC Police Chiefs Assn
Dana Fenton	City of Charlotte
JOE JOHN	STATE CRIME LABS
Andy Brandon	DPS

House Committee on Judiciary II
Tuesday, March 24, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 24, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Glazier, Hurley, Jordan, Michaux, Reives, Ross, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:03 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

House Bill 242 and a summary are provided (Attachment III and Attachment IV)
HOUSE BILL 242: A BILL TO BE ENTITLED AN ACT TO EXPAND THE LIST OF CRIMES FOR WHICH AN INVESTIGATIVE GRAND JURY MAY BE CONVENED.

Chairman Jordan recognized Representatives Faircloth and Stam, the primary sponsors of the bill, to speak on the bill.

House Bill 242 would expand the crimes for which an investigative grand jury can be convened to include violations involving: bribery, obstructing justice, buying and selling of offices, failing to discharge duties, and public officers and employees benefitting from public contracts.

The chair recognized Representative Michaux, who moved to amend the bill on page 2, line 14 by deleting the phrase "G.S. 14-230 (failing to discharge duties)," (Attachment V). The motion passed without dissent.

Chairman Jordan recognized Brad Bannon, of the North Carolina Advocates for Justice, to speak on the bill, not in opposition, but in favor of possible future amendments to be made after passing House Judiciary II.

After a short discussion, the chair recognized Representative Michaux who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 294 and summary are provided (Attachment VI and Attachment VII)
HOUSE BILL 294: A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE A CELL PHONE TO A DELINQUENT JUVENILE IN CUSTODY OF THE DEPARTMENT OF PUBLIC SAFETY.

Chairman Jordan recognized Representative McGrady, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Susan Sitze, committee staff, to explain the bill.

The Proposed Committee Substitute (PCS) for House Bill 294 would make it a criminal offense to provide a cell phone to a delinquent juvenile in custody of the Department of Public Safety.

CURRENT LAW: G.S. 7B-1501(7) defines "delinquent juvenile" as follows:
(7) Delinquent juvenile. – Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31.

The chair recognized William Lassiter, Deputy Commissioner of Juvenile Justice, to speak in favor of the bill.

After a short discussion, the chair recognized Representative Glazier who moved for a favorable report of the proposed committee substitute, unfavorable as to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 295 and summary are provided (Attachment VII and Attachment IX)
HOUSE BILL 295: A BILL TO BE ENTITLED AN ACT TO PERMIT THE DIVISION OF JUVENILE JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY TO DETERMINE WHETHER IT IS APPROPRIATE TO RELEASE CERTAIN INFORMATION ABOUT AN ESCAPED DELINQUENT JUVENILE..

Chairman Jordan recognized Representative Michaux, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Susan Sitze, committee staff, to explain the bill.

The Proposed Committee Substitute (PCS) for House Bill 295 would permit the Division of Juvenile Justice of the Department of Public Safety to determine whether it is appropriate to release certain information about an escaped delinquent juvenile.

The chair recognized William Lassiter, Deputy Commissioner of Juvenile Justice, to speak in favor of the bill.

The chair recognized Timothy Nelson, North Carolina Association of Broadcasters, to speak in favor of the PCS.

After a short discussion, the chair recognized Representative Faircloth, who moved for a favorable report of the proposed committee substitute, unfavorable as to the original bill. The motion passed on a unanimous voice vote.

There being no further business, Chairman Jordan adjourned the meeting at 1:26 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, March 24, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 242	White Collar Investigation.	Representative Faircloth Representative Stam
HB 246	Add Member/Crim. Just. Standards Comm.	Representative Horn Representative Faircloth Representative McNeill
HB 294	Prohibit Cell Phone/Delinquent Juvenile.-AB	Representative Boles
HB 295	Juvenile Media Release.-AB	Representative Boles

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 9:25 AM on Wednesday, April 01, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

House Committee on Judiciary II
Tuesday, March 24, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 242	White Collar Investigation.	Representative Faircloth Representative Stam
HB 246	Add Member/Crim. Just. Standards Comm.	Representative Horn Representative Faircloth Representative McNeill
HB 294	Prohibit Cell Phone/Delinquent Juvenile.-AB	Representative Boles
HB 295	Juvenile Media Release.-AB	Representative Boles

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **242** White Collar Investigation.

Draft Number:	H242-PCS30143-RN-5
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Faircloth

HB **294** Prohibit Cell Phone/Delinquent Juvenile.-AB

Draft Number:	H294-PCS30142-SA-16
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Boles

HB **295** Juvenile Media Release.-AB

Draft Number:	H295-PCS30141-SA-17
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Boles

TOTAL REPORTED: 3

CMR76-V-1

I

VISITOR REGISTRATION SHEET

Judiciary II — March 24, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Miskew	PSG
David Ferrell	VB
Chris Agner	DOJ
Peg Dorer	Conf of DAs
Annaliese Dolph	bc
Sarah Preston	ACLU-NC
Rebecca Murdock	NC Sentencing Commission
JOHN MIDGETTE	NC PBA

VISITOR REGISTRATION SHEET

Judiciary II — March 24, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Skinner	NCACC

VISITOR REGISTRATION SHEET

Judiciary II — March 24, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janie P. Sutton	NCSBI
Jarret Burr	NCDPS
Willie Lassiter	NCDPS
Rudy Brandon	DPS
Sam Morris	Administration
[illegible]	School of Law
Bradley Bannon	North Carolina Advocates for Justice
Dick Taylor	AOC
Tim Nelson	NC Assn of Broadcasters
Erica Nelson	NCHA
Phillip Isley	BMG

II

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary II

DATE: 3-24-15 Room: 421

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: David Leighton
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

Tuesday, March 24	Room	Time
JUCICIARY II	421	1:00 pm

Name	County	Sponsor
Evan King	Wake	Darren G. Jackson
David Kostenberger	Wake	Chris Malone
Caroline Norton	Burke	Hugh Blackwell
Tyrek Rhodes	Wake	Shelly Willingham

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 242
PROPOSED COMMITTEE SUBSTITUTE H242-PCS30143-RN-5

Short Title: White Collar Investigation. (Public)

Sponsors:

Referred to:

March 17, 2015

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF CRIMES FOR WHICH AN INVESTIGATIVE GRAND JURY MAY BE CONVENED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-622 reads as rewritten:

"**§ 15A-622. Formation and organization of grand juries; other preliminary matters.**

...

(h) A written petition for convening of grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

(1) The petition alleges the commission of or a conspiracy to commit ~~a violation of G.S. 90-95(h) or G.S. 90-95.1,~~ any of the crimes listed in subsection (i) of *this section,* any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine whether the grand jury should be convened as an investigative grand jury.

A grand jury authorized by this subsection may be convened from an existing grand jury or grand juries authorized by subsection (b) of this section or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this

section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(i) An investigative grand jury may be convened pursuant to subsection (h) of this section if the petition alleges the commission of, attempt to commit or solicitation to commit, or a conspiracy to commit ~~a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude).~~any of the following:

(1) A violation of G.S. 90-95(h) or G.S. 90-95.1.

(2) A violation of Article 29 or 30 of Chapter 14 of the General Statutes (relating to bribery and obstructing justice), G.S. 14-228 (buying and selling of offices), or G.S. 14-234 (public officers or employees benefiting from public contracts).

(3) A violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude).

(j) Any grand juror who serves the full term of service under subsection (b) or subsection (h) of this section shall not be required to serve again as a grand juror or as a juror for a period of six years."

SECTION 2. This act becomes effective October 1, 2015.

IV

HOUSE BILL 242:
White Collar Investigation

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 24, 2015
Introduced by:	Reps. Faircloth, Stam	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 242 would expand the crimes for which an investigative grand jury can be convened to include violations involving: bribery, obstructing justice, buying and selling of offices, failing to discharge duties, and public officers and employees benefitting from public contracts.

CURRENT LAW: Currently, an investigative grand jury can be convened for certain alleged violations of the Controlled Substances Act (i.e. drug trafficking cases), human trafficking, involuntary servitude, sexual servitude.

BILL ANALYSIS: House Bill 242 would expand this list of crimes for which an investigative grand jury can be convened to include all of the following:

- Violations involving bribery and obstructing justice.
- Violations involving buying and selling of offices.
- Failing to discharge duties.
- Public officers and employees benefitting from public contracts.

EFFECTIVE DATE: The act becomes effective October 1, 2015.

BACKGROUND: On May 14, 2013, House Bill 908 (White Collar Crime Investigation (2013-2014 session) passed second and third readings in the North Carolina House of Representatives. That bill was broader than the current bill because it would have permitted investigative grand juries for: embezzlement of property received by virtue of office or employment, obtaining property by false pretenses, extortion, forgery of checks/securities, counterfeiting of instruments, and malfeasance of corporation officers. The North Carolina Senate did not enact House Bill 908.

V

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 242 DATE 3-24-15

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

(Rep.) Michaux
Sen.)

1 moves to amend the bill on page D 2, line 14
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "G.S. 14-230 (failing to
4 discharge duties),".
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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VI

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 294
PROPOSED COMMITTEE SUBSTITUTE H294-PCS30142-SA-16

Short Title: Prohibit Cell Phone/Delinquent Juvenile.-AB (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE A CELL PHONE TO A DELINQUENT JUVENILE IN CUSTODY OF THE DEPARTMENT OF PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-258.1 reads as rewritten:

"**§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco products including vapor products; or furnishing mobile phones to ~~inmates.~~inmates or delinquent juveniles.**

...

(d) Any person who knowingly gives or sells a mobile telephone or other wireless communications device, or a component of one of those devices, to an inmate in the custody of the Division of Adult Correction of the Department of Public ~~Safety~~ Safety, to a delinquent juvenile in the custody of the Division of Juvenile Justice of the Department of Public Safety, or to an inmate in the custody of a local confinement facility, or any person who knowingly gives or sells any such device or component to a person who is not an inmate or delinquent juvenile for delivery to an ~~inmate,~~ inmate or delinquent juvenile, is guilty of a Class H felony.

...."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 294:
Prohibit Cell Phone/Delinquent Juvenile.-AB

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 24, 2015
Introduced by:	Rep. Boles	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H294-CSSA-16		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 294 would make it a criminal offense to provide a cell phone to a delinquent juvenile in custody of the Department of Public Safety.

CURRENT LAW: G.S. 7B-1501(7) defines "delinquent juvenile" as follows:

> (7) Delinquent juvenile. – Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31.

BILL ANALYSIS: The PCS would amend G.S. 14-258.1(d), which prohibits furnishing a cell phone to inmates, to also prohibit furnishing a cell phone to delinquent juveniles in the custody of the Department of Public Safety.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

H294-SMSA-18 CSSA-16 -V1

Research Division
(919) 733-2578

VIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 295
PROPOSED COMMITTEE SUBSTITUTE H295-PCS30141-SA-17

Short Title: Juvenile Media Release.-AB (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE DIVISION OF JUVENILE JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY TO DETERMINE WHETHER IT IS APPROPRIATE TO RELEASE CERTAIN INFORMATION ABOUT AN ESCAPED DELINQUENT JUVENILE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3102(a) reads as rewritten:

"(a) Notwithstanding G.S. 7B-2102(d) or any other law to the contrary, within 24 hours of the time a juvenile escapes from custody the Division shall release to the public the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile escaped, or if the juvenile's escape was not from an institution, the circumstances and location of the escape; and if deemed appropriate a statement, based on the juvenile's record, of the level of concern of the Division as to the juvenile's threat to self or to others, if the juvenile escapes from a detention facility, secure custody, or a youth development center and the juvenile has been adjudicated delinquent. The determination of the level of threat posed by a juvenile who escapes from custody shall be made by the Deputy Commissioner of Juvenile Justice or the Deputy Commissioner's designee."

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

IX

HOUSE BILL 295:
Juvenile Media Release.-AB

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 24, 2015
Introduced by:	Rep. Boles	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H295-CSSA-17		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 295 would permit the Division of Juvenile Justice of the Department of Public Safety to determine whether it is appropriate to release certain information about an escaped delinquent juvenile.***

CURRENT LAW: G.S. 7B-3102(a) currently requires the Division of Juvenile Justice to release the following information to the public within 24 hours of a juvenile's escape from the custody of the Division:

- For any juvenile in custody:
  - The juvenile's first name, last initial, and photograph.
  - The name and location of the institution from which the juvenile escaped, or if the escape was not from an institution, the circumstances and location of the escape.
- For any juvenile who escapes from a detention facility, secure custody, or a youth development center after having been adjudicated delinquent:
  - A statement, based on the juvenile's record, of the level of concern of the Division as to the juvenile's threat to self or to others.

BILL ANALYSIS: House Bill 295 would allow the Division to determine whether it is appropriate to release the statement regarding the level of threat when a delinquent juvenile escapes from a detention facility, secure custody, or a youth development center. The Division would still be required to release the name, photograph and general escape information.

The bill also would clarify that the determination of the level of threat posed by the juvenile would be made by the Deputy Commissioner of Juvenile Justice or the Deputy Commissioner's designee.

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

House Committee on Judiciary II
Tuesday, March 31, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on March 31, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:03 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

Chairman Blust announced that **House Bill 241 Destroy Firearm/Crime of Assault or Murder** would be the first bill to be heard. Representative Davis was recognized to present the bill. Locke Bell, Gaston County District Attorney, was recognized to speak in favor of the bill. There was committee discussion, after which Representative Glazier made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report and was re-referred to the Committee on Appropriations.

The next bill presented was **House Bill 187 Stalking by GPS/Criminal Offense.** Representative Queen made the motion to bring the Proposed Committee Substitute before the committee. Representative Glazier was recognized to present the bill. John Brown, Executive Director of the Independent Car Dealers, was recognized to speak on the bill. After a brief discussion, two amendments were offered by Representative Glazier. Amendment 1 was adopted, and Amendment 2 was withdrawn. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute as amended with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

The third bill presented was **House Bill 273 Clarify Conditional Discharge Law**. Representative Stam made the motion to bring the Proposed Committee Substitute before the committee. Representative Jackson was recognized to present the bill. Representative Glazier made a motion for a favorable report for the Proposed Committee Substitute with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

The fourth bill presented was **House Bill 284 CivPro/Civil Contempt/No Fines**. Representative Glazier was recognized to present the bill. Representative Stam made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

The last bill presented was **House Bill 291 Haz. Materials in Safe Deposit Box.-AB**. Representative Bumgardner made the motion to bring the Proposed Committee Substitute before the committee. Representative Hurley was recognized to present the bill. Kelly Chambers from the Treasurer's Office spoke on the bill. After a brief discussion, Representative Hurley made a

motion for a favorable report for the Proposed Committee substitute with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

There being no further business, Chairman Blust adjourned the meeting at 1:42 PM.

Respectfully submitted,

John M. Blust

Representative John M. Blust, Chairman
Presiding

Jennie L. Thurlow

Jennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, March 31, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 187	Stalking by GPS/Criminal Offense.	Representative Glazier Representative Horn Representative Faircloth Representative McGrady
HB 241	Destroy Firearm/Crime of Assault or Murder.	Representative Davis Representative Daughtry
HB 273	Clarify Conditional Discharge Law.	Representative Jackson Representative Glazier
HB 284	CivPro/Civil Contempt/No Fines.	Representative Glazier Representative Stam Representative L. Hall
HB 291	Haz. Materials in Safe Deposit Box.-AB	Representative Hurley Representative McNeill

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:53 PM on Thursday, March 26, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, March 31, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 187	Stalking by GPS/Criminal Offense.	Representative Glazier Representative Horn Representative Faircloth Representative McGrady
HB 241	Destroy Firearm/Crime of Assault or Murder.	Representative Davis Representative Daughtry
HB 273	Clarify Conditional Discharge Law.	Representative Jackson Representative Glazier
HB 284	CivPro/Civil Contempt/No Fines.	Representative Glazier Representative Stam Representative L. Hall
HB 291	Haz. Materials in Safe Deposit Box.-AB	Representative Hurley Representative McNeill

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

HB **284** CivPro/Civil Contempt/No Fines.

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

FAVORABLE AND RE-REFERRED

HB **241** Destroy Firearm/Crime of Assault or Murder.

Draft Number:	None
Serial Referral:	**APPROPRIATIONS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Davis

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **187** Stalking by GPS/Criminal Offense.

Draft Number:	H187-PCS30191-RN-6
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Glazier

HB **273** Clarify Conditional Discharge Law.

Draft Number:	H273-PCS40246-SA-18
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jackson

HB **291** Haz. Materials in Safe Deposit Box.-AB

Draft Number:	H291-PCS10188-RN-7
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Hurley



TOTAL REPORTED: 5



HOUSE BILL 241

Short Title:	Destroy Firearm/Crime of Assault or Murder.	(Public)
Sponsors:	Representatives Davis and Daughtry (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II, if favorable, Appropriations.	

March 17, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A FIREARM USED TO ASSAULT A LAW ENFORCEMENT OFFICER OR TO CAUSE SERIOUS BODILY INJURY OR DEATH THAT IS SEIZED AS EVIDENCE SHALL BE DISPOSED OF BY ORDERING THE DESTRUCTION OF THE FIREARM UNLESS THE COURT DETERMINES THAT IT IS APPROPRIATE TO RETURN THE FIREARM TO ITS RIGHTFUL OWNER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.1 reads as rewritten:

"**§ 15-11.1. Seizure, custody and disposition of articles; exceptions.**

...

(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal ~~trial,~~trial and that it was not used in an assault on a law enforcement officer or used to cause serious bodily injury or death to any person, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification. The sheriff shall maintain a record of the destruction of the firearm.

(4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance.

(b2) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property is a firearm that was used in an assault on a law enforcement officer or was used to cause serious bodily injury or death to any person, the firearm shall be disposed of as provided by this subsection. The district attorney, after notice to all parties known or believed by the district attorney to have an ownership interest in the firearm, shall petition the court to dispose of the firearm. The judge, after hearing, shall order the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by the sheriff's duly authorized agent, unless the judge finds it appropriate to return the firearm to its rightful owner. The judge may order the firearm returned to its rightful owner, only as provided by subdivision (1) of subsection (b1) of this section. The sheriff shall maintain a record of the destruction of the firearm.

...."

SECTION 2. This act becomes effective December 1, 2015, and applies to petitions to dispose of firearms submitted on or after that date.

HOUSE BILL 241:
Destroy Firearm/Crime of Assault or Murder

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Appropriations	**Date:**	March 31, 2015
Introduced by:	Reps. Davis, Daughtry	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 241 would provide that a firearm used to assault a law enforcement officer or to cause serious bodily injury or death that is seized as evidence shall be disposed of by ordering the destruction of the firearm unless the court determines that it is appropriate to return the firearm to its rightful owner.***

BILL ANALYSIS: House Bill 241 would provide that a firearm seized as evidence and used to either assault a law enforcement officer or cause bodily injury or death to any person be destroyed unless the judge, after hearing, finds it appropriate to return the firearm to its rightful owner. The firearm may only be returned to its rightful owner if the owner is not the defendant, is entitled to possession of the firearm, and was either unlawfully deprived of the firearm or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to petitions to dispose of firearms submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 187*
PROPOSED COMMITTEE SUBSTITUTE H187-CSRN-6 [v.1]

3/30/2015 11:02:22 AM

Short Title: Stalking by GPS/Criminal Offense. (Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care provided that the tracking device is not located on the physical person of the caretaker.

c. A legally authorized representative of a disabled adult, as defined in G.S. 108A-101(d).

d. The owner of fleet vehicles, when tracking such vehicles.

e. A private investigator as defined in G.S. 74C-3(a)(8), who is licensed in accordance with G.S. 74C-2 and is acting in the normal course of his or her business and in accordance with State law. However, this exception does not apply if the private investigator is working on behalf of a client who is subject to a domestic violence protective order under Chapter 50B of the General Statutes, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime. For purposes of this sub-subdivision, the term "private investigator" includes "private detective" as defined in G.S. 74C-3(a)(8).

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Received from Snodding.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 187*
PROPOSED COMMITTEE SUBSTITUTE H187-PCS30191-RN-6

Short Title: Stalking by GPS/Criminal Offense. (Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care provided that the tracking device is not located on the physical person of the caretaker.

c. A legally authorized representative of a disabled adult, as defined in G.S. 108A-101(d).

d. The owner or creditor of fleet vehicles, or a motor vehicle dealer or seller as defined in G.S. 20-286 and G.S. 25A-6, when tracking such vehicles, including the installation, placement, or use of an electronic tracking device to locate and remotely disable a fleet vehicle in connection with the sale, loan, or lease of the fleet vehicle with the express written consent of the purchaser, borrower, or lessee of the fleet vehicle.

e. A private investigator as defined in G.S. 74C-3(a)(8), who is licensed in accordance with G.S. 74C-2 and is acting in the normal course of his or her business and in accordance with State law. However, this exception does not apply if the private investigator is working on behalf of a client who is subject to a domestic violence protective order under Chapter 50B of the General Statutes, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime. For purposes of this sub-subdivision, the term "private investigator" includes "private detective" as defined in G.S. 74C-3(a)(8).

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall

not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 187*

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

H187-ARN-3 [v.4]

Comm. Sub. [YES]
Amends Title [NO]
H-187-CSRN-6[v1]

Date _____ ,2015

Representative Glazier

moves to amend the bill on page 2, line 25, by rewriting that line to read:

"d. The owner or creditor of fleet vehicles, or a motor vehicle dealer or seller as defined in G.S. 20-286 and G.S. 25A-6, when tracking such vehicles, including the installation, placement, or use of an electronic tracking device to locate and remotely disable a fleet vehicle in connection with the sale, loan, or lease of the fleet vehicle with the express written consent of the purchaser, borrower, or lessee of the fleet vehicle.".

SIGNED _____ Glazier
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

H187-ARN-3-V-4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 187*

Withdrawn

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

H187-ARN-2 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H187-CSRN-6[v.1]

Date _____ ,2015

Representative Glazier

moves to amend the bill on page 2, lines 18-22, by rewriting those lines to read:

"b. The parent or legal guardian of a minor on any vehicle owned or leased by that parent or legal guardian of the minor and operated by the minor. However, this sub-subdivision shall not apply if the parent or legal guardian is subject to a domestic violence protective order under Chapter 50B of the General Statutes.".

SIGNED _____ Glazier
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

withdrawn

H187-ARN-2-V-2

HOUSE BILL 187:
Stalking by GPS/Criminal Offense

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 31, 2015
Introduced by:	Reps. Glazier, Horn, Faircloth, McGrady	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H187-CSRN-6		Committee Counsel

SUMMARY: ***House Bill 187 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track the location of an individual.*** ***The Proposed Committee Substitute (PCS) makes modifications to the definition of fleet vehicle and the exception for private investigators.***

[As introduced, this bill was identical to S238, as introduced by Sens. Stein, Hartsell, which is currently in Senate Judiciary II.]

CURRENT LAW: Cyberstalking is punishable as a Class 2 misdemeanor and includes any of the following:

- Use in electronic mail or electronic communication language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or things of value from any person.
- Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
- Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
- Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

Any offense under this section may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State. These provisions do not impair any constitutionally protected activity, including speech, protest, or assembly.

BILL ANALYSIS: The PCS for House Bill 187 would provide that the following is also cyberstalking and punishable as a Class 2 misdemeanor: "Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person."

The new provision does not apply to the installation, placement, or use or an electronic tracking device by any of the following:

- A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when the person is lawfully performing official duties.
- The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care provided that the tracking device is not located on the physical person of the caretaker.
- A legally authorized representative of a disabled adult.
- The owner of fleet vehicles, when tracking such vehicles.
- A private investigator who is acting in the normal course of his or her business and in accordance with State law. However, this exception does not apply if the private investigator is working on behalf of a client who is subject to a domestic violence protective order under Chapter 50B, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime.
- The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses occurring on or after that date.

HOUSE BILL 187*

Short Title:	Stalking by GPS/Criminal Offense.	(Public)
Sponsors:	Representatives Glazier, Horn, Faircloth, and McGrady (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care provided that the tracking device is not located on the physical person of the caretaker.

c. A legally authorized representative of a disabled adult, as defined in G.S. 108A-101(d).

d. The owner of fleet vehicles, when tracking such vehicles.

e. A private investigator as defined in G.S. 74C-3(a)(8), who is licensed in accordance with G.S. 74C-2 and is acting in the normal course of his or her business and with the consent of the owner of the property upon which the electronic tracking device is installed and placed. However, this exception does not apply if the private investigator is working on behalf of a client who is subject to a domestic violence protective order under Chapter 50B of the General Statutes, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime. For purposes of this sub-subdivision, the term "private investigator" includes "private detective" as defined in G.S. 74C-3(a)(8).

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 273
PROPOSED COMMITTEE SUBSTITUTE H273-CSSA-18 [v.3]

3/30/2015 3:43:42 PM

Short Title: Clarify Cond. Discharge Law/No DWI Expunge. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING AND TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(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)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

"(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.

(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)."

SECTION 4. G.S. 15A-145.5(a) reads as rewritten:

"(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. 14-27.7A(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.

(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 ~~(8)~~(8a) of this subsection."

SECTION 5. Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

Received from Snodgrass

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 273
PROPOSED COMMITTEE SUBSTITUTE H273-PCS40246-SA-18

Short Title: Clarify Cond. Discharge Law/No DWI Expunge. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING AND TO CLARIFY THAT OFFENSES INVOLVING IMPAIRED DRIVING CANNOT BE EXPUNGED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. G.S. 15A-145 is amended by adding a new subsection to read:

"(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)."

SECTION 3. G.S. 15A-145.4(a) reads as rewritten:

"(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.

(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)."

SECTION 4. G.S. 15A-145.5(a) reads as rewritten:

"(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. 14-27.7A(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.

(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 ~~(8)~~ (8a) of this subsection."

SECTION 5. Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 273:
Clarify Conditional Discharge Law

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 31, 2015
Introduced by:	Reps. Jackson, Glazier	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H273-CSSA-18		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 273 would clarify that the provisions regarding deferred prosecution and conditional discharge for convictions of H and I felonies and misdemeanors under Structured Sentencing do not apply to convictions of impaired driving and would clarify that offenses involving impaired driving cannot be expunged.***

BILL ANALYSIS:

Section 1 of the PCS would clarify that although a person convicted of impaired driving under G.S. 20-138.1 may be placed on probation, they are not eligible for deferred prosecution or a conditional discharge.

Sections 2, 3 & 4 would clarify that an offense involving impaired driving, as defined in G.S. 20-4.01(24a), is not eligible to be expunged.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date. Sections 2 through 4 of this act become effective July 1, 2015, and apply to petitions filed and petitions pending on or after that date. The remainder of this act is effective when it becomes law.

BACKGROUND:

(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.
b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.
c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.
d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

HOUSE BILL 273

Short Title:	Clarify Conditional Discharge Law.	(Public)
Sponsors:	Representatives Jackson and Glazier (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PROVISIONS REGARDING DEFERRED PROSECUTION AND CONDITIONAL DISCHARGE FOR CONVICTIONS OF H AND I FELONIES AND MISDEMEANORS UNDER STRUCTURED SENTENCING DO NOT APPLY TO CONVICTIONS OF IMPAIRED DRIVING OR OTHER IMPLIED CONSENT OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1341(a) reads as rewritten:

"(a) Use of Probation. – Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1."

SECTION 2. This act becomes effective December 1, 2015, and applies to any order placing a person on probation on or after that date.

HOUSE BILL 284

Short Title:	CivPro/Civil Contempt/No Fines.	(Public)
Sponsors:	Representatives Glazier and Stam (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT IMPOSITION OF A FINE IS NOT AN ALLOWABLE SANCTION FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 5A-21 is amended by adding a new subsection to read:

"(d) A person who is found in civil contempt under this Article is not subject to the imposition of a fine."

SECTION 2. This act becomes effective October 1, 2015, and applies to civil contempt orders entered on or after that date.

HOUSE BILL 284:
CivPro/Civil Contempt/No Fines

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 31, 2015
Introduced by:	Reps. Glazier, Stam, L. Hall	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 284 would clarify that imposition of a fine is not an allowable sanction for civil contempt.

CURRENT LAW: North Carolina General Statute 5A-21 governs civil contempt. An act of civil contempt is continuing as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

Subject to certain limitations, a person found in civil contempt may be imprisoned for no more than 90 days for the same act of disobedience or refusal to comply with a court order. A person who has not purged himself or herself of the contempt within the period of imprisonment may be recommitted for one or more successive periods of imprisonment, each not to exceed 90 days. The total period of imprisonment for the same act of disobedience or refusal to comply with a court order shall not exceed 12 months.

BILL ANALYSIS: House Bill 284 would add a provision that a fine is not an allowable sanction for civil contempt.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to civil contempt orders entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 291
PROPOSED COMMITTEE SUBSTITUTE H291-CSRN-7 [v.2]

3/30/2015 1:33:27 PM

Short Title: Haz. Materials in Safe Deposit Box.-AB (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEPARTMENT OF STATE TREASURER AUTHORITY IN THE HANDLING OF UNCLAIMED PROPERTY DETERMINED TO BE OF A HAZARDOUS NATURE OR WHICH IS OTHERWISE REGULATED, ILLEGAL, OR WHICH HAS NO SUBSTANTIAL COMMERCIAL VALUE AND TO PROVIDE GUIDANCE FOR THE PROPER HANDLING AND DISPOSITION OF THESE MATERIALS ON THE PART OF FINANCIAL ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-55 reads as rewritten:

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

(a) Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53C-6-13 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

(b) Notwithstanding any other provision of law, the contents of a safe deposit box or other safekeeping depository shall not be delivered to the Treasurer if the Treasurer determines any of the following:

(1) The contents pose a potential public safety issue.

(2) The contents are specifically regulated by another agency or authority.

(3) The contents are illegal contraband.

(4) The contents do not have substantial commercial value.

(c) Each financial organization must complete, verify, and return a form prescribed by the Treasurer that provides identifying information for each item of property, including a good faith estimated value. If the Treasurer determines that an item of property satisfies one or more of the factors listed in subsection (b) of this section, the Treasurer will either instruct the financial organization to place the property in the custody of the appropriate local, state or federal authority, or instruct the financial organization to destroy or otherwise dispose of the property. If property is delivered to the Treasurer and is later determined to satisfy one or more of the factors listed in subsection (b) of this section, the Treasurer shall deliver the property to the appropriate authority or instruct the appropriate authority to retrieve the property from the Treasurer, or the Treasurer may destroy, or otherwise store or dispose of the property.

(d) None of the following shall be liable for any loss due to the disposal of any materials identified under subsection (b) of this section unless the loss is due to intentional misconduct:

(1) The State, the Treasurer, or any officer, employee, or agent of the State or the Treasurer, acting in the person's individual and official capacity.

(2) A financial organization or any officer, employee, or agent of the financial organization."

SECTION 2. G.S. 116B-70 reads as rewritten:

"**§ 116B-70. ~~Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.~~Property of historical significance.**

~~(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.~~

~~(b)~~ Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location."

SECTION 3. This act becomes effective October 1, 2015.

Received from Enrolling.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 291
PROPOSED COMMITTEE SUBSTITUTE H291-PCS10188-RN-7

Short Title: Haz. Materials in Safe Deposit Box.-AB (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEPARTMENT OF STATE TREASURER AUTHORITY IN THE HANDLING OF UNCLAIMED PROPERTY DETERMINED TO BE OF A HAZARDOUS NATURE OR WHICH IS OTHERWISE REGULATED, ILLEGAL, OR WHICH HAS NO SUBSTANTIAL COMMERCIAL VALUE AND TO PROVIDE GUIDANCE FOR THE PROPER HANDLING AND DISPOSITION OF THESE MATERIALS ON THE PART OF FINANCIAL ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-55 reads as rewritten:

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

(a) Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53C-6-13 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

(b) Notwithstanding any other provision of law, the contents of a safe deposit box or other safekeeping depository shall not be delivered to the Treasurer if the Treasurer determines any of the following:

(1) The contents pose a potential public safety issue.

(2) The contents are specifically regulated by another agency or authority.

(3) The contents are illegal contraband.

(4) The contents do not have substantial commercial value.

(c) Each financial organization must complete, verify, and return a form prescribed by the Treasurer that provides identifying information for each item of property, including a good-faith estimated value. If the Treasurer determines that an item of property satisfies one or more of the factors listed in subsection (b) of this section, the Treasurer will either instruct the financial organization to place the property in the custody of the appropriate local, State or federal authority, or instruct the financial organization to destroy or otherwise dispose of the property. If property is delivered to the Treasurer and is later determined to satisfy one or more of the factors listed in subsection (b) of this section, the Treasurer shall deliver the property to the appropriate authority or instruct the appropriate authority to retrieve the property from the Treasurer or the Treasurer may destroy or otherwise store or dispose of the property.

(d) None of the following shall be liable for any loss due to the disposal of any materials identified under subsection (b) of this section unless the loss is due to intentional misconduct:

(1) The State, the Treasurer, or any officer, employee, or agent of the State or the Treasurer, acting in the person's individual and official capacity.

(2) A financial organization or any officer, employee, or agent of the financial organization."

SECTION 2. G.S. 116B-70 reads as rewritten:

"**§ 116B-70. ~~Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.~~Property of historical significance.**

~~(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.~~

~~(b)~~ Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location."

SECTION 3. This act becomes effective October 1, 2015.

HOUSE BILL 291:
Haz. Materials in Safe Deposit Box.-AB

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	March 31, 2015
Introduced by:	Reps. Hurley, McNeill	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H291-CSRN-7		Committee Counsel

SUMMARY: ***House Bill 291 gives the State Treasurer authority in the handling of unclaimed property determined to be of a hazardous nature or otherwise regulated, illegal, or which has no substantial commercial value and provides guidance for the proper disposition of these materials on the part of financial organizations.*** ***The Proposed Committee Substitute (PCS) corrects a typographical error and clarifies that the individuals and entities listed in G.S. 116B-55(d) are not liable for loss due to the disposal of materials unless the loss is due to intentional misconduct.***

CURRENT LAW: The Department of State Treasurer oversees and maintains the State's database of unclaimed property. By law, these funds are escheated, or turned over, to the Department for safekeeping. The State Treasurer is the Escheat Officer for the State of North Carolina with the responsibility for collection, management, and investment of moneys in the Escheat Fund.

Under current law, contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within statutorily prescribed time limits and must be delivered to the Treasurer. The Treasurer may decline to receive property reported which the Treasurer considers to have a value less than the expenses of notice and sale. Also, the Treasurer may destroy or otherwise dispose of property that has been delivered to the Treasurer that has no substantial commercial value.

BILL ANALYSIS: The PCS for House Bill 291 provides that notwithstanding any other provision of law, the contents of a safe deposit box or other safekeeping depository must not be delivered to the State Treasurer if the Treasurer determines any of the following:

- The contents pose a potential public safety issue.
- The contents are specifically regulated by another agency or authority.
- The contents are illegal contraband.
- The contents do not have substantial commercial value.

The PCS requires each financial institution to complete a form prescribed by the Treasurer that provides identifying information for each item of property, including a good faith estimated value. If an item of property satisfies one or more of the factors above, then the Treasurer will instruct the financial organization to place the property in the custody of the appropriate authority or instruct the financial organization to destroy or otherwise dispose of the property.

If the Treasurer accepts the property, but later determines that it satisfies one or more of the factors above, then it (1) must deliver the property to the appropriate authority or instruct the appropriate authority to retrieve the property from the Treasurer or (2) the Treasurer may destroy, store, or otherwise dispose of the property.

The PCS provides that none of the following shall be liable for any loss due to the disposal of materials unless the loss is due to intentional misconduct:

- The State, the Treasurer, or any officer, employee, or agent of the State or the Treasurer, acting in the person's individual and official capacity.
- A financial organization or any officer, employee, or agent of the financial organization.

EFFECTIVE DATE: October 1, 2015.

HOUSE BILL 291

Short Title:	Haz. Materials in Safe Deposit Box.-AB	(Public)
Sponsors:	Representatives Hurley and McNeill (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary I.	

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEPARTMENT OF STATE TREASURER AUTHORITY IN THE HANDLING OF UNCLAIMED PROPERTY DETERMINED TO BE OF A HAZARDOUS NATURE OR WHICH IS OTHERWISE REGULATED, ILLEGAL, OR WHICH HAS NO SUBSTANTIAL COMMERCIAL VALUE AND TO PROVIDE GUIDANCE FOR THE PROPER HANDLING AND DISPOSITION OF THESE MATERIALS ON THE PART OF FINANCIAL ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-55 reads as rewritten:

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

(a) Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53C-6-13 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

(b) Notwithstanding any other provision of law, the contents of a safe deposit box or other safekeeping depository shall not be delivered to the Treasurer if the Treasurer determines any of the following:

(1) The contents pose a potential public safety issue.

(2) The contents are specifically regulated by another agency or authority.

(3) The contents are illegal contraband.

(4) The contents do not have substantial commercial value.

(c) Each financial organization must complete, verify, and return a form prescribed by the Treasurer that provides identifying information for each item of property, including a good faith estimated value. If the Treasurer determines that an item of property satisfies one or more of the factors listed in subsection (b) of this section, the Treasurer will either instruct the financial organization to place the property in the custody of the appropriate local, state or federal authority, or instruct the financial organization to destroy or otherwise dispose of the property. If property is delivered to the Treasurer and is later determined to satisfy one or more of the factors listed in subsection (b) of this section, the Treasurer shall deliver the property to the appropriate authority or instruct the appropriate authority to retrieve the property from the Treasurer, or the Treasurer may destroy, or otherwise store or dispose of the property.

(d) The State, the Treasurer, or any officer, employee, or agent of the State or the Treasurer, acting in the person's individual and official capacity, and no financial organization

or any officer, employee, or agent of the financial organization, shall not be liable for any loss due to the disposal of any materials identified under subsection (b) of this section unless the loss is due to intentional misconduct."

SECTION 2. G.S. 116B-70 reads as rewritten:

"**§ 116B-70. ~~Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.~~Property of historical significance.**

~~(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.~~

~~(b)~~ Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location."

SECTION 3. This act becomes effective October 1, 2015.

Committee Sergeants at Arms

NAME OF COMMITTEE JUDICIARY II

DATE: 3-31-2015 Room: 421

House Sgt-At Arms:

1. Name: BILL BASS
2. Name: MARK CONE
3. Name: JOE CROOK
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

Tuesday, March 31 JUCICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Alexis Gardner	Cumberland	Marvin W. Lucas
Stewart Haynes	Wilson	Susan Martin

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

3-31-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Mann	NCAOC
Sohari	DST
C Hamburg	DST
Williams	DST
Starnes	DST
Colleen Kachurek	KLG
Alex Miller	KLG
Kim Crouch	NCBA
Philip Isley	Bmcg
JERRY D. PITMAN	NCAPI

VISITOR REGISTRATION SHEET

Judiciary II — 3-31-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tonya Hatin	TSS
Ge Madsen	hear4NC.org
ANDY WALSH	SA
MildredSpearmen	NCAOC
Andy Brandon	
Annaliese Dolph	DL
Fred Bo	Bom: ASSO.
Max Isaacson	—

House Committee on Judiciary II
Tuesday, April 14, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 14, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:03 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

House Bill 192 and a summary with fiscal note are provided (Attachment III and Attachment IV)
HOUSE BILL 192: A BILL TO BE ENTITLED AN ACT TO ESTABLISH COMPLIANCE COURT COSTS AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH A SYSTEM FOR THE ELECTRONIC PAYMENT OF COMPLIANCE COURT COSTS.

Chairman Jordan recognized Representative McNeill to speak on the bill.

House Bill 192 would establish compliance court costs and direct the Administrative Office of the Courts (AOC) to establish a system for the electronic payment of compliance court costs.

The chair recognized Representative Stam, who moved to amend the bill on page 1, line 34 by rewriting the line to read: "to G.S. 20-179.3(b)(2)." As well as page 2, lines 14-15 by inserting between those lines the following: "Except as provided in G.S. 7A-304.2, no" (Attachment V). The motion passed without dissent.

Chairman Jordan recognized Tom Murry, of the N.C. Administrative Office of the Courts, to answer questions on the bill.

After a short discussion, the chair recognized Representative Stam who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed.

House Bill 327 and a summary are provided (Attachment VI and Attachment VII)
HOUSE BILL 327: A BILL TO BE ENTITLED AN ACT TO ALLOW EMERGENCY MEDICAL SERVICES PERSONNEL TO CARRY AND USE PEPPER SPRAY FOR SELF-DEFENSE PURPOSES.

Chairman Jordan recognized Representative Dobson to speak on the bill.

House Bill 327 would allow emergency medical services personnel to carry and use pepper spray for self-defense purposes.

After a short discussion, the chair recognized Representative Blust who moved to give a favorable report to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 357 and summary are provided (Attachment VIII and Attachment IX)
HOUSE BILL 357: A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A WRITTEN TOXICOLOGY ANALYSIS MAY BE INTRODUCED AS EVIDENCE IN A DISTRICT COURT CRIMINAL PROSECUTION WITHOUT EXPERT TESTIMONY PROVIDED THERE IS A RIGHT TO TRIAL DE NOVO.

Chairman Jordan recognized Representatives Stam and Glazier to speak on the bill.

House Bill 357 would provide a written toxicology analysis may be introduced as evidence in a district court criminal prosecution without expert testimony provided there is a right to trial de novo.

CURRENT LAW: N.C.G.S. § 8-58.20 provides that in any criminal prosecution a laboratory report of written forensic analysis including an analysis of a defendant's DNA and the results of the analysis, under certain conditions and if the defendant does not object, may be admissible into evidence without the testimony of the analyst who prepared the report. This law does not extend to toxicology reports.

The chair recognized Representative Stam, who moved to amend the bill on page 1, line 11 by rewriting the line to read: "Notwithstanding G.S. 8-58.20 and G.S. 20-139.1, in any criminal prosecution in district court a". (Attachment X). The motion passed without dissent.

The chair recognized Representative Glazier, who moved to amend the bill on page 2, line 1 by inserting before the line a new subsection to read as follows: "(b1) If a defendant wants the analyst present and the analyst is employed out of state, the defendant must notify the State in writing within five days of receiving the notice and report from the District Attorney. The State must then produce the analyst witness." (Attachment XI). The motion passed without dissent.

The chair recognized Representative Glazier, who moved to amend the bill on page 2, line 1 by inserting before the line a new subsection to read as follows: "(b2) Under this section, the State retains the burden of proof beyond a reasonable doubt. If an analyst testifies pursuant to a subpoena issued by the defendant, the analyst may be declared a hostile witness for the direct examination purposes under the North Carolina Rules of Evidence." (Attachment XII). The motion passed without dissent.

The chair recognized Christy Agner, of the North Carolina Department of Justice, to speak on the bill.

After a short discussion, the chair recognized Representative Blust who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 374 and summary are provided (Attachment XIII and Attachment XIV)
HOUSE BILL 374: A BILL TO BE ENTITLED AN ACT TO INCREASE THE EFFICIENCY OF THE OFFICE OF INDIGENT DEFENSE SERVICES BY APPROPRIATING FUNDS TO ESTABLISH A SYSTEM OF AUTOMATED KIOSKS IN CERTAIN LOCAL CONFINEMENT FACILITIES TO ALLOW ATTORNEYS REPRESENTING INDIGENT DEFENDANTS TO CONSULT WITH THEIR CLIENTS REMOTELY.

Chairman Jordan recognized Representative Conrad, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

The Proposed Committee Substitute (PCS) would increase the efficiency of the Office of Indigent Defense Services by appropriating funds to establish a system of automated kiosks in certain local confinement facilities to allow attorneys representing indigent defendants to consult with their clients remotely.

The chair recognized Representative Stam, who moved to amend the bill on page 1, line 13-14 by rewriting those lines to read: "The system shall incorporate technology through which meetings between attorneys, their clients, and authorized third parties at a separate location cannot be monitored or recorded, thereby preserving confidentiality. No later than July 31, 2015, the Office of". (Attachment XV). The motion passed without dissent.

Chairman Jordan recognized Representative Stam to speak on the bill.

The chair recognized Jennifer Harjo, Chief Public Defender of New Hanover County, to speak in favor of the bill.

The chair recognized Slade Trabucco, CEO of JurisLink, to speak on the bill.

After a short discussion, the chair recognized Representative McGrady who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 552 and summary are provided (Attachment XVI and Attachment XVII)

HOUSE BILL 552: A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF GRAFFITI VANDALISM.

Chairman Jordan recognized Representative McGrady, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative McGrady to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 552 would create the criminal offense of graffiti vandalism.

The chair recognized Representative Stam, who moved to amend the bill on page 1, line 18 by deleting: "Class H" and inserting "Class I". (Attachment XVIII). The motion failed 5-6.

After a short discussion, the chair recognized Representative Stam, who moved for a favorable report of the proposed committee substitute, unfavorable as to the original bill. The motion passed on a unanimous voice vote.

There being no further business, Chairman Jordan adjourned the meeting at 2:15 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

Corrected #1: Added HB552 for Introduction of PCS only

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 II** will meet as follows:

DAY & DATE: Tuesday, April 14, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 192	Compliance Court Costs.	Representative McNeill Representative Faircloth Representative Hurley Representative Glazier
HB 327	Allow Use of Pepper Spray by EMS Workers.	Representative Dobson
HB 357	Toxicology Reports/District Court.	Representative Stam Representative Faircloth Representative Glazier Representative Hurley
HB 374	IDS Efficiency Act.	Representative Zachary Representative Stam Representative Reives Representative Faircloth
HB 552	Graffiti Vandalism. Introduction of PCS only	Representative McGrady Representative Glazier Representative B. Brown Representative J. Bell

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:39 AM on Monday, April 13, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

House Committee on Judiciary II
Tuesday, April 14, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 192	Compliance Court Costs.	Representative McNeill Representative Faircloth Representative Hurley Representative Glazier
HB 327	Allow Use of Pepper Spray by EMS Workers.	Representative Dobson
HB 357	Toxicology Reports/District Court.	Representative Stam Representative Faircloth Representative Glazier Representative Hurley
HB 374	IDS Efficiency Act.	Representative Zachary Representative Stam Representative Reives Representative Faircloth
HB 552	Graffiti Vandalism. Introduction of PCS only	Representative McGrady Representative Glazier Representative B. Brown Representative J. Bell

Presentations

Other Business

Adjournment

I

VISITOR REGISTRATION SHEET

Judiciary II — April 14, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Mann	NCAOC
Mildred Spearman	NCAOC
Fred Bone	Bone & Asso.
Joel Faucette	NCAREMS
Vicki Beyer	self
Amanda Horaist	TSS
Andy Brandon	DPS
Alan B Smith	(asmith@zaa.org) ZAA, P.O. Box 511275, Punta Gorda, FL 33951
David Starling	NC DST
Sam Watts	NC DST
Paul Sherman	NEFB

VISITOR REGISTRATION SHEET

Judiciary II — April 14, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd W Tilley	Perquimans CSC
Barbara Moore	Conf of Clerks of Sup Ct
Rose Williams	NCLM
Ole Madsen	Heav4NC.
Sarah Preston	ACLU-NC
Annaliese Dolph	DL
Todd Barlow	NC Advocates for Justice
Jerry W Mims	NCPBA
Chris Agee	DOJ
Joe John	DOJ
CASANDRA SKINNER	NCACC

VISITOR REGISTRATION SHEET

Judiciary II — April 14, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Regina Gadette Crawford	NC Office of EMS
Flint Benson	SEANC
Peg Dorer	Conf. of DAs
Lad Rutledge	CJPC
Kirk Ross	media
Doug Cassiter	NCSTA
Joe McClure	McClure Consulting
Stewart Buss	JurisLink
David Benford	JurisLink
Slade Harrison	Turlock
Jennifer Harjo	Jurislink - PD Office

VISITOR REGISTRATION SHEET

Judiciary II — April 14, 2015

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Fetzer	FSP
Danielle Carman	JDS
Elisa Wolper	IDS
Antonio Hairston	Intern
Jennifer Cassesani	NCMS

II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 4-14-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Joe Crook
3. Name: Mark Cone
4. Name:
5. Name:

Senate Sgt-At Arms:

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

Tuesday, April 14 JUDICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Rachel Chism	Guilford	John Faircloth
Thomas Crosby	Burke	Hugh Blackwell
Chris McCain	Alamance	Dennis Riddell

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 192
PROPOSED COMMITTEE SUBSTITUTE H192-PCS30306-SA-25

Short Title: Compliance Court Costs. (Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH COMPLIANCE COURT COSTS AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH A SYSTEM FOR THE ELECTRONIC PAYMENT OF COMPLIANCE COURT COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-304.1. Compliance; court costs.**

(a) A person charged for any of the offenses set forth in subsection (b) of this section may, in lieu of the payment of fines, court costs under G.S. 7A-304, or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of fifty dollars ($50.00) per citation. The compliance court costs assessed under this section shall be remitted to the State Treasurer for support of the General Court of Justice.

(b) Voluntary dismissals in exchange for compliance and the payment of court costs as authorized by this section may be obtained only for the offenses listed in this subsection and only one fifty-dollar ($50.00) court cost amount may be collected per citation regardless of the number of offenses listed on the citation. For purposes of this section, "compliance" means proof satisfactory to the district attorney that the person has corrected the violation or otherwise achieved compliance with the applicable statute. The offenses for which compliance is available under this section are the following:

(1) No operator's license, in violation of G.S. 20-7.
(2) Registration violations under G.S. 20-111(1) through (3).
(3) Failure to notify the Division of Motor Vehicles of change of address for drivers license, in violation of G.S. 20-7.1.
(4) Expired license, in violation of G.S. 20-7.
(5) Unsafe tires, in violation of G.S. 20-122.1.
(6) Inspection violations under G.S. 20-183.2.
(7) No registration card, in violation of G.S. 20-111.
(8) Violation of G.S. 20-28(a) for failure to comply with conditions of a limited driving privilege issued pursuant to G.S. 20-179.3, but only if the person issued the limited driving privilege was eligible for those privileges pursuant to G.S. 20-179.3(b)(2).
(9) Failure to obtain commercial drivers license, in violation of G.S. 20-37.12.
(10) Allowing unlicensed person to drive, in violation of G.S. 20-32.

(11) Failure to notify the Division of Motor Vehicles of change of address for certificate of title or registration, in violation of G.S. 20-67.
(12) Rearview mirror violations under G.S. 20-117.1(a).
(13) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125, 20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.
(14) Child restraint violations under G.S. 20-137.1.
(15) Motorcycle and moped helmet violations under G.S. 20-140.4(2).

(c) The district attorney shall provide written notice to any person electing for compliance and the payment of court costs under this section that compliance in response to certain offenses, if presented to a court, constitutes a statutory defense to the charge and therefore might result in the dismissal of the charge without the payment of any court costs. These defenses include those contained in G.S. 20-35(c), 20-122.1(b), 20-127(e), 20-133(b), and 20-137.1(c)."

SECTION 2. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. ~~No~~ Except as provided in G.S. 7A-304.1, no costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

...."

SECTION 3. Effective July 1, 2016, G.S. 7A-304.1(a), as enacted by Section 1 of this act, reads as rewritten:

"(a) A person charged for any of the offenses set forth in subsection (b) of this section may, in lieu of the payment of fines, court costs under G.S. 7A-304, or the making of court appearances, elect to provide proof of compliance to the district attorney prior to or on the scheduled court appearance date, and the district attorney may agree to voluntarily dismiss the case in exchange for the person's signed waiver of appearance and payment of court costs in the sum of ~~fifty dollars ($50.00).~~(i) fifty dollars ($50.00) if paid in person to the clerk of court; or (ii) ten dollars ($10.00) if paid through the system for electronic payment established by the Administrative Office of the Courts. The compliance court costs assessed under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

SECTION 4. The Administrative Office of the Courts, in consultation with the Conference of District Attorneys and the Conference of Clerks of Superior Court, shall (i) develop a procedure for the acceptance of compliance court costs and establish uniform guidelines as to what constitutes compliance in each type of case; (ii) study the structure of the compliance court costs established in this act and make any recommendations for changes to that structure; and (iii) establish a system for the acceptance of electronic payment of compliance court costs and updating of the record, which shall be ready to accept electronic payments in all counties no later than July 1, 2016. The Administrative Office of the Courts shall report on the development of the electronic payment system to the Chairs of the Senate Appropriations Committee on Justice and Public Safety, the Chairs of the House Appropriations Committee on Justice and Public Safety, and the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by May 1, 2016.

SECTION 5. Section 3 of this act becomes effective July 1, 2016, and applies to dismissals granted on and after that date. The remainder of this act becomes effective October 1, 2015, and applies to dismissals granted on and after that date.

IV

HOUSE BILL 192:
Compliance Court Costs

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	April 14, 2015
Introduced by:	Reps. McNeill, Faircloth, Hurley, Glazier	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 192 would establish compliance court costs and direct the Administrative Office of the Courts (AOC) to establish a system for the electronic payment of compliance court costs.

BILL ANALYSIS:

Section 1 of the bill would create a process to allow persons charged with certain offenses to obtain a dismissal of the offense by the district attorney upon proof of compliance and payment of $50.00 in court costs.

The offenses for which a compliance dismissal would be available are as follows:

- No operator's license
- Motor vehicle registration violations for failure to register, failure to display a license plate, displaying a fictitious license plate or registration, or giving, lending or borrowing a license plate for use on another vehicle.
- Failure to notify DMV of change of address for license, title, or registration
- Expired license
- Unsafe tires
- Inspection violations
- No registration card
- Driving while license revoked for failure to comply with the provisions of a limited driving privilege, but only if the limited driving privilege was issued based on a revocation under G.S. 15A-1331.1 for conviction of a felony
- Failure to obtain a commercial drivers license
- Allowing an unlicensed person to drive
- Rearview mirror violations
- Safety equipment violations
- Child restraint violations
- Motorcycle and moped helmet violations

The district attorney would be required to provide written notice to any person electing a compliance dismissal under this statute that compliance in response to certain offenses constitute a statutory defense, and if presented to the court may result in dismissal without payment of any court costs.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Section 2 of the bill would provide that effective July 1, 2016, payment of compliance court costs is only $10.00 if paid through a system of electronic payment and remains $50.00 if paid in person to the clerk of court.

Section 3 of the bill would require AOC, in consultation with the Conference of District Attorneys and the Conference of Clerks of Superior court to (i) develop a procedure for the acceptance of compliance court costs and establish uniform guidelines for what constitutes compliance in each case; (ii) study the structure of the compliance court costs and make recommendations for changes to that structure; and (iii) establish a system for the acceptance of electronic payment of compliance court costs and updating of the record, which shall be ready to accept electronic payment in all counties no later than July 1, 2016. The AOC shall report to the Chairs of the House and Senate Appropriations Committees on Justice and Public Safety and the Joint Legislative Oversight Committee on Justice and Public Safety on the development of the electronic payment system by May 1, 2016.

EFFECTIVE DATE: Section 2 of this act becomes effective July 1, 2016, and applies to dismissals granted on and after that date. The remainder of this act becomes effective October 1, 2015, and applies to dismissals granted on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: House Bill 192 (First Edition)

SHORT TITLE: Compliance Court Costs.

SPONSOR(S): Representatives McNeill, Faircloth, Hurley, and Glazier

FISCAL IMPACT
($ in millions)

Yes No No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:	$3.9 to $7.9	$2.1 to $4.2	$2.1 to $4.2	$2.1 to $4.2	$2.1 to $4.2
General Fund Expenditures:	$1.4 to $0.8	$1.0 to $0.5	$1.0 to $0.5	$1.0 to $0.5	$1.0 to $0.5
State Positions:	8.0 to 16.0	8.0 to 16.0	8.0 to 16.0	8.0 to 16.0	8.0 to 16.0
NET STATE IMPACT	**$2.5 to $7.1**	**$1.1 to $3.7**	**$1.1 to $3.7**	**$1.1 to $3.7**	**$1.1 to $3.7**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
The Administrative Office of the Courts

EFFECTIVE DATE: Sections 1 and 3 become effective October 1, 2015. Section 2 becomes effective July 1, 2016.

TECHNICAL CONSIDERATIONS:
None

FISCAL SUMMARY:
Section 1 of this bill adds a $50 court fee for compliance dismissals granted on or after October 1, 2015. Compliance dismissals do not currently have a court fee. Fiscal Research Division (FRD) estimates that increased revenues to the General Fund would be between $3,939,169 and $7,878,338 in FY 2015-16. In the first year, costs to the Administrative Office of the Courts (AOC) would include technology costs ranging from $348,916 to $567,236 and personnel costs ranging between $385,282 recurring and $21,260 nonrecurring for two assistant district attorney and six deputy clerks to $770,564 in recurring funds and $43,240 in nonrecurring funds for four assistant district attorneys and 12 deputy clerks. Total estimated costs for AOC in FY 2015-16, therefore, range from $755,458 to $1,381,040.

Section 2 modifies the new $50 court fee starting in FY 2016-17. If paid in person to the clerk of court, the compliance dismissal fee would remain $50, but if using an online system, the fee would be reduced to $10. FRD estimates that increased revenues to the General Fund would be between $2,100,890 and $4,201,781 in FY 2016-17 and thereafter. Costs to AOC would range between $513,709 and $1,027,418 for personnel starting in FY 2016-17 and continuing into subsequent years.

BILL SUMMARY:
Section 1 of this bill adds new G.S. 7A-304.1. Subsection (a) allows an individual to provide proof of compliance to the district attorney in lieu of paying fines and court costs or making a court

appearance. The district attorney may voluntarily dismiss the charge or charges in exchange for a signed waiver of appearance and payment of $50 in court costs per citation. These costs will be remitted to the General Fund. Subsection (b) defines "compliance" and lists fifteen offenses for which compliance in exchange for a voluntary dismissal is approved. These offenses include traffic infractions, such as no operator's license, registration violations, or unsafe tires. Subsection (c) directs the district attorney to provide written notice that compliance might result in the dismissal of the charge or charges without the requirement to pay any court costs.

Section 2 amends new G.S. 7A-304.1(a) to stipulate that the $50 will be charged if paid in person to the clerk of court and $10 will be charged if paid through the electronic payment system.

Section 3 directs the Administrative Office of the Courts (AOC), in consultation with the Conference of District Attorneys and Conference of Clerks of Superior Court, to (i) develop a procedure and establish guidelines for the acceptance of compliance costs, (ii) study the structure of the compliance costs and make any recommendations for changes, and (iii) establish a system for the electronic payment of compliance costs and updating the record. Section 3 sets a deadline to have this system available in all counties by July 1, 2016, and AOC shall report on its progress by May 1, 2016.

Section 2 becomes effective July 1, 2016, and applies to dismissals granted on or after that date. The remainder of this bill becomes effective October 1, 2015, and applies to dismissals granted on or after that date.

ASSUMPTIONS AND METHODOLOGY:

Section 1

Section 1 of this bill adds a $50 court fee for compliance dismissals granted on or after October 1, 2015. Compliance dismissals do not currently have a court fee. In calendar year 2014, there were 210,089 cases filed in North Carolina courts that contained only compliance dismissal-eligible cases. Some offenders charged with compliance dismissal-eligible charges may choose to appear before a district court judge because of the possibility that a judge may dismiss the charge and waive the costs (See Technical Considerations). However, an appearance before a judge would take more time and effort, so a conservative estimate of the maximum number of offenders who would chose to appear before a judge rather than dismiss the charges with a district attorney would be 50 percent.

Assumptions:

- 210,089 is a typical number of cases with compliance dismissal-eligible charges.
- At least 50 percent of these cases would be addressed through the compliance dismissal process and incur the $50 fee rather than involving an appearance before a district court judge who may waive all costs because of the time and effort involved in the latter process.
- The fee applies to compliance dismissals granted on or after October 1, 2015 and will be in effect for nine months, or 75 percent of FY 2015-16.

Assuming the previous three factors, increased revenues to the General Fund in FY 2015-16 would be **$3,939,169**.[1] Changing the second assumption to the maximum of 100 percent of these cases being dismissed through the process, increased revenues to the General Fund in FY 2015-16 would be **$7,878,338**.[2] Table 1 outlines the calculated revenues in the minimum and maximum estimates.

Table 1: Revenues from compliance dismissal fees, FY 2015-16, minimum and maximum

	Cases handled by compliance dismissal process (50% minimum)	Cases handled by compliance dismissal process (100% maximum)
Number of cases	105,044.5	210,089
$50 compliance dismissal fee (annualized)	$5,252,255	$10,504,450
October 1, 2015 effective date (75% of FY 2015-16)	**$3,919,169**	**$7,878,338**

Section 2

Section 2 modifies this $50 court fee as of July 1, 2016 to set the compliance dismissal fee to $50 if paid in person to the clerk of court, but $10 if paid online.

Assumptions:

- 210,089 is a typical number of cases with compliance dismissal-eligible charges.
- At least 75 percent of the cases that incurred the $50 fee in FY 2015-16 would use the online system and incur a $10 fee in FY 2016-17 and thereafter.
- Between 50 percent and 100 percent of all compliance dismissal-eligible cases would be addressed through the compliance dismissal process rather than an appearance before a district court judge.

Assuming the previous three factors, revenues from the new compliance dismissal fees for FY 2016-17 and thereafter would range from **$2,100,890** (representing the minimal 50 percent of eligible cases being addressed through the process, with 75 percent of those going through the online system)[3] to **$4,201,781** (representing the maximum of 100 percent of eligible cases being addressed through the process with 75 percent of those using the online system)[4]. Table 2 outlines the calculated revenues in the minimum and maximum estimates.

[1] 210,089 cases x 50% minimum = 105,044.5 x $50 fee = $5,252,255 x 9/12 months in FY 2015-16 = $3,939,169.

[2] 210,089 cases (100% maximum) x $50 fee = $10,504,450 x 9/12 months in FY 2015-16 = $7,878,338.

[3] Online system fees: 210,089 cases x 50% minimum = 105,044.5 x 75% paying online = 78,783.4 x $10 fee = $787,834. In person fees: 210,089 cases x 50% minimum = 105,044.5 x 25% paying in person = 26,261.1 x $50 fee = $1,313,056. $787,834 collected through online fees + $1,313,056 in-person fees = $2,100,890.

[4] Online system fees: 210,089 cases x 75% paying online = 157,566.8 x $10 fee = $1,575,668. In person fees: 210,089 cases x 25% paying in person = 52,522.3 x $50 fee = $2,626,113. $1,575,668 collected through online fees + $2,626,113 in-person fees = $4,201,781.

Table 2: Revenues from compliance dismissal fees, FY 2016-17, minimum and maximum

Cases handled by compliance dismissal process (50% minimum)		Cases handled by compliance dismissal process (100% maximum)	
105.044.5 cases		210,089 cases	
Online System (75% of minimum)	In Person (25% of minimum)	Online System (75% of maximum)	In Person (25% of maximum)
78,783.4 cases	26.261.1 cases	157,566.8 cases	52,522.3 cases
$10 fee	$50 fee	$10 fee	$50 fee
$787,834	$1,313,056	$1,575,688	$2,626,113
$2,100,890 total		**$4,201,781 total**	

The increase in demand on court personnel in Sections 1 and 2 has a fiscal impact under the minimum scenario of **$385,282 in recurring funds and $21,260 in nonrecurring funds in FY 2015-16** and **$513,709 recurring in subsequent years**. Assuming that defendants in 50 percent of the 210,089 cases elect to pay the $50 compliance dismissal fee and an assistant district attorney takes an additional two minutes over the current practice to handle the case and explain the process and fee, as well as to provide the written notice required in new G.S. 7A-304.4(c), there will be a need statewide for two new assistant district attorney (ADA) full-time equivalent positions (FTE). To handle the resulting annual 105,045 payments of $50, there will be a need for an additional six deputy clerks of superior court FTE. The total fiscal impact of these additional positions is $385,282 recurring and $21,260 nonrecurring in FY 2015-16, taking into account the October 1, 2015 effective date. In subsequent years, the cost of these two ADA and six deputy clerk FTE would be $513,709.

Under the maximum scenario, these numbers would essentially double, leading to a fiscal impact of **$770,564 in recurring funds and $43,240 in nonrecurring funds in FY 2015-16** and **$1,027,418 recurring in subsequent years**. This estimate assumes that defendants in 100 percent of the 210,089 cases would elect to pay the compliance dismissal fee, either in person or online starting in FY 2016-17. This would lead to a statewide need of four new ADA FTE and 12 new deputy clerk of superior court FTE. This estimate also takes into account the October 1, 2015 effective date in FY 2015-16.

Section 3 requires AOC to develop a system for the acceptance of electronic payment of compliance costs and updating the record. Development of this system could take one of two approaches.

1. In the more basic option, AOC's payNCticket application would be modified to:
   - allow a defendant to enter a compliance dismissal request,
   - allow the district attorney to review the request, view the proof of compliance uploaded by the defendant, and approve or deny the request,
   - notify the defendant of the decision and provide instructions about paying the court cost through payNCticket, and
   - update the court's electronic record.

This option is estimated to require 5,458 total hours in technology time and training of court personnel, which would lead to a need for **$348,916** in additional funds to AOC. Because AOC's Technology Services Division staff is fully engaged with current technology projects, any additional projects will require additional resources in the form of contracted services or will require a reassignment from current Judicial Branch priorities, which would delay current projected deadlines.

2. In the more secure option, AOC's payNCticket application would be modified as described above with the additional step of AOC creating an interface with DMV to determine compliance in DMV-related offenses. In this scenario, an offender claiming compliance with an expired license offense, for example, could be verified electronically against DMV records rather than relying on the relatively less secure method of requiring the defendant to upload an image of the renewed license or registration card. This option is estimated to require 8,187 total hours in technology time and training of court personnel (which is 2,729 hours more than in the basic option), which would lead to a need for **$567,236** in additional funds to AOC (which is $218,320 more than the basic option would cost). The deadline for this project would depend on DMV's timeline to make such changes.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: William Childs

APPROVED BY:
Mark Trogdon, Director
Fiscal Research Division

DATE: March 24, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 192

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

H192-ASA-14 [v.2]

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

Date _____,2015

Representative Starr

moves to amend the bill on page 1, line 34
by rewriting the line to read:
"to G.S. 20-179.3(b)(2)."

And on page 2, lines 14-15
by inserting between those lines the following:

"**SECTION 2.** G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. ~~No~~ Except as provided in G.S. 7A-304.1, no costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

…";

And by renumbering the remaining sections of the bill accordingly;

And on page 2, line 38
By deleting "Section 2" and inserting "Section 3".

SIGNED Stormy
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



VI

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 327

Short Title:	Allow Use of Pepper Spray by EMS Workers.	(Public)
Sponsors:	Representative Dobson (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 24, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW EMERGENCY MEDICAL SERVICES PERSONNEL TO CARRY AND USE PEPPER SPRAY FOR SELF-DEFENSE PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-508(d) reads as rewritten:

"(d) The North Carolina Medical Care Commission shall adopt rules to do all of the following:

...

(8) Establish standards for vehicles and equipment used within the emergency medical services system. These standards shall not prohibit the carrying and use of pepper spray by emergency medical services personnel for self-defense purposes.

...."

SECTION 2. G.S. 131E-157(a) reads as rewritten:

"(a) The Commission shall adopt rules specifying equipment, sanitation, supply and design requirements for ambulances. These rules shall not prohibit the carrying and use of pepper spray by emergency medical services personnel for self-defense purposes."

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

VII

HOUSE BILL 327:
Allow Use of Pepper Spray by EMS Workers

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 14, 2015
Introduced by:	Rep. Dobson	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 327 would allow emergency medical services personnel to carry and use pepper spray for self-defense purposes.***

CURRENT LAW AND BILL ANALYSIS: The North Carolina Medical Care Commission must adopt and amend rules to carry out the purposes of statutes governing the regulation of emergency medical services and the implementation of a statewide trauma system. Among other things, its rules must establish standards for vehicles and equipment used within the emergency medical system.

The act provides that these standards must not prohibit emergency medical services personnel for carrying or using pepper spray for self-defense purposes.

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

O. Walker Reagan
Director

★H327-SMRN-19 E1 -V2★

Research Division
(919) 733-2578

VIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 357
PROPOSED COMMITTEE SUBSTITUTE H357-PCS20290-TV-6

Short Title: Toxicology Reports/District Court. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A WRITTEN TOXICOLOGY ANALYSIS MAY BE INTRODUCED AS EVIDENCE IN A DISTRICT COURT CRIMINAL PROSECUTION WITHOUT EXPERT TESTIMONY PROVIDED THERE IS A RIGHT TO TRIAL DE NOVO.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7C of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-58.21. Toxicology analysis admissible as evidence in criminal prosecution in district court.**

(a) Notwithstanding G.S. 8-58.20 and G.S. 20-139.1, in any criminal prosecution in district court, a laboratory report of a written toxicology analysis that states the results of the analysis and that is signed and sworn to by the person performing the analysis may be admissible in evidence without the testimony of the analyst who prepared the report provided all of the following criteria are satisfied:

(1) The analysis complies with the provisions of G.S. 8-58.20(b).

(2) The analyst who conducts the toxicology analysis and signs the report complies with the provisions of G.S. 8-58.20(c).

(3) The district attorney serves a copy of the laboratory report and affidavit and indicates whether the report and affidavit will be offered as evidence at any proceeding in district court against the defendant on the attorney of record for the defendant, or on the defendant if that person has no attorney, no later than 10 business days after receiving the report and affidavit and at least 10 business days before trial.

(4) The defendant in the criminal prosecution has a right to appeal from the criminal prosecution for a trial de novo as provided in Article 90 of Chapter 15A of the General Statutes.

(b) A defendant who wants to contest the results of a toxicology analysis that may be admitted into evidence pursuant to subsection (a) of this section retains the right to subpoena the person performing the analysis to testify in the criminal prosecution in district court as provided by G.S. 8-59. If the analyst fails to comply with the subpoena, and the case is not continued for the analyst to do so, the results of the analysis are inadmissible at trial in the district court.

(b1) If a defendant wants the analyst present and the analyst is employed out of state, the defendant must notify the State in writing within five days of receiving the notice and report from the District Attorney. The State must then produce the analyst witness.

(b2) Under this section the State retains the burden of proof beyond a reasonable doubt. If an analyst testifies pursuant to a subpoena issued by the defendant, the analyst may be declared a hostile witness for direct examination purposes under the North Carolina Rules of Evidence.

(c) Nothing in this section shall be construed as an abrogation of any State or federal constitutional or statutory right otherwise applicable in criminal cases with the exception of the right to a jury trial in district court."

SECTION 2. This act becomes effective October 1, 2015, and applies to trials commencing on or after that date.

IX

HOUSE BILL 357:
Toxicology Reports/District Court

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 13, 2015
Introduced by:	Reps. Stam, Faircloth, Glazier, Hurley	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 357 would provide a written toxicology analysis may be introduced as evidence in a district court criminal prosecution without expert testimony provided there is a right to trial de novo.***

CURRENT LAW: N.C.G.S. § 8-58.20 provides in any criminal prosecution a laboratory report of written forensic analysis including an analysis of a defendant's DNA and the results of the analysis, under certain conditions and if the defendant does not object, may be admissible into evidence without the testimony of the analyst who prepared the report. This law does not extend to toxicology reports.

BILL ANALYSIS: This bill would add a new section to Article 7, Chapter 8 to provide in any criminal prosecution in district court a laboratory report of written toxicology analysis may be admissible in evidence without the testimony of the analyst who prepared the report provided the following conditions exist:

1) The analysis complies with N.C.G.S. § 8-58.20.

2) The analyst who conducts the toxicology analysis signs the report and complies with N.C.G.S. § 8-58.20.

3) The district attorney serves the defendant or the defendant's attorney of record a copy of the laboratory report and affidavit and indicates if the same will be offered as evidence in any proceeding in district court no later than 10 business days after receiving the report and affidavit and at least 10 business days before trial.

4) The defendant has the right to appeal from the criminal prosecution for a trial de novo.

The defendant who wants to contest the results of the toxicology analysis that may be admitted into evidence may subpoena the person performing the analysis to testify in the criminal prosecution in district court. If the analyst fails to comply with the subpoena, the case is not continued for the analyst to do so, the results of the analysis are inadmissible at trial in district court.

EFFECTIVE DATE: This act would become effective on October 1, 2015 and applies to trials commencing on or after that date.

X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 357

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

H357-ATV-4 [v.4]

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

Date _____ ,2015

Representative _____

moves to amend the bill on page 1, line 11 by rewriting the line to read:

"Notwithstanding G.S. 8-58.20 and G.S. 20-139.1, in any criminal prosecution in district court a".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

XI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 357

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

H357-ATV-5 [v.2]

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

Date _____,2015

Representative Glazier

moves to amend the bill on page 2, line 1 by inserting before the line a new subsection to read as follows:

"(b1) If a defendant wants the analyst present and the analyst is employed out of state, the defendant must notify the State in writing within five days of receiving the notice and report from the District Attorney. The State must then produce the analyst witness.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

XII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 367 DATE 4/14/15

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

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

moves to amend the bill on page 2 (as amended by 2 amendments adopted in committee), line 1

( ) WHICH CHANGES THE TITLE

by inserting a new subsection to read as follows:

"(b2) Under this section the State retains the burden of proof beyond a reasonable doubt. If an analyst testifies pursuant to a subpoena issued by the defendant, the analyst may be declared a hostile witness for ~~cross~~ direct examination purposes under the North Carolina Rules of Evidence."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

XIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 374*
PROPOSED COMMITTEE SUBSTITUTE H374-PCS40391-SA-23

Short Title: IDS Efficiency Act. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE EFFICIENCY OF THE OFFICE OF INDIGENT DEFENSE SERVICES BY APPROPRIATING FUNDS TO ESTABLISH A SYSTEM OF AUTOMATED KIOSKS IN CERTAIN LOCAL CONFINEMENT FACILITIES TO ALLOW ATTORNEYS REPRESENTING INDIGENT DEFENDANTS TO CONSULT WITH THEIR CLIENTS REMOTELY.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Office of Indigent Defense Services the sum of one million six hundred thousand dollars ($1,600,000) for the 2015-2016 fiscal year to establish a system of fully automated kiosks in certain local confinement facilities to allow attorneys representing indigent defendants to consult with their clients remotely, thereby saving the time and expense of traveling to and from those facilities. The system shall incorporate technology through which meetings between attorneys, their clients, and authorized third parties at a separate location cannot be monitored or recorded, thereby preserving confidentiality. No later than July 31, 2015, the Office of Indigent Defense Services shall issue a Request for Proposal (RFP) from vendors who can provide the kiosks described in this section. The vendor will be chosen for an initial two-year period, will continue to own the kiosks, and will oversee access to the kiosks by attorneys assigned to represent indigent clients. In the initial two-year period, attorneys assigned to represent indigent clients shall bear no direct cost for use of the kiosks to meet with their indigent clients.

SECTION 2. The savings realized through the use of this system shall be used at the discretion of the Commission on Indigent Defense Services to (i) continue funding for the use of the kiosk system or (ii) reduce the carry-forward debt incurred through payments to private assigned counsel during the 2013-2015 fiscal biennium and, to the extent there are additional savings, increase the rates paid by the Office of Indigent Defense Services to private assigned counsel during the 2015-2017 fiscal biennium and provide comparable increases for contract attorneys during the 2015-2017 fiscal biennium.

SECTION 3. The Office of Indigent Defense Services shall report on the establishment and use of the kiosk system provided for in this act and the corresponding cost-savings to the Chairs of the Senate Appropriations Committee on Justice and Public Safety, the Chairs of the House Appropriations Committee on Justice and Public Safety, and the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year.

SECTION 4. This act becomes effective July 1, 2015.

XIV

HOUSE BILL 374:
IDS Efficiency Act

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Appropriations	**Date:**	April 14, 2015
Introduced by:	Reps. Zachary, Stam, Reives, Faircloth	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H374-CSSA-23		

SUMMARY: ***The Proposed Committee Substitute (PCS) would increase the efficiency of the Office of Indigent Defense Services by appropriating funds to establish a system of automated kiosks in certain local confinement facilities to allow attorneys representing indigent defendants to consult with their clients remotely.***

[As introduced, this bill was identical to S685, as introduced by Sens. Lee, Newton, which is currently in Rules and Operations of the Senate.]

BILL ANALYSIS: The PCS for House Bill 374 would appropriate $1,600,000 for FY 2015-2016 to the Office of Indigent Defense Services (IDS) to establish a system of fully automated kiosks in certain local confinement facilities to allow attorneys representing indigent defendants to consult with their clients remotely and confidentially.

IDS would issue a Request for Proposal (RFP) and choose a vendor for an initial two-year period. The vendor would retain ownership of the kiosks and oversee access to the kiosks. There would be no direct cost to the appointed attorneys.

Savings realized through use of the system would be used at the discretion of IDS to continue funding the use of the kiosks or reduce the carry-forward debt to private assigned counsel and, if additional savings are realized, increase the rates paid to private assigned counsel.

IDS would be required to report on the establishment and use of the kiosks and any resulting cost savings to the Chairs of the House and Senate Appropriations Committees on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety, by February 1 of every year.

EFFECTIVE DATE: This act becomes effective July 1, 2015.

O. Walker Reagan
Director

* H 3 7 4 - S M S A - 2 8 C S S A - 2 3 - V 1 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

XV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 374*

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

H374-ASA-15 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H374-CSSA-23

Date _____ ,2015

Representative Stam

moves to amend the bill on page 1, lines 13-14
by rewriting those lines to read:
"The system shall incorporate technology through which meetings between attorneys, their clients, and authorized third parties at a separate location cannot be monitored or recorded, thereby preserving confidentiality. No later than July 31, 2015, the Office of"

And on page 1, line 18
by deleting "cases in the public defender offices." and inserting "represent indigent clients.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

XVI

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 552
PROPOSED COMMITTEE SUBSTITUTE H552-PCS30305-SA-24

Short Title: Graffiti Vandalism. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF GRAFFITI VANDALISM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-127.1. Graffiti vandalism.**

(a) As used in this section, "graffiti vandalism" means to unlawfully write or scribble on, mark, paint, deface, or besmear the walls of (i) any real property, whether public or private, including cemetery tombstones and monuments, (ii) any public building or facility as defined in G.S. 14-132, or (iii) any statue or monument situated in any public place, by any type of pen, paint, or marker regardless of whether the pen or marker contains permanent ink, paint, or spray paint.

(b) Except as otherwise provided in this section, any person who engages in graffiti vandalism is guilty of a Class 1 misdemeanor. A person convicted of a Class 1 misdemeanor under this subsection shall be fined a minimum of five hundred dollars ($500.00) and, if community or intermediate punishment is imposed, shall be required to perform 24 hours of community service.

(c) Any person who violates subsection (a) of this section shall be guilty of a Class H felony if any of the following apply:

(1) The cost to repair damage caused by the violation is in excess of one thousand dollars ($1,000).

(2) The person has two or more prior convictions for violation of this section.

(3) The person commits five or more violations of this section within a 60-day period."

SECTION 2. G.S. 14-132(d) reads as rewritten:

"(d) ~~Any~~ Unless the conduct is covered under some other provision of law providing greater punishment, any person who violates any provision of this section is guilty of a Class 2 misdemeanor."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

XVII

HOUSE BILL 552: Graffiti Vandalism

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	April 14, 2015
Introduced by:	Reps. McGrady, Glazier, B. Brown, J. Bell	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H552-CSSA-24		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 552 would create the criminal offense of graffiti vandalism.***

CURRENT LAW: G.S. 14-132 provides for a Class 2 misdemeanor for anyone to "unlawfully write or scribble on, mark, deface, besmear, or injure the walls of any public building or facility, or any statue or monument situated in any public place."

BILL ANALYSIS: The PCS for House Bill 552 would create the criminal offense of "graffiti vandalism" for anyone who unlawfully writes, scribbles on, marks, paints, defaces, or besmears the walls of any real property, any public building or facility, or any statue or monument situated in a public place, by any type of pen, paint, or marker.

Except as otherwise provided, the offense would be a Class 1 misdemeanor with a mandatory fine of $500. Punishment as a misdemeanor would also require 24 hours of community service if the person received a community or intermediate sentence.

The offense would be a Class H felony if any of the following apply:

- The cost to repair damage caused by the violation is in excess of $1,000.
- The person has two or more prior convictions for violation of this section.
- The person commits five or more violations of this section within a 60-day period.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

BACKGROUND:

§ 14-132. Disorderly conduct in and injuries to public buildings and facilities.

...

(c) The term "public building or facility" as used in this section includes any building or facility which is:

(1) One to which the public or a portion of the public has access and is owned or controlled by the State, any subdivision of the State, any other public agency, or any private institution or agency of a charitable, educational, or eleemosynary nature; or

(2) Dedicated to the use of the general public for a purpose which is primarily concerned with public recreation, cultural activities, and other events of a public nature or character.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

(3) Designated by the Director of the State Bureau of Investigation in accordance with G.S. 143B-987.

The term "building or facility" as used in this section also includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

NO
XVIII

EDITION No. _____

H. B. No. 552 DATE _____

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

COMMITTEE SUBSTITUTE H552-CSSA-24

(Rep.) Sen.) Stam

moves to amend the bill on page 1, line 18

( ) WHICH CHANGES THE TITLE

by deleting "Class H" and inserting "Class I"

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Committee on Judiciary II
Tuesday, April 21, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 21, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:01 PM. The Chairman recognized the Sergeants-at-Arms and Pages.

The following bills were considered:

HB 338 Fail to Obtain DL/Increase Punishment. (Representative Millis)

Representative Conrad made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Millis to present the bill. There was a brief discussion. Representative Conrad made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report and was re-referred to the Committee on Appropriations.

HB 711 Prohibit Counterfeit/Nonfunctional Air Bags. (Representatives Faircloth, Blust, Hardister)

Representatives Faircloth and Hardister were recognized to present the bill. An amendment was offered by Representative Stam, and it was adopted. Ms. Ember Brillhart, Honda; Dr. Jeff Runge, former Administrator for the National Highway Transportation Safety Administration; Mr. John Policastro, General Counsel, NC Automobile Dealers Association; and Mr. Dave Horne, Smith Anderson Blount Dorsett, spoke on the bill. Representative Faircloth made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

HB 350 Restore Driving Privileges/Competency. (Representatives Farmer-Butterfield, Richardson, Hurley, R. Turner)

Representative Farmer-Butterfield was recognized to present the bill. After a brief discussion, Representative Hurley made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 376 Civ Pro/Modernize Expert Discovery. (Representatives Jordan, Stam, Bishop, Glazier)

Representative Ross made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Bishop to present the bill. Mrs. Kim Crouch, NC Bar Association, spoke on the bill. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 435 McDowell/Burke Firing from Road. (Representative Dobson)

Representative Dobson was recognized to present the bill. Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 383 Clarify Statutory Scheme/Sex Offenses. (Representatives Glazier, Stam, Jordan, Faircloth)

Representatives Glazier was recognized to present the bill. An amendment was offered by Representative Glazier, and it was adopted. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

HB 397 Clarify Protections/Exploitation of Elders. (Representatives Glazier, Reives, Stam, Faircloth)

Representative Faircloth made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Glazier to present the bill. An amendment was offered by Representative Glazier, and it was adopted. Representative Michaux made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

HB 405 Property Protection Act. (Representatives Szoka, Whitmire, Jordan, R. Moore)

Representative Stam made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Szoka to present the bill. Several visitors spoke on the bill. After much discussion, Representative Glazier offered an amendment, and it was adopted. A second amendment was offered by Representative Stam, and it was adopted. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

The meeting adjourned at 2:20 PM.

Respectfully submitted,

Representative John M. Blust, Chairman
Presiding

Gennie L. Thurlow, Committee Clerk

Corrected #2: HB187 Removed.

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 II** will meet as follows:

DAY & DATE: Tuesday, April 21, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 338	Fail to Obtain DL/Increase Punishment.	Representative Millis
HB 350	Restore Driving Privileges/Competency.	Representative Farmer-Butterfield Representative Richardson Representative Hurley Representative R. Turner
HB 376	Civ Pro/Modernize Expert Discovery.	Representative Jordan Representative Stam Representative Bishop Representative Glazier
HB 383	Clarify Statutory Scheme/Sex Offenses.	Representative Glazier Representative Stam Representative Jordan Representative Faircloth
HB 397	Clarify Protections/Exploitation of Elders.	Representative Glazier Representative Reives Representative Stam Representative Faircloth
HB 405	Property Protection Act.	Representative Szoka Representative Whitmire Representative Jordan Representative R. Moore
HB 435	McDowell/Burke Firing from Road.	Representative Dobson
HB 711	Prohibit Counterfeit/Nonfunctional Air Bags.	Representative Faircloth Representative Blust Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:23 AM on Tuesday, April 21, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

Corrected #1: HB338 added.

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 II** will meet as follows:

DAY & DATE: Tuesday, April 21, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 187	Stalking by GPS/Criminal Offense.	Representative Glazier Representative Horn Representative Faircloth Representative McGrady
HB 350	Restore Driving Privileges/Competency.	Representative Farmer-Butterfield Representative Richardson Representative Hurley Representative R. Turner
HB 376	Civ Pro/Modernize Expert Discovery.	Representative Jordan Representative Stam Representative Bishop Representative Glazier
HB 383	Clarify Statutory Scheme/Sex Offenses.	Representative Glazier Representative Stam Representative Jordan Representative Faircloth
HB 397	Clarify Protections/Exploitation of Elders.	Representative Glazier Representative Reives Representative Stam Representative Faircloth
HB 405	Property Protection Act.	Representative Szoka Representative Whitmire Representative Jordan Representative R. Moore
HB 435	McDowell/Burke Firing from Road.	Representative Dobson
HB 711	Prohibit Counterfeit/Nonfunctional Air Bags.	Representative Faircloth Representative Blust

		Representative Hardister
HB 338	Fail to Obtain DL/Increase Punishment.	Representative Millis

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:17 PM on Thursday, April 16, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (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 II** will meet as follows:

DAY & DATE: Tuesday, April 21, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 187	Stalking by GPS/Criminal Offense.	Representative Glazier Representative Horn Representative Faircloth Representative McGrady
HB 350	Restore Driving Privileges/Competency.	Representative Farmer-Butterfield Representative Richardson Representative Hurley Representative R. Turner
HB 376	Civ Pro/Modernize Expert Discovery.	Representative Jordan Representative Stam Representative Bishop Representative Glazier
HB 383	Clarify Statutory Scheme/Sex Offenses.	Representative Glazier Representative Stam Representative Jordan Representative Faircloth
HB 397	Clarify Protections/Exploitation of Elders.	Representative Glazier Representative Reives Representative Stam Representative Faircloth
HB 405	Property Protection Act.	Representative Szoka Representative Whitmire Representative Jordan Representative R. Moore
HB 435	McDowell/Burke Firing from Road.	Representative Dobson
HB 711	Prohibit Counterfeit/Nonfunctional Air Bags.	Representative Faircloth Representative Blust Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:40 PM on Thursday, April 16, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, April 21, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 338	Fail to Obtain DL/Increase Punishment	Representative Millis
HB 350	Restore Driving Privileges/ Competency.	Representative Farmer-Butterfield Representative Richardson Representative Hurley Representative R. Turner
HB 376	Civ Pro/Modernize Expert Discovery.	Representative Jordan Representative Stam Representative Bishop Representative Glazier
HB 383	Clarify Statutory Scheme/Sex Offenses.	Representative Glazier Representative Stam Representative Jordan Representative Faircloth
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HB 405	Property Protection Act.	Representative Szoka Representative Whitmire Representative Jordan Representative R. Moore
HB 435	McDowell/Burke Firing from Road.	Representative Dobson
HB 711	Prohibit Counterfeit/Nonfunctional Air Bags.	Representative Faircloth Representative Blust Representative Hardister

(Continued)

Presentations

Other Business

Adjournment

4-a1 5

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

HB **350** Restore Driving Privileges/Competency.

Draft Number:	None
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Farmer-Butterfield

HB **435** McDowell/Burke Firing from Road.

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

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **376** Civ Pro/Modernize Expert Discovery.

Draft Number:	H376-PCS40419-RN-15
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Bishop

HB **383** Clarify Statutory Scheme/Sex Offenses.

Draft Number:	H383-PCS30337-SA-37
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Glazier

HB **405** Property Protection Act.

Draft Number:	H405-PCS20321-RN-9
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Szoka



HB **711** Prohibit Counterfeit/Nonfunctional Air Bags.

Draft Number:	H711-PCS30338-SA-38
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Faircloth

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **338** Fail to Obtain DL/Increase Punishment.

Draft Number:	H338-PCS30339-SA-26
Serial Referral:	None
Recommended Referral:	**APPROPRIATIONS**
Long Title Amended:	No
Floor Manager:	Millis

TOTAL REPORTED: 7

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **397** Clarify Protections/Exploitation of Elders.

Draft Number:	H397-PCS30341-TV-10
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Glazier

TOTAL REPORTED: 1



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 338
PROPOSED COMMITTEE SUBSTITUTE H338-CSSA-26 [v.1]

4/17/2015 12:00:55 PM

Short Title: Fail to Obtain DL/Increase Punishment. (Public)

Sponsors:

Referred to:

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF FAILING TO OBTAIN A DRIVERS LICENSE BEFORE DRIVING A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-35 reads as rewritten:

"**§ 20-35. Penalties for violating Article; defense to driving without a license.**

(a) Penalty. – Except as otherwise provided in ~~subsection (a1) or (a2)~~subsections (a1) through (a3) of this section, a violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(a1) The following offenses are Class 3 misdemeanors:

(1) ~~Failure~~Except as provided in subsection (a3) of this section, failure to obtain a license before driving a motor vehicle, in violation of G.S. 20-7(a).

(2) Failure to comply with license restrictions, in violation of G.S. 20-7(e).

(3) Permitting a motor vehicle owned by the person to be operated by an unlicensed person, in violation of G.S. 20-34.

...

(a3) A second or subsequent offense of failure to obtain a license before driving a motor vehicle in violation of G.S. 20-7(a) shall be a Class 2 misdemeanor if, at the time of each offense, the person was ineligible to receive a drivers license from the Division because the person did not meet the requirements set forth in G.S. 20-7. Punishment imposed for any offense under this subsection shall include a fine of four hundred dollars ($400.00).

Notwithstanding G.S. 15A-1340.23, and unless the conduct is prohibited by another provision of law providing for greater punishment, a person convicted of a third or subsequent offense of failure to obtain a license before driving a motor vehicle in violation of G.S. 20-7(a), who at the time of each offense was ineligible to receive a drivers license from the Division because the person did not meet the requirements set forth in G.S. 20-7, (i) may be sentenced to an active sentence of not less than 20 days and not more than 60 days, and (ii) the vehicle that was driven by the person at the time the person committed the third or subsequent offense under this subsection shall become property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.10.

Nothing in this subsection shall be construed as applying to (i) a person who commits an offense under G.S. 20-7(a) for failing to obtain a license before driving a motor vehicle, but is eligible to receive a drivers license from the Division at the time of the offense, or (ii) a person driving a motor vehicle with a revoked or suspended license.

...."

SECTION 2. 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 offenses of failing to obtain a license before driving a motor vehicle.**

(a) Authority. – If a person is convicted of a third or subsequent offense of failure to obtain a license before driving a motor vehicle in violation of G.S. 20-7(a), and that offense is punishable under G.S. 20-35(a3), the vehicle that was driven by the person at the time the person committed offense shall become property subject to seizure, impoundment, and forfeiture.

(b) Governing Law 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 and G.S. 20-54.1. 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 G.S. 20-35(a3). 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 G.S. 20-35(a3)."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 338
PROPOSED COMMITTEE SUBSTITUTE H338-PCS30339-SA-26

Short Title: Fail to Obtain DL/Increase Punishment. (Public)

Sponsors:

Referred to:

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF FAILING TO OBTAIN A DRIVERS LICENSE BEFORE DRIVING A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-35 reads as rewritten:

"**§ 20-35. Penalties for violating Article; defense to driving without a license.**

(a) Penalty. – Except as otherwise provided in ~~subsection (a1) or (a2)~~subsections (a1) through (a3) of this section, a violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(a1) The following offenses are Class 3 misdemeanors:

(1) ~~Failure~~Except as provided in subsection (a3) of this section, failure to obtain a license before driving a motor vehicle, in violation of G.S. 20-7(a).

(2) Failure to comply with license restrictions, in violation of G.S. 20-7(e).

(3) Permitting a motor vehicle owned by the person to be operated by an unlicensed person, in violation of G.S. 20-34.

...

(a3) A second or subsequent offense of failure to obtain a license before driving a motor vehicle in violation of G.S. 20-7(a) shall be a Class 2 misdemeanor if, at the time of each offense, the person was ineligible to receive a drivers license from the Division because the person did not meet the requirements set forth in G.S. 20-7. Punishment imposed for any offense under this subsection shall include a fine of four hundred dollars ($400.00).

Notwithstanding G.S. 15A-1340.23, and unless the conduct is prohibited by another provision of law providing for greater punishment, a person convicted of a third or subsequent offense of failure to obtain a license before driving a motor vehicle in violation of G.S. 20-7(a), who at the time of each offense was ineligible to receive a drivers license from the Division because the person did not meet the requirements set forth in G.S. 20-7, (i) may be sentenced to an active sentence of not less than 20 days and not more than 60 days, and (ii) the vehicle that was driven by the person at the time the person committed the third or subsequent offense under this subsection shall become property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.10.

Nothing in this subsection shall be construed as applying to (i) a person who commits an offense under G.S. 20-7(a) for failing to obtain a license before driving a motor vehicle, but is eligible to receive a drivers license from the Division at the time of the offense, or (ii) a person driving a motor vehicle with a revoked or suspended license.

...."

SECTION 2. 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 offenses of failing to obtain a license before driving a motor vehicle.**

(a) Authority. – If a person is convicted of a third or subsequent offense of failure to obtain a license before driving a motor vehicle in violation of G.S. 20-7(a), and that offense is punishable under G.S. 20-35(a3), the vehicle that was driven by the person at the time the person committed offense shall become property subject to seizure, impoundment, and forfeiture.

(b) Governing Law 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 and G.S. 20-54.1. 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 G.S. 20-35(a3). 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 G.S. 20-35(a3)."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 338:
Fail to Obtain DL/Increase Punishment

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Rep. Millis	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H338-CSSA-26		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 338 would increase the punishment for certain offenses of failing to obtain a drivers license before driving a motor vehicle.***

CURRENT LAW: Failure to obtain a drivers license before driving a motor vehicle is a Class 3 misdemeanor for all violations.

BILL ANALYSIS:

Section 1 of the PCS would provide that a first offense by any person of failure to obtain a drivers license before driving a motor vehicle would remain a Class 3 misdemeanor. A second or subsequent offense would be a Class 2 misdemeanor if the person, at the time of each offense, was ineligible to receive a drivers license because they did not meet the requirements of G.S. 20-7. Punishment would include a mandatory $400 fine for any second or subsequent offense.

The PCS would also provide that punishment for a third or subsequent offense of failure to obtain a drivers license before driving a motor vehicle by someone who is ineligible to receive a drivers license may include an active sentence of not less than 20 days and not more than 60 days. Additionally, the vehicle that was driven by the person at the time of the third or subsequent offense would become property subject to forfeiture.

Section 2 of the PCS would create a new G.S. 20-28.10 to provide for the seizure, impoundment, and forfeiture of motor vehicles driven by persons who are convicted of a third or subsequent offense of failure to obtain a drivers license before driving a motor vehicle when they are ineligible to receive a license. The process would be the same as for vehicles seized for impaired driving offenses.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

* H 3 3 8 - S M S A - 3 1 C S S A - 2 6 - V 1 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 338

Short Title:	Fail to Obtain DL/Increase Punishment.	(Public)
Sponsors:	Representative Millis (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 25, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN OFFENSES OF FAILING TO OBTAIN A DRIVERS LICENSE BEFORE DRIVING A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-35 reads as rewritten:

"**§ 20-35. Penalties for violating Article; defense to driving without a license.**

(a) Penalty. – Except as otherwise provided in ~~subsection (a1) or (a2)~~subsections (a1) through (a3) of this section, a violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(a1) The following offenses are Class 3 misdemeanors:

(1) ~~Failure~~Except as provided in subsection (a3) of this section, failure to obtain a license before driving a motor vehicle, in violation of G.S. 20-7(a).

(2) Failure to comply with license restrictions, in violation of G.S. 20-7(e).

(3) Permitting a motor vehicle owned by the person to be operated by an unlicensed person, in violation of G.S. 20-34.

...

(a3) A second or subsequent offense under G.S. 20-7(a) for failing to obtain a license before driving a motor vehicle shall be a Class 2 misdemeanor if, at the time of each offense, the person was ineligible to receive a drivers license from the Division because he or she did not meet the requirements set forth in G.S. 20-7. Punishment imposed for any offense under this subsection shall include a fine of four hundred dollars ($400.00). Notwithstanding G.S. 15A-1340.23, and unless the conduct is prohibited by another provision of law providing for greater punishment, a person convicted of a third or subsequent offense under this subsection (i) may be sentenced to an active sentence of not less than 20 days and not more than 60 days and (ii) the vehicle that was driven by the person at the time the person committed the third or subsequent offense under this subsection shall become property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.10. Nothing in this subsection shall be construed as applying to (i) a person who commits an offense under G.S. 20-7(a) for failing to obtain a license before driving a motor vehicle, but is eligible to receive a drivers license from the Division at the time of the offense, or (ii) a person driving a motor vehicle with a revoked or suspended license.

...."

SECTION 2. 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 offenses of failing to obtain a license before driving a motor vehicle.**

(a) Authority. – If a person is convicted of a third or subsequent offense under G.S. 20-35(a3) for failing to obtain a license before driving a motor vehicle, the vehicle that was driven by the person at the time the person committed the third or subsequent offense under G.S. 20-35(a3) shall become property subject to seizure, impoundment, and forfeiture.

(b) Governing Law 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 and G.S. 20-54.1. 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 G.S. 20-35(a3). 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 G.S. 20-35(a3)."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 711
PROPOSED COMMITTEE SUBSTITUTE H711-PCS30338-SA-38

Short Title: Prohibit Counterfeit/Nonfunctional Air Bags. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE IMPORT, MANUFACTURE, SALE, OFFER OF SALE, INSTALLATION, OR REINSTALLATION OF COUNTERFEIT AND NONFUNCTIONAL AIR BAGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1) Air bag. – A motor vehicle inflatable occupant restraint system, including all component parts, that operates in the event of a crash and is designed in accordance with federal motor vehicle safety standards for the make, model, and year of the motor vehicle in which it is or will be installed.

...

(2d) Counterfeit air bag. – A replacement motor vehicle inflatable occupant restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of a motor vehicle.

...

(23a) Nonfunctional air bag. – A replacement motor vehicle inflatable occupant restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring that has a fault that is detected by the vehicle diagnostic system after the installation procedure is completed. Nonfunctional airbag also means any object, including a counterfeit airbag, repaired airbag, or airbag component, installed to deceive the vehicle owner or operator into believing a functional airbag is installed.

...."

SECTION 2. G.S. 20-71.4(a) reads as rewritten:

"(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

...

(2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(3) Transfer a motor vehicle when the transferor has knowledge that a counterfeit air bag or a nonfunctional air bag has been installed in the vehicle."

SECTION 3. G.S. 20-136.2 reads as rewritten:

"**§ 20-136.2. ~~Air bag installation.~~Counterfeit and nonfunctional air bags.**

It shall be unlawful for any person, firm, or corporation to knowingly ~~install~~import, manufacture, sell, offer for sale, install, or reinstall ~~any object in lieu of an air bag, other than an air bag that was designed in accordance with federal safety regulations for the make, model, and year of vehicle, as part of a vehicle inflation restraint system.~~a counterfeit air bag or nonfunctional air bag. Any person, firm, or corporation violating this section shall be guilty of a Class ~~1 misdemeanor.~~H felony. In addition, a violation of this section shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

SECTION 4. This act becomes effective October 1, 2015, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

yes

EDITION No. _____

H. B. No. 711 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Stam
Sen.)

1 moves to amend the bill on page 2, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "December 1, 2015," and inserting "October 1, 2015,"
4
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SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 711:
Prohibit Counterfeit/Nonfunctional Air Bags

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Faircloth, Blust, Hardister	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 711 would prohibit the import, manufacture, sale, offer of sale, installation, or reinstallation of counterfeit and nonfunctional air bags.

[As introduced, this bill was identical to H753, as introduced by Rep. Blust, which is currently in House Judiciary II.]

BILL ANALYSIS:

Section 1 would add definitions of "air bag", "counterfeit air bag" and "nonfunctional air bag" to Chapter 20 of the General Statutes.

Section 2 would create a Class 2 misdemeanor to transfer a motor vehicle when the transferor has knowledge that a counterfeit air bag or a nonfunctional air bag has been installed in the vehicle.

Section 3 would amend G.S. 20-136.2 to make it a Class H felony to knowingly import, manufacture, sell, offer for sale, install, or reinstall a counterfeit air bag or nonfunctional air bag. A violation would also constitute an unfair and deceptive trade practice under G.S. 75-1.1.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

H711-SMSA-37 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 711

Short Title:	Prohibit Counterfeit/Nonfunctional Air Bags.	(Public)
Sponsors:	Representatives Faircloth, Blust, and Hardister (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE IMPORT, MANUFACTURE, SALE, OFFER OF SALE, INSTALLATION, OR REINSTALLATION OF COUNTERFEIT AND NONFUNCTIONAL AIR BAGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1) Air bag. – A motor vehicle inflatable occupant restraint system, including all component parts, that operates in the event of a crash and is designed in accordance with federal motor vehicle safety standards for the make, model, and year of the motor vehicle in which it is or will be installed.

...

(2d) Counterfeit air bag. – A replacement motor vehicle inflatable occupant restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of a motor vehicle.

...

(23a) Nonfunctional air bag. – A replacement motor vehicle inflatable occupant restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring that has a fault that is detected by the vehicle diagnostic system after the installation procedure is completed. Nonfunctional airbag also means any object, including a counterfeit airbag, repaired airbag, or airbag component, installed to deceive the vehicle owner or operator into believing a functional airbag is installed.

...."

SECTION 2. G.S. 20-71.4(a) reads as rewritten:

"(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

...

(2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(3) Transfer a motor vehicle when the transferor has knowledge that a counterfeit air bag or a nonfunctional air bag has been installed in the vehicle."

SECTION 3. G.S. 20-136.2 reads as rewritten:

"**§ 20-136.2. ~~Air bag installation.~~Counterfeit and nonfunctional air bags.**

It shall be unlawful for any person, firm, or corporation to knowingly ~~install~~import, manufacture, sell, offer for sale, install, or reinstall ~~any object in lieu of an air bag, other than an air bag that was designed in accordance with federal safety regulations for the make, model, and year of vehicle, as part of a vehicle inflation restraint system.~~a counterfeit air bag or nonfunctional air bag. Any person, firm, or corporation violating this section shall be guilty of a Class ~~1 misdemeanor.~~H felony. In addition, a violation of this section shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

SECTION 4. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 350:
Restore Driving Privileges/Competency

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Farmer-Butterfield, Richardson, Hurley, R. Turner	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 350 would require the Division of Motor Vehicles to restore a person's driving privilege upon notification from the clerk of court that the person has been adjudicated to be restored to competency.

CURRENT LAW: Article 1 of Chapter 35A of the General Statutes provides a procedure for adjudicating a person to be incompetent. The clerk of the court in which the adjudication is made is required to notify the Commissioner of Motor Vehicles of the adjudication. Upon receipt of notice that any person has been adjudicated incompetent, G.S. 20-17.1 authorizes the Division of Motor Vehicles to revoke that person's driving privilege unless the Commissioner is satisfied that the person is competent to operate a motor vehicle safely.

Article 3 of Chapter 35A provides for a proceeding before the clerk of court to restore a person's competency. When a person's competency is restored, the person is authorized to manage his or her affairs and exercise his or her rights as if he or she had never been adjudicated incompetent. There is no provision that specifically addresses restoration of the driving privilege in the event that the person's competency is later restored.

BILL ANALYSIS: House Bill 350 would add a provision to Chapter 35A requiring the clerk of court to send a certified copy of an order adjudicating a person to be restored to competency to the Division of Motor Vehicles. Upon receipt of the notice, the Division would be required to restore the person's drivers license, unless the license was otherwise revoked or the person does not otherwise meet requirements for restoration.

EFFECTIVE DATE: The act would become effective July 1, 2015.

**This summary was originally prepared by Wendy Graf Ray, Staff Attorney.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 350

Short Title:	Restore Driving Privileges/Competency.	(Public)
Sponsors:	Representatives Farmer-Butterfield, Richardson, Hurley, and R. Turner (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Transportation, if favorable, Judiciary II.	

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF MOTOR VEHICLES TO RESTORE THE DRIVERS LICENSE OF A PERSON ADJUDICATED TO BE RESTORED TO COMPETENCY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.1A. Restoration of license for person adjudicated to be restored to competency.**

If otherwise eligible under G.S. 20-7 and any other applicable provision of law, the Division shall restore the drivers license of a person adjudicated to be restored to competency under G.S. 35A-1130 upon receiving notice from the clerk of court in which the adjudication is made. Nothing in this section shall be construed as requiring the Division to restore the drivers license of a person if (i) the person's drivers license was revoked because of a conviction or other act requiring revocation and (ii) the person has not met the requirements set forth in this Article for restoration of the person's drivers license."

SECTION 2. G.S. 35A-1130(d) reads as rewritten:

"(d) If the clerk or jury finds by a preponderance of the evidence that the ward is competent, the clerk shall enter an order adjudicating that the ward is restored to competency. Upon such adjudication, the ward is authorized to manage his or her affairs, make contracts, control and sell his or her property, both real and personal, and exercise all rights as if he or she had never been adjudicated incompetent. In addition, the clerk shall send a certified copy of the order adjudicating that the ward is restored to competency to the Division of Motor Vehicles."

SECTION 3. This act becomes effective July 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 376
PROPOSED COMMITTEE SUBSTITUTE H376-CSRN-15 [v.4]
4/20/2015 8:08:46 PM

Short Title: Civ Pro/Modernize Expert Discovery. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS COSTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by adding a new subdivision to read:

"(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

...

(4a) Trial Preparation; Discovery of Experts. – Discovery of facts known and opinions held by experts, that are otherwise discoverable under the provisions of subdivision (1) of subsection (b) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as provided by this subdivision:

a. 1. In general. In order to provide openness and avoid unfair tactical advantage in the presentation of a case at trial, a party must disclose to the other parties in accordance with this subdivision the identity of any witness it may use at trial to present evidence under Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence.

2. Witnesses providing a written report. The parties shall have the option, in connection with the disclosures required by this subdivision, of accompanying the disclosure with a written report prepared and signed by the witness if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. If the parties agree to accompany their disclosure pursuant to this subdivision with a written report, the report must contain all of the following:

I. A complete statement of all opinions the witness will express and the basis and reasons for them.

II. The facts or data considered by the witness in forming the them.

III. Any exhibits that will be used to summarize or support them.

IV. The witness's qualifications, including a list of all publications authored in the previous 10 years.

V. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

VI. A statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses not providing expert reports. Unless otherwise stipulated to by the parties, or ordered by the court, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify pursuant to Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Depositions.

1. Depositions of an expert who may testify. A party may depose any person who has been identified as an expert pursuant to this subdivision, with such deposition to be conducted after any written report is provided or identification by response to interrogatory has been made pursuant to sub-subdivision f. of this subdivision.

2. Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may take such discovery only:

I. As provided in Rule 35(b); or

II. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

c. Payment. Unless manifest injustice would result and absent court order, the party seeking discovery under sub-subdivision b. of this subdivision shall pay the expert a reasonable fee for the time spent at that expert's deposition.

d. Trial preparation protection for draft reports or disclosures. Drafts of reports provided under sub-sub-subdivision a.2. of this subdivision are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.

e. Trial preparation protection for communications between a party's attorney and expert witness. Communications between a party's attorney and any witness providing a report pursuant to sub-sub-subdivision a.2. of this subdivision or identified under sub-sub-subdivision a.3. of this subdivision, regardless of the form of

the communication, are protected from disclosure and are not discoverable, except to the extent that the communications:

1. Relate to compensation for the expert's study or testimony;
2. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

f. Time to disclose expert witness testimony. Parties agreeing to the submission of written reports pursuant to Rule 26(b)(4a)a.2. or parties otherwise seeking to obtain disclosure as set forth herein by interrogatory shall, unless otherwise stipulated, set by scheduling order or otherwise ordered by the court, serve such written report or in the case of no agreement on the submission of written reports, interrogatory:

1. At least 90 days before the date set for trial or the case to be ready for trial; or
2. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(b)(4a)a., within 30 days after the other party's disclosure. If a party fails to provide timely disclosure under this rule, the court may, upon motion, take such action as it deems just, including ordering that the party may not present at trial the expert witness for whom disclosure was not timely made.

The notice requirements of this sub-subdivision shall not apply if neither party had less than 120 days notice of the trial date.

g. Supplementation. The parties must supplement these disclosures when required under subsection (e) of this rule."

SECTION 2. G.S. 7A-314(d) reads as rewritten:

"(d) ~~An~~ Subject to the specific limitations set forth in G.S. 7A-305(d)(11), an expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in accordance with the rules established by the Administrative Office of the Courts. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

SECTION 3. This act becomes effective October 1, 2015, with Section 1 applying to claims pending on or after that date, and Section 2 applying to motions or applications for costs filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 376
PROPOSED COMMITTEE SUBSTITUTE H376-PCS40419-RN-15

Short Title: Civ Pro/Modernize Expert Discovery. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS COSTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by adding a new subdivision to read:

"(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

...

(4a) Trial Preparation; Discovery of Experts. – Discovery of facts known and opinions held by experts, that are otherwise discoverable under the provisions of subdivision (1) of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as provided by this subdivision:

a. 1. In General. – In order to provide openness and avoid unfair tactical advantage in the presentation of a case at trial, a party must disclose to the other parties in accordance with this subdivision the identity of any witness it may use at trial to present evidence under Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence.

2. Witnesses Providing a Written Report. – The parties shall have the option, in connection with the disclosures required by this subdivision, of accompanying the disclosure with a written report prepared and signed by the witness if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. If the parties agree to accompany their disclosure pursuant to this subdivision with a written report, the report must contain all of the following:

I. A complete statement of all opinions the witness will express and the basis and reasons for them.

II. The facts or data considered by the witness in forming them.

III. Any exhibits that will be used to summarize or support them.

IV. The witness' qualifications, including a list of all publications authored in the previous 10 years.

V. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

VI. A statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses Not Providing Expert Reports. – Unless otherwise stipulated to by the parties, or ordered by the court, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify pursuant to Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Depositions. –

1. Depositions of an Expert Who May Testify. – A party may depose any person who has been identified as an expert pursuant to this subdivision, with such deposition to be conducted after any written report is provided or identification by response to interrogatory has been made pursuant to sub-subdivision f. of this subdivision.

2. Expert Employed Only for Trial Preparation. – Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may take such discovery only:

I. As provided in Rule 35(b); or

II. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

c. Payment. – Unless manifest injustice would result and absent court order, the party seeking discovery under sub-subdivision b. of this subdivision shall pay the expert a reasonable fee for the time spent at that expert's deposition.

d. Trial Preparation Protection for Draft Reports or Disclosures. – Drafts of reports provided under sub-sub-subdivision a.2. of this subdivision are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.

e. Trial Preparation Protection for Communications Between a Party's Attorney and Expert Witness. – Communications between a party's attorney and any witness providing a report pursuant to sub-sub-subdivision a.2. of this subdivision or identified under sub-sub-subdivision a.3. of this subdivision, regardless of the form of

the communication, are protected from disclosure and are not discoverable, except to the extent that the communications:

1. Relate to compensation for the expert's study or testimony;
2. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

f. Time to Disclose Expert Witness Testimony. – Parties agreeing to the submission of written reports pursuant to sub-sub-subdivision a.2. of this subdivision or parties otherwise seeking to obtain disclosure as set forth herein by interrogatory shall, unless otherwise stipulated, set by scheduling order or otherwise ordered by the court, serve such written report or in the case of no agreement on the submission of written reports, interrogatory:

1. At least 90 days before the date set for trial or the case to be ready for trial; or
2. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under sub-subdivision a. of this subdivision, within 30 days after the other party's disclosure. If a party fails to provide timely disclosure under this rule, the court may, upon motion, take such action as it deems just, including ordering that the party may not present at trial the expert witness for whom disclosure was not timely made.

The notice requirements of this sub-subdivision shall not apply if neither party had less than 120-days notice of the trial date.

g. Supplementation. - The parties must supplement these disclosures when required under subsection (e) of this rule."

SECTION 2. G.S. 7A-314(d) reads as rewritten:

"(d) ~~An~~ Subject to the specific limitations set forth in G.S. 7A-305(d)(11), an expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in accordance with the rules established by the Administrative Office of the Courts. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

SECTION 3. This act becomes effective October 1, 2015. Section 1 applies to claims pending on or after that date. Section 2 applies to motions or applications for costs filed on or after that date.

HOUSE BILL 376:
Civ Pro/Modernize Expert Discovery

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Jordan, Stam, Bishop, Glazier	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H376-CSRN-15		Committee Counsel

SUMMARY: ***House Bill 376 amends the rules of civil procedure to modernize discovery of expert witnesses and to clarify expert witness costs in civil actions.*** ***The Proposed Committee Substitute (PCS) provides that the parties have the option, when disclosing witnesses, to include a written report prepared and signed by the witness (was "unless otherwise stipulated or ordered by the court, the parties shall have the option. . ."). The PCS also makes technical changes.***

BILL ANALYSIS: The PCS for House Bill 376 enacts a new Rule 26(b)(4a) in the Rules of Civil Procedure dealing with trial preparation and the discovery of experts. The discovery of facts known and opinions held by experts that are otherwise discoverable may only be obtained only as provided by this rule provide in this rule, including:

- **In general-** A party must disclose to the other parties in accordance with this subdivision the identity of any witness it may use at trial to present evidence.
- **Witnesses providing a written report.-** The parties must have the option, in connection with the disclosures required by this subdivision, of accompanying the disclosure with a written report prepared and signed by the witness if the witness is one retained or specifically employed to provide expert testimony or one whose duties as the party's employee regularly involve giving expert testimony. If the parties agree to including a report, the report must include:

  (I) a complete statement of all opinions the witness will express and the reasons for them.

  (II) facts or data considered by the witness.

  (III) any exhibits that will be used.

  (IV) witness's qualifications, including a list of publications authored in the past 10 years.

  (V) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

  (VI) A statement of the compensation to be paid for the study and testimony.

- **Witnesses not Providing Expert Reports-** Unless otherwise stipulated to by the parties, or ordered by the court, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions.
- **Depositions of an expert who may testify-** A party may depose any person who has been identified as an expert, and the deposition is to be conducted after any written report is provided or identification by response to interrogatory has been made.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- **Expert employed only for trial preparation-** Ordinarily, a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness. But a party may take such discovery only as provided in Rule 35(b) or by showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.
- **Payment-** The party seeking discovery must pay the expert a reasonable fee for the time spent at the deposition unless manifest injustice would result.
- **Trial preparation protection for draft reports or disclosures-** Drafts of reports are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.
- **Trial preparation protection for communications between a party's attorney and expert witness-** Communications between a party's attorney and any witness providing a report are protected from disclosure and are not discoverable, except to the extent that the communications do any of the following:

  1. Relate to compensation for the expert's study or testimony.

  2. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed.

  3. Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

- **Time to disclose expert witness testimony.-** Parties agreeing to the submission of written reports or parties otherwise seeking to obtain disclosure by interrogatory must set by scheduling order or otherwise ordered by the court, serve such written report or in the case of no agreement on the submission of written reports, interrogatory:

  1. At least 90 days before the date set for trial or the case to be ready for trial; or

  2. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another part, within 30 days after the other party's disclosure.

  These notice requirements do not apply if neither party had less than 120 days notice of the trial date.

EFFECTIVE DATE: The act becomes effective October 1, 2015.

BACKGROUND: House Bill 376 is a recommendation of the North Carolina Bar Association.

HOUSE BILL 376

Short Title:	Civ Pro/Modernize Expert Discovery.	(Public)
Sponsors:	Representatives Jordan, Stam, Bishop, and Glazier (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS COSTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by adding a new subdivision to read:

"(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

...

(4a) Trial Preparation; Discovery of Experts. – Discovery of facts known and opinions held by experts, that are otherwise discoverable under the provisions of subdivision (1) of subsection (b) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as provided by this subdivision:

a. 1. In general. In order to provide openness and avoid unfair tactical advantage in the presentation of a case at trial, a party must disclose to the other parties in accordance with this subdivision the identity of any witness it may use at trial to present evidence under Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence.

2. Witnesses providing a written report. Unless otherwise stipulated or ordered by the court, the parties shall have the option, in connection with the disclosures required by this subdivision, of accompanying the disclosure with a written report prepared and signed by the witness if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. If the parties agree to accompany their disclosure pursuant to this subdivision with a written report, the report must contain all of the following:

I. A complete statement of all opinion the witness will express and the basis and reasons for them.

II. The facts or data considered by the witness in forming the them.

III. Any exhibits that will be used to summarize or support them.

IV. The witness's qualifications, including a list of all publications authored in the previous 10 years.

V. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

VI. A statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses not providing expert reports. Unless otherwise stipulated to by the parties, or ordered by the court, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify pursuant to Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Depositions.

1. Depositions of an expert who may testify. A party may depose any person who has been identified as an expert pursuant to this subdivision, with such deposition to be conducted after any written report is provided or identification by response to interrogatory has been made pursuant to sub-subdivision f. of this subdivision.

2. Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may take such discovery only:

I. As provided in Rule 35(b); or

II. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

c. Payment. Unless manifest injustice would result and absent court order, the party seeking discovery under sub-subdivision b. of this subdivision shall pay the expert a reasonable fee for the time spent at that expert's deposition.

d. Trial preparation protection for draft reports or disclosures. Drafts of reports provided under sub-sub-subdivision a.2. of this subdivision are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.

e. Trial preparation protection for communications between a party's attorney and expert witness. Communications between a party's attorney and any witness providing a report pursuant to sub-sub-subdivision a.2. of this subdivision or identified under

sub-sub-subdivision a.3. of this subdivision, regardless of the form of the communication, are protected from disclosure and are not discoverable, except to the extent that the communications:

1. Relate to compensation for the expert's study or testimony;
2. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

f. Time to disclose expert witness testimony. Parties agreeing to the submission of written reports pursuant to Rule 26(b)(6)a.2. or parties otherwise seeking to obtain disclosure as set forth herein by interrogatory shall, unless otherwise stipulated, set by scheduling order or otherwise ordered by the court, serve such written report or in the case of no agreement on the submission of written reports, interrogatory:

1. At least 90 days before the date set for trial or the case to be ready for trial; or
2. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(b)(6)a., within 30 days after the other party's disclosure. If a party fails to provide timely disclosure under this rule, the court may, upon motion, take such action as it deems just, including ordering that the party may not present at trial the expert witness for whom disclosure was not timely made.

g. Supplementation. The parties must supplement these disclosures when required under subsection (e) of this rule."

SECTION 2. G.S. 7A-314(d) reads as rewritten:

"(d) ~~An~~ Subject to the specific limitations set forth in G.S. 7A-305(d)(11), an expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in accordance with the rules established by the Administrative Office of the Courts. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

SECTION 3. This act becomes effective October 1, 2015, with Section 1 applying to claims pending on or after that date, and Section 2 applying to motions or applications for costs filed on or after that date.

HOUSE BILL 435:
McDowell/Burke Firing from Road

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 20, 2015
Introduced by:	Rep. Dobson	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 435 would prohibit the discharge of a firearm from, on, or across the right-of-way of Highway 105 and State Road 1238 in Burke and McDowell Counties.

CURRENT LAW: S.L. 1997-453 prohibits discharging a firearm across the right-of-way of a state-numbered road for the purpose of taking big game animals. This law applies only to McDowell County, but not portions of the county along NC Highway 105 where there are game lands on both sides of the road.

BILL ANALYSIS: This bill would extend the prohibition in S.L. 1997-453 to all of N.C. Highway 105 and N.C. State Road 1238 in McDowell and Burke Counties. Violation of this act would be a Class 3 misdemeanor and would be enforceable by wildlife officers, sheriffs and deputy sheriffs, and other peace officers within the jurisdiction.

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

O. Walker Reagan
Director

H435-SMTV-20 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 435

Short Title:	McDowell/Burke Firing from Road.	(Local)
Sponsors:	Representative Dobson (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 1, 2015

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM FROM, ON, OR ACROSS THE RIGHT-OF-WAY OF HIGHWAY 105 OR STATE ROAD 1238 IN BURKE AND MCDOWELL COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, it is unlawful to discharge a firearm from, on, or across the right-of-way of N.C. Highway 105 or N.C. State Road 1238.

SECTION 2. Section 4 of S.L. 1997-453 reads as rewritten:

"Section 4. This act applies only to McDowell ~~County, but shall not apply to those portions of the county along NC Highway 105 where there are game lands on both sides of the road.~~ County."

SECTION 3. Violation of Section 1 of this act is a Class 3 misdemeanor.

SECTION 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

SECTION 5. This act applies only to Burke and McDowell Counties.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 383*
PROPOSED COMMITTEE SUBSTITUTE H383-PCS30337-SA-37

Short Title: Clarify Statutory Scheme/Sex Offenses. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE, RENAME, AND RENUMBER VARIOUS SEXUAL OFFENSES TO MAKE THEM MORE EASILY DISTINGUISHABLE FROM ONE ANOTHER AS RECOMMENDED BY THE NORTH CAROLINA COURT OF APPEALS IN "STATE OF NORTH CAROLINA V. SLADE WESTON HICKS, JR."

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 7B.

"Rape and other Sex Offenses.

SECTION 2. G.S. 14-27.1 is recodified as G.S. 14-27.20 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(a) G.S. 14-27.2 is recodified as G.S. 14-27.21 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(b) G.S. 14-27.2, recodified as G.S. 14-27.21 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.21. First-degree forcible rape.**

(a) A person is guilty of ~~rape in the~~ first-degree forcible rape if the person engages in vaginal ~~intercourse:~~

~~(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or~~

~~(2)~~ ~~With~~ intercourse with another person by force and against the will of the other person, ~~and:~~does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~ person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 4.(a) G.S. 14-27.3 is recodified as G.S. 14-27.22 under Article 7B of the General Statutes.

SECTION 4.(b) G.S. 14-27.3, recodified as G.S. 14-27.22 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.22. Second-degree forcible rape.**

(a) A person is guilty of ~~rape in the second degree~~ second-degree forcible rape if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 5.(a) G.S. 14-27.2A is recodified as G.S. 14-27.23 under Article 7B of the General Statutes.

SECTION 5.(b) G.S. 14-27.2A, recodified as G.S. 14-27.23 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.23. ~~Rape of a child; adult offender.~~Statutory rape of a child by an adult.**

(a) A person is guilty of ~~rape of a child~~ statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

...

(e) The offense under ~~G.S. 14-27.2(a)(1)~~ G.S. 14-27.24 is a lesser included offense of the offense in this section."

SECTION 6. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.24. First-degree statutory rape.**

(a) A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 7.(a) G.S. 14-27.7A is recodified as G.S. 14-27.25 under Article 7B of Chapter 14 of the General Statutes.

SECTION 7.(b) G.S. 14-27.7A, recodified as G.S. 14-27.25 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.25. Statutory rape ~~or sexual offense~~ of person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 13, 14, or 15 years old and the defendant

is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 8.(a) G.S. 14-27.4 is recodified as G.S. 14-27.26 under Article 7B of Chapter 14 of the General Statutes.

SECTION 8.(b) G.S. 14-27.4, recodified as G.S. 14-27.26 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.26. First-degree forcible sexual offense.**

(a) A person is guilty of a ~~sexual offense in the~~ first degree forcible sexual offense if the person engages in a sexual ~~act:~~

~~(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or~~

~~(2)~~ With act with another person by force and against the will of the other person, ~~and:~~and does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~ weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony."

SECTION 9.(a) G.S. 14-27.5 is recodified as G.S. 14-27.27 under Article 7B of Chapter 14 of the General Statutes.

SECTION 9.(b) G.S. 14-27.5, recodified as G.S. 14-27.27 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.27. Second-degree forcible sexual offense.**

(a) A person is guilty of ~~a sexual offense in the~~ second degree forcible sexual offense if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony."

SECTION 10.(a) G.S. 14-27.4A is recodified as G.S. 14-27.28 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 10.(b) G.S. 14-27.4A, recodified as G.S. 14-27.28 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.28. ~~Sexual offense with a child; adult offender.~~Statutory sexual offense with a child by an adult.**

(a) A person is guilty of ~~sexual offense with a child~~ statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

...

(d) The offense under ~~G.S. 14-27.4(a)(1)~~ G.S. 14-27.29 is a lesser included offense of the offense in this section."

SECTION 11. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.29. First-degree statutory sexual offense.**

(a) A person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony."

SECTION 12. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding the following new section:

"**§ 14-27.30. Statutory sexual offense against a person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 13.(a) G.S. 14-27.7(a) is recodified as G.S. 14-27.31 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 13.(b) G.S. 14-27.7(a), recodified as G.S. 14-27.31 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.31. ~~Intercourse and sexual offenses with certain victims; consent no defense.~~Sexual activity by a substitute parent or custodian.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the ~~home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim,~~ home, the defendant is guilty of a Class E felony.

(b) If a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.

(c) Consent is not a defense to a charge under this section."

SECTION 14.(a) G.S. 14-27.7(b) is recodified as G.S. 14-27.32 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 14.(b) G.S. 14-27.7(b), recodified as G.S. 14-27.32 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.32. Sexual activity with a student.**

~~(b)~~(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.

(b) A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.

(c) This ~~subsection~~ section shall apply unless the conduct is covered under some other provision of law providing for greater punishment.

(d) Consent is not a defense to a charge under this section.

(e) For purposes of this ~~subsection,~~ section, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this ~~subsection.~~ section, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

SECTION 15. G.S. 14-27.5A. is recodified as G.S. 14-27.33 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act. G.S. 14-27.8 through G.S. 14-27.10 are recodified as G.S. 14-27.34 through G.S. 14-27.36 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 16. G.S. 14-202.4(d)(1) reads as rewritten:

"(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. ~~14-27.1.~~14-27.20."

SECTION 17. G.S. 14-203(5) reads as rewritten:

"(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification for any money or other consideration."

SECTION 18. G.S. 14-205.2(a) reads as rewritten:

"(a) Any person who willfully performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification."

SECTION 19. G.S. 15A-136 reads as rewritten:

"**§ 15A-136. Venue for sexual offenses.**

If a person is transported by any means, with the intent to violate any of the provisions of Article 7A of Chapter 14 (§ ~~14-27.1~~14-27.20 et seq.) of the General Statutes and the intent is followed by actual violation thereof, the defendant may be tried in the county where transportation was offered, solicited, begun, continued or ended."

SECTION 20. G.S. 50-16.1A(3) reads as rewritten:

"(3) "Marital misconduct" means any of the following acts that occur during the marriage and prior to or on the date of separation:

a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S. ~~14-27.1(4),~~14-27.20(4), voluntarily engaged in by a spouse with someone other than the other spouse;

b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;
c. Abandonment of the other spouse;
d. Malicious turning out-of-doors of the other spouse;
e. Cruel or barbarous treatment endangering the life of the other spouse;
f. Indignities rendering the condition of the other spouse intolerable and life burdensome;
g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;
h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;
i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome."

SECTION 21. G.S. 7B-101(1) reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. ~~14-27.2;~~14-27.21; rape of a child by an adult offender, as provided in G.S. ~~14-27.2A;~~14-27.23; second degree rape as provided in G.S. ~~14-27.3;~~14-27.22; first-degree sexual offense, as provided in G.S. ~~14-27.4;~~14-27.26; sexual offense with a child by an adult offender, as provided in G.S. ~~14-27.4A;~~14-27.28; second degree sexual offense, as provided in G.S. ~~14-27.5;~~14-27.27; sexual act by a custodian, as provided in G.S. ~~14-27.7;~~14-27.31; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child."

SECTION 22. G.S. 7B-401.1(b) reads as rewritten:

"(b) Parents. – The juvenile's parent shall be a party unless one of the following applies:

(1) The parent's rights have been terminated.

(2) The parent has relinquished the juvenile for adoption, unless the court orders that the parent be made a party.

(3) The parent has been convicted under G.S. ~~14-27.2~~14-27.21 or G.S. ~~14-27.3~~14-27.22 for an offense that resulted in the conception of the juvenile."

SECTION 23. G.S. 7B-1103(c) reads as rewritten:

"(c) No person whose actions resulted in a conviction under G.S. ~~14-27.2~~14-27.2 or G.S. ~~14-27.3~~14-27.22 and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile."

SECTION 24. G.S. 7B-1104(3) reads as rewritten:

"(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. ~~14-27.2~~14-27.21 or G.S. ~~14-27.3~~14-27.22 and the conception of the juvenile need not be named in the petition."

SECTION 25. G.S. 7B-1602(a) reads as rewritten:

"(a) When a juvenile is committed to the Division for placement in a youth development center for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2~~,14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first."

SECTION 26. G.S. 7B-2509 reads as rewritten:

"**§ 7B-2509. Registration of certain delinquent juveniles.**

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. ~~14-27.2~~14-27.21 (first-degree rape), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.4 (first-degree sexual offense), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

SECTION 27. G.S. 7B-2513(a)(1) reads as rewritten:

"(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2~~,14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult;"

SECTION 28. G.S. 7B-2514(c)(2) reads as rewritten:

"(2) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~ 14-27.21, or

first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult."

SECTION 29. G.S. 7B-2516(c)(1) reads as rewritten:

"(1) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.2, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult."

SECTION 30. G.S. 7B-2600(c) reads as rewritten:

"(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.2, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult, or (iv) until terminated by order of the court."

SECTION 31. G.S. 8-53.12(a)(7) reads as rewritten:

"(7) Sexual assault. – Any alleged violation of G.S. ~~14-27.2,~~14-27.21, ~~14-27.3,~~14-27.22, ~~14-27.4,~~14-27.26, ~~14-27.5,~~14-27.27, ~~14-27.7,~~14-27.31, ~~14-27.7A,~~14-27.25, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation."

SECTION 32. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. ~~14-27.2~~14-27.21 (first degree rape), G.S. ~~14-27.2A~~14-27.23 (rape of a child; adult offender), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.26 (first degree sexual offense), G.S. ~~14-27.4A~~14-27.28 (sex offense with a child; adult offender), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), G.S. ~~14-27.5A~~14-27.33 (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. ~~14-27.7~~14-27.31 (intercourse and sexual offense with certain victims), G.S. ~~14-27.7A(a)~~14-27.25(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or

G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 33. G.S. 14-208.26(a) reads as rewritten:

"Part 4. Registration of Certain Juveniles Adjudicated for Committing Certain Offenses.

"**§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.**

"(a) When a juvenile is adjudicated delinquent for a violation of G.S. ~~14-27.2~~14-27.21 (first degree rape), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.26 (first degree sexual offense), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), or former G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part."

SECTION 34. G.S. 48-3-603(a)(9) reads as rewritten:

"(9) An individual whose actions resulted in a conviction under G.S. ~~14-27.2,~~14-27.21, G.S. ~~14-27.2A,~~14-27.23, or G.S. ~~14-27.3~~14-27.22 and the conception of the minor to be adopted."

SECTION 35. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. ~~14-27.2,~~14-27.21, G.S. ~~14-27.2A,~~14-27.23, or G.S. ~~14-27.3~~14-27.22 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 36. G.S. 50B-1(a)(3) reads as rewritten:

"(3) Committing any act defined in G.S. ~~14-27.2~~14-27.21 through G.S. ~~14-27.7.~~14-27.31."

SECTION 37. G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct examinations for the purpose of collecting evidence from the victims of first-degree rape as defined in G.S. ~~14-27.2,~~14-27.21, second-degree rape as defined in G.S. ~~14-27.3,~~14-27.22, statutory rape as defined in G.S. ~~14-27.7A,~~14-27.25, first-degree sexual offense as defined in G.S. ~~14-27.4,~~14-27.26, second-degree sexual offense as defined in G.S. ~~14-27.5~~14-27.27 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense. The Board, pursuant to G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply

to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 38. G.S. 143B-1200(i)(3) reads as rewritten:

"(3) Sexual assault. – Any of the following crimes:

a. First-degree rape as defined in G.S. ~~14-27.2.~~14-27.21.

b. Second degree rape as defined in G.S. ~~14-27.3.~~14-27.22.

c. First-degree sexual offense as defined in G.S. ~~14-27.4.~~14-27.26.

d. Second degree sexual offense as defined in G.S. ~~14-27.5.~~14-27.27.

e. Statutory rape as defined in G.S. ~~14-27.7A.~~14-27.25."

SECTION 39. G.S. 14-401.16(c) reads as rewritten:

"(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. ~~14-27.3~~14-27.22 or G.S. ~~14-27.5,~~14-27.27, the violation is a Class G felony."

SECTION 40. G.S. 14-208.40(a)(3) reads as rewritten:

"(3) Any offender who is convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment."

SECTION 41. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed an aggravated offense, or was convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A~~14-27.28 and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Division of Adult Correction pursuant to subsection (d) of this section, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and

monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 42. G.S. 14-208.40B(c) reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 43. G.S. 15A-145.5(a)(4) reads as rewritten:

"(4) Any of the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(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."

SECTION 44. G.S. 15A-145.4(5) reads as rewritten:

"(5) Any felony offense under the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1."

SECTION 45. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. ~~14-27.4A(a)~~14-27.28(a) (sex offense with a child; adult offender), G.S. ~~14-27.7A~~14-27.25 (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 46. G.S. 15A-290(c)(1) reads as rewritten:

"(1) Any felony offense against a minor, including any violation of G.S. ~~14-27.7~~14-27.31 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d) (Patronizing a prostitute who is a minor or a mentally disabled person), or G.S. 14-205.3(b) (Promoting prostitution of a minor or a mentally disabled person)."

SECTION 47. The Revisor of Statutes may correct statutory references as required by this act, throughout the General Statutes. In making the changes authorized by this act, the Revisor may also adjust subject and verb agreement and the placement of conjunctions.

SECTION 48. This act becomes effective October 1, 2015, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to those prosecutions.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 383*

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

H383-ASA-17 [v.2]

Amends Title [NO]
First Edition

Date _____,2015

Representative Glazier

moves to amend the bill on page 12, line 15
by deleting "**SECTION 16.** " And inserting "**SECTION 47.**";

and on page 12, line 18
by rewriting the line to read:

"**SECTION 48.** This act becomes effective October 1, 2015, and applies to offenses committed on or after that date. Prosecutions for"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 383:
Clarify Statutory Scheme/Sex Offenses

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Glazier, Stam, Jordan, Faircloth	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 383 would reorganize, rename, and renumber various sexual offenses to make them more easily distinguishable from one another as recommended by the North Carolina Court of Appeals in "State of North Carolina v. Slade Weston Hicks, Jr."***

[As introduced, this bill was identical to S651, as introduced by Sen. Stein, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: In February 2015, the North Carolina Court of Appeals issued an opinion in State of North Carolina v. Slade Weston Hicks, Jr. As part of that opinion the Court stated the following:

> *Given the frequency with which these errors arise, we strongly urge the General Assembly to consider reorganizing, renaming, and renumbering the various sexual offenses to make them more easily distinguishable from one another. Currently, there is no uniformity in how the various offenses are referenced, and efforts to distinguish the offenses only lead to more confusion. For example, because "first degree sexual offense" encompasses two different offenses, a violation of N.C. Gen.Stat. § 14–27.4(a)(1) is often referred to as "first degree sexual offense with a child" or "first degree statutory sexual offense" to distinguish the offense from "first degree sexual offense by force" under N.C. Gen.Stat. § 14–27.4(a)(2). "First degree sexual offense with a child," in turn, is easily confused with "statutory sexual offense" which could be a reference to a violation of either N.C. Gen.Stat. § 14–27.4A (officially titled "[s]exual offense with a child; adult offender") or N.C. Gen.Stat. § 14–27.7A (2013) (officially titled "[s]tatutory rape or sexual offense of person who is 13, 14, or 15 years old"). Further adding to the confusion is the similarity in the statute numbers of N.C. Gen.Stat. § 14–27.4(a)(1) and N.C. Gen.Stat. § 14–27.4A. We do not foresee an end to this confusion until the General Assembly amends the statutory scheme for sexual offenses.*

BILL ANALYSIS: House Bill 383 reorganizes, renames, and renumbers various sexual offenses to make them more easily distinguishable from one another.

Sections 1 through 15 recodify statutes currently in Article 7A of Chapter 14 of the General Statutes to a new Article 7B with new statute numbers and separating differing conduct into separate statutes.

Sections 16 through 46 made corresponding changes to other statutes to reflect new statute numbers.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

O. Walker Reagan
Director

* H 3 8 3 - S M S A - 3 3 E 1 - V 4 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 383*

Short Title: Clarify Statutory Scheme/Sex Offenses. (Public)

Sponsors: Representatives Glazier, Stam, Jordan, and Faircloth (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II.

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE, RENAME, AND RENUMBER VARIOUS SEXUAL OFFENSES TO MAKE THEM MORE EASILY DISTINGUISHABLE FROM ONE ANOTHER AS RECOMMENDED BY THE NORTH CAROLINA COURT OF APPEALS IN "STATE OF NORTH CAROLINA V. SLADE WESTON HICKS, JR."

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 7B.

"Rape and other Sex Offenses.

SECTION 2. G.S. 14-27.1 is recodified as G.S. 14-27.20 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(a) G.S. 14-27.2 is recodified as G.S. 14-27.21 under Article 7B of the General Statutes as created by Section 1 of this act.

SECTION 3.(b) G.S. 14-27.2, recodified as G.S. 14-27.21 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.21. First-degree forcible rape.**

(a) A person is guilty of ~~rape in the~~ first-degree forcible rape if the person engages in vaginal ~~intercourse:~~

~~(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or~~

~~(2)~~ ~~With~~ intercourse with another person by force and against the will of the other person, ~~and:~~does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~ person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall

the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 4.(a) G.S. 14-27.3 is recodified as G.S. 14-27.22 under Article 7B of the General Statutes.

SECTION 4.(b) G.S. 14-27.3, recodified as G.S. 14-27.22 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.22. Second-degree forcible rape.**

(a) A person is guilty of ~~rape in the second degree~~ second-degree forcible rape if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 5.(a) G.S. 14-27.2A is recodified as G.S. 14-27.23 under Article 7B of the General Statutes.

SECTION 5.(b) G.S. 14-27.2A, recodified as G.S. 14-27.23 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.23. ~~Rape of a child; adult offender.~~Statutory rape of a child by an adult.**

(a) A person is guilty of ~~rape of a child~~ statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

...

(e) The offense under ~~G.S. 14-27.2(a)(1)~~ G.S. 14-27.24 is a lesser included offense of the offense in this section."

SECTION 6. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.24. First-degree statutory rape.**

(a) A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

SECTION 7.(a) G.S. 14-27.7A is recodified as G.S. 14-27.25 under Article 7B of Chapter 14 of the General Statutes.

SECTION 7.(b) G.S. 14-27.7A, recodified as G.S. 14-27.25 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.25. Statutory rape ~~or sexual offense~~ of person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse ~~or a sexual act~~ with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 8.(a) G.S. 14-27.4 is recodified as G.S. 14-27.26 under Article 7B of Chapter 14 of the General Statutes.

SECTION 8.(b) G.S. 14-27.4, recodified as G.S. 14-27.26 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.26. First-degree forcible sexual offense.**

(a) A person is guilty of a ~~sexual offense in the~~ first degree forcible sexual offense if the person engages in a sexual ~~act:~~

~~(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or~~

~~(2)~~ ~~With~~ act with another person by force and against the will of the other person, ~~and:~~ and does any of the following:

~~a.~~(1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly ~~weapon; or~~ weapon.

~~b.~~(2) Inflicts serious personal injury upon the victim or another ~~person; or~~ person.

~~c.~~(3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony."

SECTION 9.(a) G.S. 14-27.5 is recodified as G.S. 14-27.27 under Article 7B of Chapter 14 of the General Statutes.

SECTION 9.(b) G.S. 14-27.5, recodified as G.S. 14-27.27 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.27. Second-degree forcible sexual offense.**

(a) A person is guilty of ~~a sexual offense in the~~ second degree forcible sexual offense if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony."

SECTION 10.(a) G.S. 14-27.4A is recodified as G.S. 14-27.28 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 10.(b) G.S. 14-27.4A, recodified as G.S. 14-27.28 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.28. ~~Sexual offense with a child; adult offender.~~Statutory sexual offense with a child by an adult.**

(a) A person is guilty of ~~sexual offense with a child~~ statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

...

(d) The offense under ~~G.S. 14-27.4(a)(1)~~ G.S. 14-27.29 is a lesser included offense of the offense in this section."

SECTION 11. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding a new section to read:

"**§ 14-27.29. First-degree statutory sexual offense.**

(a) A person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony."

SECTION 12. Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act is amended by adding the following new section:

"**§ 14-27.30. Statutory sexual offense against a person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person."

SECTION 13.(a) G.S. 14-27.7(a) is recodified as G.S. 14-27.31 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 13.(b) G.S. 14-27.7(a), recodified as G.S. 14-27.31 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.31. ~~Intercourse and sexual offenses with certain victims; consent no defense.~~Sexual activity by a substitute parent or custodian.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the ~~home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim,~~ home, the defendant is guilty of a Class E felony.

(b) If a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.

(c) Consent is not a defense to a charge under this section."

SECTION 14.(a) G.S. 14-27.7(b) is recodified as G.S. 14-27.32 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 14.(b) G.S. 14-27.7(b), recodified as G.S. 14-27.32 by subsection (a) of this section, reads as rewritten:

"**§ 14-27.32. Sexual activity with a student.**

~~(b)~~(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.

(b) A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim

and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.

(c) This ~~subsection~~ section shall apply unless the conduct is covered under some other provision of law providing for greater punishment.

(d) Consent is not a defense to a charge under this section.

(e) For purposes of this ~~subsection,~~ section, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this ~~subsection,~~ section, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

SECTION 15. G.S. 14-27.5A. is recodified as G.S. 14-27.33 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act. G.S. 14-27.8 through G.S. 14-27.10 are recodified as G.S. 14-27.34 through G.S. 14-27.36 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

SECTION 16. G.S. 14-202.4(d)(1) reads as rewritten:

"(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. ~~14-27.1.~~14-27.20."

SECTION 17. G.S. 14-203(5) reads as rewritten:

"(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification for any money or other consideration."

SECTION 18. G.S. 14-205.2(a) reads as rewritten:

"(a) Any person who willfully performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. ~~14-27.1,~~ 14-27.20, or any sexual contact as defined in G.S. ~~14-27.1,~~ 14-27.20, for the purpose of sexual arousal or gratification."

SECTION 19. G.S. 15A-136 reads as rewritten:

"**§ 15A-136. Venue for sexual offenses.**

If a person is transported by any means, with the intent to violate any of the provisions of Article 7A of Chapter 14 (§ ~~14-27.1~~14-27.20 et seq.) of the General Statutes and the intent is followed by actual violation thereof, the defendant may be tried in the county where transportation was offered, solicited, begun, continued or ended."

SECTION 20. G.S. 50-16.1A(3) reads as rewritten:

"(3) "Marital misconduct" means any of the following acts that occur during the marriage and prior to or on the date of separation:

a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate

sexual acts, or sexual acts defined in G.S. ~~14-27.1(4),~~14-27.20(4), voluntarily engaged in by a spouse with someone other than the other spouse;

b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;

c. Abandonment of the other spouse;

d. Malicious turning out-of-doors of the other spouse;

e. Cruel or barbarous treatment endangering the life of the other spouse;

f. Indignities rendering the condition of the other spouse intolerable and life burdensome;

g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;

h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;

i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome."

SECTION 21. G.S. 7B-101(1) reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. ~~14-27.2;~~14-27.21; rape of a child by an adult offender, as provided in G.S. ~~14-27.2A;~~14-27.23; second degree rape as provided in G.S. ~~14-27.3;~~14-27.22; first-degree sexual offense, as provided in G.S. ~~14-27.4;~~14-27.26; sexual offense with a child by an adult offender, as provided in G.S. ~~14-27.4A;~~14-27.28; second degree sexual offense, as provided in G.S. ~~14-27.5;~~14-27.27; sexual act by a custodian, as provided in G.S. ~~14-27.7;~~14-27.31; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's

severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or

g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child."

SECTION 22. G.S. 7B-401.1(b) reads as rewritten:

"(b) Parents. – The juvenile's parent shall be a party unless one of the following applies:

(1) The parent's rights have been terminated.

(2) The parent has relinquished the juvenile for adoption, unless the court orders that the parent be made a party.

(3) The parent has been convicted under G.S. ~~14-27.2~~14-27.21 or G.S. ~~14-27.3~~14-27.22 for an offense that resulted in the conception of the juvenile."

SECTION 23. G.S. 7B-1103(c) reads as rewritten:

"(c) No person whose actions resulted in a conviction under G.S. ~~14-27.2~~14-27.2 or G.S. ~~14-27.3~~14-27.22 and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile."

SECTION 24. G.S. 7B-1104(3) reads as rewritten:

"(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. ~~14-27.2~~14-27.21 or G.S. ~~14-27.3~~14-27.22 and the conception of the juvenile need not be named in the petition."

SECTION 25. G.S. 7B-1602(a) reads as rewritten:

"(a) When a juvenile is committed to the Division for placement in a youth development center for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2~~,14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first."

SECTION 26. G.S. 7B-2509 reads as rewritten:

"**§ 7B-2509. Registration of certain delinquent juveniles.**

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. ~~14-27.2~~14-27.21 (first-degree rape), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.4 (first-degree sexual offense), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

SECTION 27. G.S. 7B-2513(a)(1) reads as rewritten:

"(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2~~,14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult;"

SECTION 28. G.S. 7B-2514(c)(2) reads as rewritten:

"(2) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~ 14-27.21, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult."

SECTION 29. G.S. 7B-2516(c)(1) reads as rewritten:

"(1) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.2, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult."

SECTION 30. G.S. 7B-2600(c) reads as rewritten:

"(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. ~~14-27.2,~~14-27.2, or first-degree sexual offense pursuant to G.S. ~~14-27.4~~14-27.26 if committed by an adult, or (iv) until terminated by order of the court."

SECTION 31. G.S. 8-53.12(a)(7) reads as rewritten:

"(7) Sexual assault. - Any alleged violation of G.S. ~~14-27.2,~~14-27.21, ~~14-27.3,~~14-27.22, ~~14-27.4,~~14-27.26, ~~14-27.5,~~14-27.27, ~~14-27.7,~~14-27.31, ~~14-27.7A,~~14-27.25, or 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation."

SECTION 32. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. ~~14-27.2~~14-27.21 (first degree rape), G.S. ~~14-27.2A~~14-27.23 (rape of a child; adult offender), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.26 (first degree sexual offense), G.S. ~~14-27.4A~~14-27.28 (sex offense with a child; adult offender), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), G.S. ~~14-27.5A~~14-27.33 (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. ~~14-27.7~~14-27.31 (intercourse and sexual offense with certain victims), G.S. ~~14-27.7A(a)~~14-27.25(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or

a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 33. G.S. 14-208.26(a) reads as rewritten:

"Part 4. Registration of Certain Juveniles Adjudicated for Committing Certain Offenses.

"**§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.**

"(a) When a juvenile is adjudicated delinquent for a violation of G.S. ~~14-27.2~~14-27.21 (first degree rape), G.S. ~~14-27.3~~14-27.22 (second degree rape), G.S. ~~14-27.4~~14-27.26 (first degree sexual offense), G.S. ~~14-27.5~~14-27.27 (second degree sexual offense), or former G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part."

SECTION 34. G.S. 48-3-603(a)(9) reads as rewritten:

"(9) An individual whose actions resulted in a conviction under G.S. ~~14-27.2,~~14-27.21, G.S. ~~14-27.2A,~~14-27.23, or G.S. ~~14-27.3~~14-27.22 and the conception of the minor to be adopted."

SECTION 35. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. ~~14-27.2,~~14-27.21, G.S. ~~14-27.2A,~~14-27.23, or G.S. ~~14-27.3~~14-27.22 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 36. G.S. 50B-1(a)(3) reads as rewritten:

"(3) Committing any act defined in G.S. ~~14-27.2~~14-27.21 through G.S. ~~14-27.7.~~14-27.31."

SECTION 37. G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct examinations for the purpose of collecting evidence from the victims of first-degree rape as defined in G.S. ~~14-27.2,~~14-27.21, second-degree rape as defined in G.S. ~~14-27.3,~~14-27.22, statutory rape as defined in G.S. ~~14-27.7A,~~14-27.25, first-degree sexual offense as defined in G.S. ~~14-27.4,~~14-27.26, second-degree sexual offense as defined in G.S. ~~14-27.5~~14-27.27 or attempted first-degree or second-degree rape or attempted first-degree

or second-degree sexual offense. The Board, pursuant to G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 38. G.S. 143B-1200(i)(3) reads as rewritten:

"(3) Sexual assault. – Any of the following crimes:

a. First-degree rape as defined in G.S. ~~14-27.2.~~14-27.21.

b. Second degree rape as defined in G.S. ~~14-27.3.~~14-27.22.

c. First-degree sexual offense as defined in G.S. ~~14-27.4.~~14-27.26.

d. Second degree sexual offense as defined in G.S. ~~14-27.5.~~14-27.27.

e. Statutory rape as defined in G.S. ~~14-27.7A.~~14-27.25."

SECTION 39. G.S. 14-401.16(c) reads as rewritten:

"(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. ~~14-27.3~~14-27.22 or G.S. ~~14-27.5.~~14-27.27, the violation is a Class G felony."

SECTION 40. G.S. 14-208.40(a)(3) reads as rewritten:

"(3) Any offender who is convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A.~~14-27.28, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment."

SECTION 41. G.S. 4-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A.~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A.~~14-27.28, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed an aggravated offense, or was convicted of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A.~~14-27.28, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A~~14-27.28 and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Division of Adult Correction pursuant to subsection (d) of this section, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 42. G.S. 14-208.40B(c) reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. ~~14-27.2A~~14-27.23 or G.S. ~~14-27.4A,~~14-27.28, and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 43. G.S. 15A-145.5(a)(4) reads as rewritten:

"(4) Any of the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(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."

SECTION 44. G.S. 15A-145.4(5) reads as rewritten:

"(5) Any felony offense under the following sex-related or stalking offenses: G.S. ~~14-27.7A(b),~~14-27.25(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1."

SECTION 45. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. ~~14-27.4A(a)~~14-27.28(a) (sex offense with a child; adult offender), G.S. ~~14-27.7A~~14-27.25 (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any

aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 46. G.S. 15A-290(c)(1) reads as rewritten:

"(1) Any felony offense against a minor, including any violation of G.S. ~~14-27.7~~14-27.31 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d) (Patronizing a prostitute who is a minor or a mentally disabled person), or G.S. 14-205.3(b) (Promoting prostitution of a minor or a mentally disabled person)."

SECTION 16. The Revisor of Statutes may correct statutory references as required by this act, throughout the General Statutes. In making the changes authorized by this act, the Revisor may also adjust subject and verb agreement and the placement of conjunctions.

SECTION 17. This act becomes effective October 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

H D

HOUSE BILL 397
PROPOSED COMMITTEE SUBSTITUTE H397-CSRU-2 [v.4]

4/20/2015 9:53:51 PM

Short Title: Clarify Protections/Exploitation of Elders. (Public)

Sponsors:

Referred to:

March 31, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT UPON CONVICTION FOR EXPLOITATION OF AN OLDER ADULT OR DISABLED ADULT, ANY SEIZED ASSETS SHALL BE USED TO SATISFY THE DEFENDANT'S RESTITUTION OBLIGATION AS ORDERED BY THE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-112.3 reads as rewritten:

"**§ 14-112.3. Asset freeze or seizure; proceeding.**

(a) For purposes of this section, the term "assets" includes funds and property as well as other assets that may be involved in a violation of G.S. 14-112.2.

(b) Whenever it appears by clear and convincing evidence that any defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the district attorney may make an application to the court ~~with jurisdiction over the pending charges~~ to freeze or seize the assets of the defendant. Upon a showing by clear and convincing evidence in the hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed by G.S. 1A-1, Rule 65, except as otherwise provided in this section.

(b1) An order to freeze or seize assets shall direct the appropriate State or local law enforcement agency with territorial jurisdiction over the assets to serve the order as follows:

(1) Personal property or financial assets in the defendant's possession that are not held by a financial institution shall be seized and held until final disposition as directed by the order.

(2) If the asset is an account, intangible, or other financial asset held by a financial institution, the State or local law enforcement agency shall serve the order on the entity or institution in possession of the asset with return of service to the clerk of superior court.

(3) If the asset is real property, then a lis pendens shall be filed as directed by the court with the clerk in the county where the property is located in accordance with Article 11 of Chapter 1 of the General Statutes.

(b2) Any personal property seized by a law enforcement agency pursuant to this section shall be recorded and retained as provided in Article 2 of Chapter 15 of the General Statute, except that the property shall not be disposed of other than pursuant to an order of the court entered pursuant to this section. Property frozen or seized pursuant to this section shall be deemed to be in the custody of the law enforcement agency seizing it, and shall be removed and stored in the discretion of that law enforcement agency, which may do any of the following:

(1) Place the property under seal.
(2) Remove the property to a place designated by the law enforcement agency.
(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with the court order.

(c) At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets.

~~(d)~~ In any proceeding to release assets, the burden of proof shall be by clear and convincing evidence and shall be on the State to show that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. If the court finds that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the court shall ~~order the assets frozen or held until further order of the court. The rules of evidence that apply to this proceeding are the rules that would apply in a proceeding pursuant to G.S. 1A-1, Rule 65.~~deny the motion.

(e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal without leave by the State or the court, or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets. If assets are released pursuant to this subsection, accrued costs incident to the seizure, freeze, or storage or the assets shall not be charged against the defendant and shall be assumed by the agency incurring those costs.

(e1) Upon conviction of the defendant, or entry of a plea of no contest, any frozen or seized assets shall be used to satisfy the defendant's restitution obligation as ordered by the court, accounting for costs incident to seizure, including costs of sale. However, if the defendant can satisfy the restitution order at the time of entry of the order, the court may accept an alternate form of restitution satisfaction. Any excess assets shall be returned to the defendant.

In order to satisfy an order of restitution, frozen or seized assets shall be handled as follows:

(1) Assets shall be sold, transferred, paid out or otherwise applied to the defendant's restitution obligation as follows:
a. If the asset is personal property, the property shall be recorded pursuant to G.S. 15-11 and the seizing agency shall store the personal property in accordance with the court order.
b. If the asset is a liquid asset, the court shall enter an order directing the payment of those funds to the victim in an amount equal to the restitution order or, if the amount is less than the full restitution award, the court shall order the full amount paid to the victim.
c. If the asset is real property, the court shall enter an order directing the sale of the property. The sale shall be conducted pursuant to Article 29A of Chapter 1 of the General Statutes. A private sale may be conducted pursuant to G.S. 1-339.33 through G.S. 1-339.40, if it upon receipt of petition and satisfactory proof it appears to the person directed to oversee the sale that a private sale is in the best interest of the victim.

(2) The proceeds of any sale, transfer, or conversion shall be disbursed as follows:
a. The law enforcement agency shall pay all proceeds to the clerk of superior court.
b. All proceeds received by the clerk shall be distributed according to the following priority:
1. Payment to the victim in the full amount of the restitution order.

2. The costs and expenses of the sale.
3. All other necessary expenses incident to compliance with this section.
4. Any remaining balance to the defendant within 30 days of the sale, unless the defendant directs the clerk to apply any excess to the defendant's other monetary obligations contained in the judgment of conviction.

In the event proceeds from the sale of assets are not sufficient to cover the restitution order and the costs and expenses of the sale, any unpaid amounts shall be charged against the defendant and a criminal judgment shall be placed against the defendant for those amounts. Any amount included in a criminal judgment for costs and expenses of the sale shall be owed to the agency or entity which incurred the expense.

(f) Any person holding any interest in the frozen or seized assets may commence a separate civil proceeding in the manner provided by law."

(g) Any filing fees, service fees, or other monies due to any State or county agency for the administration or use of this Chapter shall not be waived and shall only be recoverable if charged against the defendant in the final disposition of the criminal action.

SECTION 2. G.S. 1-116(a) is amended by adding a new subdivision to read as follows:

"(5) Actions for asset freezing or seizure under G.S. 14-112.3."

SECTION 3. G.S. 1-119 reads as rewritten:

"**§ 1-119. Notice void unless action prosecuted.**

(a) The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an affidavit therefor pursuant to Rule 4 (j)(1)c of the Rules of Civil Procedure or by personal service on the defendant within 60 days after the cross-indexing.

(b) When an action is commenced by the issuance of summons and permission is granted to file the complaint within 20 days, pursuant to Rule 3 of the Rules of Civil Procedure, if the complaint is not filed within the time fixed by the order of the clerk, the notice of lis pendens shall become inoperative and of no effect. The clerk may on his own motion and shall on the ex parte application of any interested party cancel such notice of lis pendens by appropriate entry on the records, which entry shall recite the failure of the plaintiff to file his complaint within the time allowed. Such applications for cancellation, when made in a county other than that in which the action was instituted, shall include a certificate over the hand and seal of the clerk of the county in which the action was instituted that the plaintiff did not file his complaint within the time allowed. The fees of the clerk may be recovered against the plaintiff and his surety.

(c) Notwithstanding (a) and (b) of this section, a notice of lis pendens filed pursuant to G.S. 1-116(a)(5) shall remain effective until the order to freeze or seize assets under G.S. 14-112.3(b1)(3) is terminated or an order directing the sale of real property under G.S. 14-112.3(e1)(1)c. is entered. Notice of lis pendens filed pursuant to G.S. 1-116(5) shall be exempt from filing fees. "

SECTION 4. This act becomes effective October 1, 2015 and applies to orders to freeze or seize assets issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 397
PROPOSED COMMITTEE SUBSTITUTE H397-PCS30341-TV-10

Short Title: Clarify Protections/Exploitation of Elders. (Public)

Sponsors:

Referred to:

March 31, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT UPON CONVICTION FOR EXPLOITATION OF AN OLDER ADULT OR DISABLED ADULT, ANY SEIZED ASSETS SHALL BE USED TO SATISFY THE DEFENDANT'S RESTITUTION OBLIGATION AS ORDERED BY THE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-112.3 reads as rewritten:

"**§ 14-112.3. Asset freeze or seizure; proceeding.**

(a) For purposes of this section, the term "assets" includes funds and property as well as other assets that may be involved in a violation of G.S. 14-112.2.

(b) Whenever it appears by clear and convincing evidence that any defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the district attorney may make an application to the court ~~with jurisdiction over the pending charges~~ to freeze or seize the assets of the defendant. Upon a showing by clear and convincing evidence in the hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed by G.S. 1A-1, Rule 65, except as otherwise provided in this section.

(b1) An order to freeze or seize assets shall direct the appropriate State or local law enforcement agency with territorial jurisdiction over the assets to serve the order as follows:

(1) Personal property or financial assets in the defendant's possession that are not held by a financial institution shall be seized and held until final disposition as directed by the order.

(2) If the asset is an account, intangible, or other financial asset held by a financial institution, the State or local law enforcement agency shall serve the order on the entity or institution in possession of the asset with return of service to the clerk of superior court.

(3) If the asset is real property, then a lis pendens shall be filed as directed by the court with the clerk in the county where the property is located in accordance with Article 11 of Chapter 1 of the General Statutes.

(b2) Any personal property seized by a law enforcement agency pursuant to this section shall be recorded and retained as provided in Article 2 of Chapter 15 of the General Statutes, except that the property shall not be disposed of other than pursuant to an order of the court entered pursuant to this section. Property frozen or seized pursuant to this section shall be deemed to be in the custody of the law enforcement agency seizing it and shall be removed and stored in the discretion of that law enforcement agency, which may do any of the following:

(1) Place the property under seal.
(2) Remove the property to a place designated by the law enforcement agency.
(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with the court order.

(c) At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets.

(d) In any proceeding to release assets, the burden of proof shall be by clear and convincing evidence and shall be on the State to show that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. If the court finds that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the court shall ~~order the assets frozen or held until further order of the court. The rules of evidence that apply to this proceeding are the rules that would apply in a proceeding pursuant to G.S. 1A-1, Rule 65.~~deny the motion.

(e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal without leave by the State or the court, or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets. If assets are released pursuant to this subsection, accrued costs incident to the seizure, freeze, or storage of the assets shall not be charged against the defendant and shall be assumed by the agency incurring those costs.

(e1) Upon conviction of the defendant, or entry of a plea of no contest, any frozen or seized assets shall be used to satisfy the defendant's restitution obligation as ordered by the court, accounting for costs incident to seizure, including costs of sale. However, if the defendant can satisfy the restitution order at the time of entry of the order, the court may accept an alternate form of restitution satisfaction. Any excess assets shall be returned to the defendant.

In order to satisfy an order of restitution, frozen or seized assets shall be handled as follows:

(1) Assets shall be sold, transferred, paid out, or otherwise applied to the defendant's restitution obligation as follows:
a. If the asset is personal property, the property shall be recorded pursuant to G.S. 15-11 and the seizing agency shall store the personal property in accordance with the court order.
b. If the asset is a liquid asset, the court shall enter an order directing the payment of those funds to the victim in an amount equal to the restitution order or, if the amount is less than the full restitution award, the court shall order the full amount paid to the victim.
c. If the asset is real property, the court shall enter an order directing the sale of the property. The sale shall be conducted pursuant to Article 29A of Chapter 1 of the General Statutes. A private sale may be conducted pursuant to G.S. 1-339.33 through G.S. 1-339.40, if, upon receipt of petition and satisfactory proof, it appears to the person directed to oversee the sale that a private sale is in the best interest of the victim.

(2) The proceeds of any sale, transfer, or conversion shall be disbursed as follows:
a. The law enforcement agency shall pay all proceeds to the clerk of superior court.
b. All proceeds received by the clerk shall be distributed according to the following priority:
1. Payment to the victim in the full amount of the restitution order.

2. The costs and expenses of the sale.
3. All other necessary expenses incident to compliance with this section.
4. Any remaining balance to the defendant within 30 days of the sale, unless the defendant directs the clerk to apply any excess to the defendant's other monetary obligations contained in the judgment of conviction.

In the event proceeds from the sale of assets are not sufficient to cover the restitution order and the costs and expenses of the sale, any unpaid amounts shall be charged against the defendant and a criminal judgment shall be placed against the defendant for those amounts. Any amount included in a criminal judgment for costs and expenses of the sale shall be owed to the agency or entity which incurred the expense.

(f) Any person holding any interest in the frozen or seized assets may commence a separate civil proceeding in the manner provided by law.

(g) Any filing fees, service fees, or other monies due to any State or county agency for the administration or use of this Chapter shall not be waived and shall only be recoverable if charged against the defendant in the final disposition of the criminal action."

SECTION 2. G.S. 1-116(a) is amended by adding a new subdivision to read as follows:

"(5) Actions for asset freezing or seizure under G.S. 14-112.3."

SECTION 3. G.S. 1-119 reads as rewritten:

"**§ 1-119. Notice void unless action prosecuted.**

(a) The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an affidavit therefor pursuant to Rule 4 (j)(1)c of the Rules of Civil Procedure or by personal service on the defendant within 60 days after the cross-indexing.

(b) When an action is commenced by the issuance of summons and permission is granted to file the complaint within 20 days, pursuant to Rule 3 of the Rules of Civil Procedure, if the complaint is not filed within the time fixed by the order of the clerk, the notice of lis pendens shall become inoperative and of no effect. The clerk may on his own motion and shall on the ex parte application of any interested party cancel such notice of lis pendens by appropriate entry on the records, which entry shall recite the failure of the plaintiff to file his complaint within the time allowed. Such applications for cancellation, when made in a county other than that in which the action was instituted, shall include a certificate over the hand and seal of the clerk of the county in which the action was instituted that the plaintiff did not file his complaint within the time allowed. The fees of the clerk may be recovered against the plaintiff and his surety.

(c) Notwithstanding subsections (a) and (b) of this section, a notice of lis pendens filed pursuant to G.S. 1-116(a)(5) shall remain effective until the order to freeze or seize assets under G.S. 14-112.3(b1)(3) is terminated or an order directing the sale of real property under G.S. 14-112.3(e1)(1)c. is entered. Notice of lis pendens filed pursuant to G.S. 1-116(5) shall be exempt from filing fees."

SECTION 3.5. G.S. 7A-308 is amended by adding a new subsection to read:

"(b2) The fees set forth in subdivision (11) of subsection (a) of this section are not chargeable when service is performed or documents are filed pursuant to the provisions of G.S. 14-112.3."

SECTION 4. This act becomes effective October 1, 2015, and applies to orders to freeze or seize assets issued on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 21, 2015

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

COMMITTEE SUBSTITUTE 397

Rep.) Glazier
)
Sen.)

moves to amend the bill on page 3, line 41-42

( ) WHICH CHANGES THE TITLE

by inserting the following between the lines

"Section 3.5. G.S. 7A-308 is amended by adding a new subsection to read:

(b2) The fees set forth in subdivision (11) of this section are not chargeable when service is performed or document(s) are filed pursuant to the provisions of G.S. 14-112.3.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 397:
Clarify Protections/Exploitation of Elders

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 20, 2015
Introduced by:	Reps. Glazier, Reives, Stam, Faircloth	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	PCS to First Edition H397-CSRU-2		

SUMMARY: The PCS to House Bill 397 would clarify that upon conviction for exploitation of an older adult or disabled adult, any seized assets shall be used to satisfy the defendant's restitution obligation as ordered by the court.

CURRENT LAW: G.S. 14-112.3 defines "assets" and authorizes the district attorney to freeze or seize assets when it appears a defendant is about to or intends to divest himself or herself of assets that would render the defendant insolvent for the purposes of restitution if ordered by the court. The defendant or any person claiming an interest in the assets may file a motion to release the assets.

BILL ANALYSIS:

The PCS to House Bill 397 would add sub-sections to the original statute to clarify the methods of serving the order, freezing or seizing the assets, and satisfying the order of restitution if the defendant pleads guilty or no contest.

Section 1 of the PCS adds the following new sub-sections:

- **Sub-section (b1)** that would direct State or local law enforcement agencies with jurisdiction over the assets on how to serve the order, and freeze or seize the assets based on the type of asset.
- **Sub-section (b2)** would require any personal property seized to be recorded and retained and specifies the procedures for doing so.
- **Sub-section (e1)** would specify how the frozen or seized assets will be handled to satisfy restitution once the defendant is convicted or enters a plea of no contest.
- **Sub-section (g)** would provide any fees or monies due to State or county agency shall not be waived and are recoverable if charged against the defendant in the final disposition.

Section 2 of the PCS amends G.S. 1-116(a) to add asset freezing and seizure under G.S. 14-112.3.

Section 3 of the PCS amends G.S. 1-119 to provide a lis pendens filed to freeze or seize assets under G.S. 112.3(b1)(3) remains in effect until terminated or an order directing the sale of the real property is entered. Notice of a lis pendens filed pursuant to G.S. 1-116(5) is exempt from filing fees.

EFFECTIVE DATE: This act becomes effective October 1, 2015 and applies to orders to freeze or seize assets issued on or after that date.

O. Walker Reagan
Director



Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 397

Short Title:	Clarify Protections/Exploitation of Elders.	(Public)
Sponsors:	Representatives Glazier, Reives, Stam, and Faircloth (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

March 31, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT UPON CONVICTION FOR EXPLOITATION OF AN OLDER ADULT OR DISABLED ADULT, ANY SEIZED ASSETS SHALL BE USED TO SATISFY THE DEFENDANT'S RESTITUTION OBLIGATION AS ORDERED BY THE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-112.3(e) reads as rewritten:

"**§ 14-112.3. Asset freeze or seizure; proceeding.**

...

(e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal by the State or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets. Upon conviction of the defendant, any seized assets shall be used to satisfy the defendant's restitution obligation as ordered by the court, accounting for costs incident to seizure, including costs of sale. Any excess assets shall be returned to the defendant."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 405*
PROPOSED COMMITTEE SUBSTITUTE H405-CSRN-9 [v.2]

4/9/2015 4:14:03 PM

Short Title: Property Protection Act. (Public)

Sponsors:

Referred to:

April 1, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT PROPERTY OWNERS FROM DAMAGES RESULTING FROM INDIVIDUALS ACTING IN EXCESS OF THE SCOPE OF PERMISSIBLE ACCESS AND CONDUCT GRANTED TO THEM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99A of the General Statutes reads as rewritten:

"**Chapter 99A.**

"**Civil Remedies for ~~Criminal Actions.~~Interference With Property.**

"**§ 99A-1. Recovery of damages for interference with property rights.**

Notwithstanding any other provisions of the General Statutes of North Carolina, when personal property is wrongfully taken and carried away from the owner or person in lawful possession of such property without his consent and with the intent to permanently deprive him of the use, possession and enjoyment of said property, a right of action arises for recovery of actual and punitive damages from any person who has or has had, possession of said property knowing the property to be stolen.

An agent having possession, actual or constructive, of property lawfully owned by his principal, shall have a right of action in behalf of his principal for any unlawful interference with that possession by a third person.

In cases of bailments where the possession is in the bailee, a trespass committed during the existence of the bailment shall give a right of action to the bailee for the interference with his special property and a concurrent right of action to the bailor for the interference with his general property.

Any abuse of, or damage done to, the personal property of another or one who is in possession thereof, unlawfully, is a trespass for which damages may be recovered.

"**§ 99A-2. Recovery of damages for exceeding the scope of authorized access to property.**

(a) Any person who intentionally gains access to the nonpublic areas of another's premises and engages in an act that exceeds the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained. For the purposes of this section, "nonpublic areas" shall mean those areas not accessible to or not intended to be accessed by the general public.

(b) For the purposes of this section, an act that exceeds a person's authority to enter the nonpublic areas of another's premises is any of the following:

(1) An employee who enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization captures or removes the employer's data, paper, records, or any other

documents for the purpose of using the information to breach the person's duty of loyalty to the employer.

(2) An employee who, without authorization, knowingly or intentionally creates or produces an image or sound occurring within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer.

(3) Knowingly or intentionally placing on the employer's premises an unattended camera or electronic surveillance device and using that device to record images or data.

(4) Conspiring in organized retail theft, as defined in Article 16A of Chapter 14 of the General Statutes.

(5) An act that substantially interferes with the ownership or possession of real property.

(c) Any person who intentionally directs, assists, compensates, or induces another person to violate this section shall be jointly liable.

(d) A court may award to a party who prevails in an action brought pursuant to this section one or more of the following remedies:

(1) Equitable relief.

(2) Damages.

(3) Costs and fees, including reasonable attorneys' fees.

(4) Exemplary damages in the amount of five thousand dollars ($5,000) for each day, or portion thereof, that a defendant has acted in violation of subsection (a) of this section.

(e) Nothing in this section shall be construed to diminish the protections provided to employees under Article 21 of Chapter 95 or Article 14 of Chapter 126 of the General Statutes.

(f) This section shall not apply to any governmental agency or law enforcement officer engaged in a lawful investigation of the premises or the owner or operator of the premises.

(g) Nothing in this section shall be construed to limit any other remedy available at common law or provided by the General Statutes."

SECTION 2. This act becomes effective January 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 405*
PROPOSED COMMITTEE SUBSTITUTE H405-PCS20321-RN-9

Short Title: Property Protection Act. (Public)

Sponsors:

Referred to:

April 1, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT PROPERTY OWNERS FROM DAMAGES RESULTING FROM INDIVIDUALS ACTING IN EXCESS OF THE SCOPE OF PERMISSIBLE ACCESS AND CONDUCT GRANTED TO THEM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99A of the General Statutes reads as rewritten:

"**Chapter 99A.**

"**Civil Remedies for ~~Criminal Actions.~~Interference With Property.**

"**§ 99A-1. Recovery of damages for interference with property rights.**

Notwithstanding any other provisions of the General Statutes of North Carolina, when personal property is wrongfully taken and carried away from the owner or person in lawful possession of such property without his consent and with the intent to permanently deprive him of the use, possession and enjoyment of said property, a right of action arises for recovery of actual and punitive damages from any person who has or has had, possession of said property knowing the property to be stolen.

An agent having possession, actual or constructive, of property lawfully owned by his principal, shall have a right of action in behalf of his principal for any unlawful interference with that possession by a third person.

In cases of bailments where the possession is in the bailee, a trespass committed during the existence of the bailment shall give a right of action to the bailee for the interference with his special property and a concurrent right of action to the bailor for the interference with his general property.

Any abuse of, or damage done to, the personal property of another or one who is in possession thereof, unlawfully, is a trespass for which damages may be recovered.

"**§ 99A-2. Recovery of damages for exceeding the scope of authorized access to property.**

(a) Any person who intentionally gains access to the nonpublic areas of another's premises and engages in an act that exceeds the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained. For the purposes of this section, "nonpublic areas" shall mean those areas not accessible to or not intended to be accessed by the general public.

(b) For the purposes of this section, an act that exceeds a person's authority to enter the nonpublic areas of another's premises is any of the following:

(1) An employee who enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization captures or removes the employer's data, paper, records, or any other

documents and uses the information to breach the person's duty of loyalty to the employer.

(2) An employee who intentionally enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization records images or sound occurring within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer.

(3) Knowingly or intentionally placing on the employer's premises an unattended camera or electronic surveillance device and using that device to record images or data.

(4) Conspiring in organized retail theft, as defined in Article 16A of Chapter 14 of the General Statutes.

(5) An act that substantially interferes with the ownership or possession of real property.

(c) Any person who intentionally directs, assists, compensates, or induces another person to violate this section shall be jointly liable.

(d) A court may award to a party who prevails in an action brought pursuant to this section one or more of the following remedies:

(1) Equitable relief.

(2) Compensatory damages as otherwise allowed by State or federal law.

(3) Costs and fees, including reasonable attorneys' fees.

(4) Exemplary damages as otherwise allowed by State or federal law in the amount of five thousand dollars ($5,000) for each day, or portion thereof, that a defendant has acted in violation of subsection (a) of this section.

(e) Nothing in this section shall be construed to diminish the protections provided to employees under Article 21 of Chapter 95 or Article 14 of Chapter 126 of the General Statutes, nor may any party who is covered by these Articles be liable under this section.

(f) This section shall not apply to any governmental agency or law enforcement officer engaged in a lawful investigation of the premises or the owner or operator of the premises.

(g) Nothing in this section shall be construed to limit any other remedy available at common law or provided by the General Statutes."

SECTION 2. This act becomes effective January 1, 2016.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 405*

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

H405-ARN-12 [v.4]

Amends Title [NO]
H405-CSRN-9[v.2]

Date _____ ,2015

Representative Glazier

moves to amend the bill on page 2, line 1, by deleting the phrase "for the purpose of using" and substituting the phrase "and uses"; and

on page 2, lines 3-5, by rewriting those lines to read:

"(2) An employee who intentionally enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization records images or sound occurring within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer." ; and

on page 2, line 18, by rewriting that line to read:

"(2) Compensatory damages as otherwise allowed by State or federal law.";

and on page 2, line 24, by deleting the word "Statutes." and substituting "Statutes, nor may any party who is covered by these Articles be liable under this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

H405-ARN-12-V-4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 405 DATE 4-21-15

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSRN-9[v.2]

(Rep.) Stam
Sen.)

1 moves to amend the bill on page 2, line 20
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between ~~the phrase~~ "damages" and "in"
4 the following phrase "as otherwise allowed by
5 State or federal law"
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SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 405:
Property Protection Act

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Szoka, Whitmire, Jordan, R. Moore	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H405-CSRN-9		Committee Counsel

SUMMARY: ***House Bill 405 would protect property owners from damages resulting from individuals acting in excess of the scope of permissible access and conduct granted to them.*** ***The Proposed Committee Substitute (PCS) clarifies that a person violates the act if he or she "intentionally" gains access to the non-public areas of the premises and clarifies that acts exceeding a person's authority to enter are limited to those items enumerated in the bill. The PCS makes other clarifying changes.***

[As introduced, this bill was identical to S433, as introduced by Sens. Rucho, Tucker, B. Jackson, which is currently in Rules and Operations of the Senate.]

BILL ANALYSIS: The PCS for House Bill 405 provides that any person who intentionally gains access to the nonpublic areas of another's premises and engages in an act that exceeds the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained.

"Nonpublic areas" are those areas not accessible to or not intended to be accessed by the general public.

An act that exceeds a person's authority to enter "the nonpublic areas of another's premises" is any of the following:

- An employee who enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and, without authorization, captures or removes the employer's data or any other documents for the purpose of using the information to breach the person's duty of loyalty to the employer.
- An employee who, without authorization, knowingly or intentionally creates or produces an image or sound occurring within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer.
- Knowingly or intentionally placing on the employer's premises an unattended camera or electronic surveillance device and using that device to record images or data.
- Conspiring in organized retail theft.
- An act that substantially interferes with the ownership or possession of real property.

Any person who intentionally directs, assists, compensates, or induces another person to violate this section shall be jointly liable.

The following remedies are available to any party who prevails under these provisions:

- Equitable relief.
- Damages.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Costs and fees, including reasonable attorneys' fees.
- Exemplary damages in the amount of $5,000 for each day, or portion thereof, that a defendant has acted in violation of this section.

These provisions do not diminish protections available to employees dealing with retaliatory discrimination and protections for reporting improper government activities. The provisions do not apply to government agencies or law enforcement officers engaged in a lawful investigation or the owner of the premises. Nothing in the section limits other remedies that are available at common law or conferred by statute.

EFFECTIVE DATE: The act becomes effective January 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 405*

Short Title:	Property Protection Act.	(Public)
Sponsors:	Representatives Szoka, Whitmire, Jordan, and R. Moore (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 1, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT PROPERTY OWNERS FROM DAMAGES RESULTING FROM INDIVIDUALS ACTING IN EXCESS OF THE SCOPE OF PERMISSIBLE ACCESS AND CONDUCT GRANTED TO THEM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99A of the General Statutes reads as rewritten:

"Chapter 99A.

"Civil Remedies for ~~Criminal Actions.~~Interference With Property.

"§ 99A-1. Recovery of damages for interference with property rights.

Notwithstanding any other provisions of the General Statutes of North Carolina, when personal property is wrongfully taken and carried away from the owner or person in lawful possession of such property without his consent and with the intent to permanently deprive him of the use, possession and enjoyment of said property, a right of action arises for recovery of actual and punitive damages from any person who has or has had, possession of said property knowing the property to be stolen.

An agent having possession, actual or constructive, of property lawfully owned by his principal, shall have a right of action in behalf of his principal for any unlawful interference with that possession by a third person.

In cases of bailments where the possession is in the bailee, a trespass committed during the existence of the bailment shall give a right of action to the bailee for the interference with his special property and a concurrent right of action to the bailor for the interference with his general property.

Any abuse of, or damage done to, the personal property of another or one who is in possession thereof, unlawfully, is a trespass for which damages may be recovered.

"§ 99A-2. Recovery of damages for exceeding the scope of authorized access to property.

(a) Any person who gains access to the nonpublic areas of another's premises and engages in an act that exceeds the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained. For the purposes of this section, "nonpublic areas" shall mean those areas not accessible to or not intended to be accessed by the general public.

(b) For the purposes of this section, acts that exceed a person's authority to enter the nonpublic areas of another's premises include, but are not limited to, the following:

(1) An employee who seeks to enter or enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter

without authorization captures or removes the employer's data, paper, records, or any other documents for the purpose of using the information to breach the person's duty of loyalty to the employer.

(2) An employee who, without authorization, creates or produces an image or sound occurring within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer.

(3) Knowingly or intentionally placing on the employer's premises an unattended camera or electronic surveillance device and using that device to record images or data.

(4) Conspiring in organized retail theft, as defined in Article 16A of Chapter 14 of the General Statutes.

(5) Acts that interfere with the ownership or possession of real property.

(c) Any person who directs, assists, compensates, or induces another person to violate this section shall be jointly liable.

(d) A court may award to a plaintiff who prevails in an action brought pursuant to this section one or more of the following remedies:

(1) Equitable relief.

(2) Damages.

(3) Costs and fees, including reasonable attorneys' fees.

(4) Exemplary damages in the amount of five thousand dollars ($5,000) for each day, or portion thereof, that a defendant has acted in violation of subsection (a) of this section.

(e) Nothing in this section shall be construed to diminish the protections provided to employees under Article 21 of Chapter 95 or Article 14 of Chapter 126 of the General Statutes.

(f) This section shall not apply to any governmental agency or law enforcement officer engaged in a lawful investigation of the premises or the owner or operator of the premises.

(g) Nothing in this section shall be construed to limit any other remedy available at common law or provided by the General Statutes."

SECTION 2. This act becomes effective January 1, 2016.

Committee Sergeants at Arms

NAME OF COMMITTEE Judicidary II

DATE: 4-21-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: _____
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

Tuesday, April 21 JUDICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Lizzie O'Briant	Randolph	Pat B. Hurley
Alina Cardwell	Alamance	Dennis Riddell

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

4-21-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terri Burke	NLWC
Cassie Gavin	Sierra Club
Wendy Keely	Forest Landowners
Thomas Moore	[illegible]
Ember Bissette	Honda
Dave Horne	Smithfield
Jeffrey Runge	self - Chapel Hill
John Hardin	MH&S
Mark Lynch	NCBIA
Kim Albourn	HSUS
Ashley Perkins	Perkinson Law

VISITOR REGISTRATION SHEET

Judiciary II — 4-21-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julia Wagner	Conservations Center, Burlington, NC
Mindy Stinner	Conservations Center, Burlington, NC
Nancy Warren	NCDHHS
Genell Pridgen	Rainbow Meadow Farms Snow Hill, NC
Chris Nichols	NC BAR ASSOCIATION LITIGATION SECT.
[illegible]	[illegible]
Benton Craig	NC Advocates for Justice
Charlotte Mass ngill	NC DMV
Hope Mozingo	NCDMV
Maggie Thomas	NC DOT IT
Leo Russell	CJIC

VISITOR REGISTRATION SHEET

Judiciary II — 4-21-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Murray	NCAOC
[signature]	NCRMA
MARK J. PRAK	NCAB
[signature]	Intern
[signature]	Jordan Price, rdc.
NAKE PARKER	NCFB
Lexi Morgan	NCRMA
Tammy Smith	NCCODA
Peg Dorer	Conf of DAs
Pam Barlow	Ashe CSC
Jred Schmidt	DMV

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

4-21-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Sawyer	DMV
Craig Sarvis	N&O
Heather Robinson	NCRMA
Andy Flora	NCRMA
Jack Cecil	NCCC
Heather Babcock	NCC
JGOODMAN	"

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

4-21-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Smith	Zoological Assn of America
Sam Skinner	NCACC
Mildred Spearman	NCAOC

House Committee on Judiciary II
Wednesday, April 22, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 22, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Reives, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:03 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

The proposed committee substitute for House Bill 477 and a summary are provided (Attachment III and Attachment IV)
HOUSE BILL 477: AN ACT TO REQUIRE CITIES AND COUNTIES TO REMOVE PERSONAL INFORMATION FROM RECORDS AVAILABLE ON INTERNET WEB SITES MAINTAINED BY COUNTIES AND CITIES WHEN REQUESTED BY CERTAIN LAW ENFORCEMENT PERSONNEL, PROSECUTORS, AND JUDICIAL OFFICERS AND TO EXEMPT GOVERNMENT ISSUED MOBILE TELEPHONE NUMBERS OF PUBLIC SAFETY PERSONNEL FROM DISCLOSURE AS A PUBLIC RECORD.

Chairman Jordan recognized Representative Blust, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Malone to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 477 would require cities and counties to remove personal information from records available on internet web sites maintained by counties and cities when requested by certain law enforcement personnel, prosecutors, and judicial officers and exempt government issued mobile telephone numbers of public safety personnel from disclosure as a public record.

After a short discussion, the chair moved to re-calendar the bill pending a new PCS.

House Bill 479 and summary are provided (Attachment V and Attachment VI)
HOUSE BILL 479: AN ACT TO CLARIFY THE LIABILITY OF SECONDARY METALS RECYCLERS AND SALVAGE YARDS WHEN PURCHASING CERTAIN MOTOR VEHICLES.

Chairman Jordan recognized Representative Pittman to speak on the bill.

House Bill 479 would clarify the liability of secondary metal recyclers and salvage yards when purchasing certain motor vehicles

The chair recognized Ed Turlington, of Brooks Pierce, to speak on the bill.

After a short discussion, the chair moved to re-calendar the bill for vote next meeting.

The proposed committee substitute for House Bill 641 and summary are provided (Attachment VII and Attachment VIII)
HOUSE BILL 641: AN ACT TO REVISE THE STATUTES GOVERNING BAIL BONDSMEN BY CLARIFYING CERTAIN DEFINITIONS, BY CLARIFYING THE STATUTES GOVERNING RETURN OF PREMIUM, ARREST ORDERS, AND APPOINTMENT OF SURETY BONDSMEN, BY BROADENING THE ENTITIES WHO MAY PROVIDE CONTINUING EDUCATION, AND BY MAKING VARIOUS OTHER CHANGES TO THE BAIL BONDSMEN LAWS.

Chairman Jordan recognized Representative Reives, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

The Proposed Committee Substitute (PCS) for House Bill 641 would revise the statutes governing bail bondsmen by clarifying certain definitions, by clarifying the statutes governing return of premium, arrest orders, and appointment of surety bondsmen, by broadening the entities who may provide continuing education, and by making various other changes to the bail bondsmen laws.

Chairman Jordan recognized Representative Reives to speak on the bill.

The chair recognized Representative Reives, who moved to amend the bill. (Attachment IX). The motion passed without dissent.

The chair recognized Mark Black, of the North Carolina Bail Bonds Agency, to speak on the bill.

After a short discussion, the chair moved to re-calendar the bill for vote next meeting.

House Bill 880 and summary are provided (Attachment X and Attachment XI)
HOUSE BILL 880: AN ACT AUTHORIZING COMPANY POLICE OFFICERS TO USE APPROPRIATE AND REASONABLE FORCE TO KEEP A RESPONDENT AT THE FACILITY WHERE THE RESPONDENT IS TO OBTAIN AN EXAMINATION BY A PHYSICIAN OR PSYCHOLOGIST PURSUANT TO COURT ORDER.

Chairman Blust recognized Representative Jordan to speak on the bill.

House Bill 880 would authorize company police officers to use appropriate and reasonable force to keep a respondent at the facility where the respondent is to obtain an examination by a physician or psychologist pursuant to a court order.

After a short discussion, the chair recognized Representative Glazier, who moved for a favorable report. The motion passed on a unanimous voice vote.

House Bill 872 and summary are provided (Attachment XII and Attachment XIII)
HOUSE BILL 872: AN ACT TO ADJUST THE SALARIES PAID TO ADMINISTRATIVE LAW JUDGES.

Chairman Blust recognized Representative Jordan to speak on the bill.

House Bill 872 adjusts the salaries of administrative law judges. The salary of the Chief Administrative Law Judge shall be the same as superior court judges (was district court judges). The salary of a Senior Administrative Law Judge shall be the same as district attorneys (was 95% of the salary of the Chief Administrative Law Judge). The salary of other administrative law judges shall be the same as district court judges (was 90% of the salary of the Chief Administrative Law Judge).

After a short discussion, the chair recognized Representative Jordan, who moved for a favorable report, with a serial referral to Appropriations. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 879 and a summary are provided (Attachment XIV and Attachment XV)
HOUSE BILL 879: AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE CODE IN REGARD TO DUE PROCESS PROTECTIONS, REENTRY OF JUVENILES IN THE DELINQUENCY SYSTEM, AND CONFINEMENT OF JUVENILES.

Chairman Jordan recognized Committee Staff to speak on the bill.

House Bill 879 would make various changes to the juvenile code in regard to due process protections, reentry of juveniles in the delinquency system, and confinement of juveniles.

The chair recognized Representative Jordan, who moved to amend the bill. (Attachment XVI). The motion passed without dissent.

The chair recognized Representative Jordan, who moved to amend the bill. (Attachment XVII). The motion passed without dissent.

The chair recognized Representative Stam, who moved to amend the bill. (Attachment XVIII). The motion passed without dissent.

The chair recognized Representative Jordan, who moved to amend the bill. (Attachment XIX). The motion passed without dissent.

The chair recognized Eric Zogry, State Juvenile Defender, to speak in favor of the bill.

The chair recognized Eddie Caldwell, of the NC Sheriff's Association, to speak on the bill.

The chair recognized William Lassiter, of NC Department of Public Safety, to speak on the bill.

After a short discussion, the chair recognized Representative McGrady who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 446 and a summary are provided (Attachment XX and Attachment XXI)
HOUSE BILL 446: AN ACT TO AMEND THE STATUTES GOVERNING BAIL BONDSMEN TO INCREASE THE AGE OF QUALIFICATION FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER, TO LENGTHEN THE TIME LIMIT FOR THE RETURN OF SECURITY TO INCLUDE THE TIME PERIOD IN WHICH AN APPEAL FROM DISTRICT COURT MAY BE FILED, TO REQUIRE THE COMMISSIONER OF INSURANCE TO RETURN THE AMOUNT OF A BONDSMAN'S SECURITY DEPOSIT ABOVE OUTSTANDING BOND LIABILITY IN EVENT THE BONDSMAN IS KILLED OR CEASES WRITING BONDS, AND TO ALLOW A BONDSMAN TO HAVE ACCESS TO THE ADMINISTRATIVE OFFICE OF THE COURTS' CIVIL INFORMATION SYSTEMS.

Chairman Jordan recognized Representative Reives, who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Jordan to speak on the bill.

House Bill 446 amends the law governing the licensure of bail bondsmen to increase the minimum age to be eligible for a license, to extend the time limit for the return of collateral security to include the time period in which an appeal from district court may be filed, and to require the Commissioner of Insurance to return the amount of a bondsman's security deposit above outstanding bond liability in the event the bondsman ceases writing bonds. The Proposed Committee Substitute (PCS) grandfathers current licensees who are under the age of 21 so that they are not subject to the new minimum age requirement, deletes former Sections 4 and 5 which appeared in the First Edition of the bill, and allows bondsmen to have access to certain civil information systems of the Administrative Office of the Courts (AOC).

After a short discussion, the chair recognized Representative Jordan who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 876 and summary are provided (Attachment XXII and Attachment XXIII)
HOUSE BILL 876: AN ACT TO REQUIRE A SEARCH WARRANT TO OBTAIN THE LOCATION INFORMATION OF A CELL PHONE OR OTHER ELECTRONIC DEVICE.

House Bill 876 would require a search warrant to obtain the location information of a cell phone or other electronic device except in certain circumstances.

Chairman Blust recognized Representative Jordan to speak on the bill.

After a short discussion, the chair appointed Representatives Faircloth, Hurley, Jordan and Glazier to a subcommittee on H876 to convene over the weekend.

There being no further business, Chairman Blust adjourned the meeting at 2:35 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

Corrected #5: H641 Removed

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 II** will meet as follows:

DAY & DATE: Wednesday, April 22, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative Jordan will preside**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 477	LEO Privacy Protection.	Representative Malone Representative Saine Representative Faircloth Representative McNeill
HB 872	Administrative Law Judges' Salaries.	Representative Jordan
HB 876	Cell Phone Location Tracking.	Representative Jordan Representative Glazier Representative Jeter Representative Brockman
HB 880	Detain Respondents for First Examinations.	Representative Jordan Representative Elmore Representative Faircloth Representative Floyd
HB 446	Amend Statutes Governing Bail Bondsmen.	Representative Jordan Representative Wray Representative R. Turner Representative Schaffer
HB 479	Auto Salvage Dealer Protection Act.	Representative Pittman Representative Speciale Representative Ford Representative Saine
HB 879	Juvenile Code Reform.	Representative Jordan Representative Glazier Representative McGrady Representative Avila

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:02 AM on Wednesday, April 22, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

Jennie Thurlow
733-5781

ATTENDANCE

House Committee on Judiciary II

DATES	4-22-15														
Rep. Jonathan C. Jordan – Chair	✓														
Rep. John M. Blust– Chair	✓														
Rep. John Faircloth – Vice Chair	✓														
Rep. Rick Glazier – Vice Chair	✓														
Rep. Pat Hurley – Vice Chair	✓														
Rep. Chuck McGrady – Vice Chair	✓														
Rep. Henry Michaux Jr. – Vice Chair	✓														
Rep. Paul Stam – Vice Chair	✓														
Rep. Dana Bumgardner	✓														
Rep. Debra Conrad															
Rep. Joe Queen															
Rep. Robert Reives, II	✓														
Rep. Stephen Ross															
Rep. Jason Saine															
Rep. Brad Salmon	✓														

House Committee on Judiciary II
Wednesday, April 22, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Reggie Sills**
2. **Marvin Lee**
3. **Terry McCraw**
4. **Chris McCracken**

I

VISITOR REGISTRATION SHEET

Judiciary II — 4/22/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TJ Bugbee	NP
Andy Walsh	SA
Jerry P. Pitman	NCAPI
Kim Howes	NC OJD
Eric Zogry	NC OJD
Corye Dunn	DRNC
Annalise Dolph	DL
David Freed	NB
Robert Sawyer	NC DMV
Hope Mozingo	NCDMV
Kelly Thomas	DMV

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Casperini	NCMS
Tom Bienes	PFFPNC
BRIAN LEWIS	New Frame LLC
Jason Joyner	New Frame LLC
	—

VISITOR REGISTRATION SHEET

J II — 4/22/15

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	NC Sheriffs' Assn.

II

Wednesday, April 22 JUDICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Pira Apputhurai	Mecklenburg	William Brawley
Davis Privette	Guilford	John Faircloth

II

Committee Sergeants at Arms

NAME OF COMMITTEE HOUSE COMM ON JUDICIARY II

DATE: 04-22-15 Room: 421

House Sgt-At Arms:

1. Name: REGGIE SILLS
2. Name: MARVIN LEE
3. Name: TERRY McCRAW
4. Name: CHRIS McCRACKEN
5. Name: _____

Senate Sgt-At Arms:

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

1 Date 4/22

Bill Number 477

PCS Yes

Motion to be before the committee by Blust

Rep. Malone explained the bill.

Discussion on the Bill (YES or NO)

Amendments: _____

Rep. _____ motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report _____ Unfavorable to original bill, favorable to PCS

_____ No vote

✓ Other: PCS + Recalendar

Serial referral to: _____

Speakers:

Handouts:

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 477*
PROPOSED COMMITTEE SUBSTITUTE H477-CSSA-40 [v.1]

4/21/2015 9:18:48 PM

Short Title: LEO Privacy Protection. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CITIES AND COUNTIES TO REMOVE PERSONAL INFORMATION FROM RECORDS AVAILABLE ON INTERNET WEB SITES MAINTAINED BY COUNTIES AND CITIES WHEN REQUESTED BY CERTAIN LAW ENFORCEMENT PERSONNEL, PROSECUTORS, AND JUDICIAL OFFICERS AND TO EXEMPT GOVERNMENT ISSUED MOBILE TELEPHONE NUMBERS OF PUBLIC SAFETY PERSONNEL FROM DISCLOSURE AS A PUBLIC RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-148.2. Removal of personal information from public Web sites; law enforcement personnel and others.**

(a) Each county shall develop and make available a process by which a nonelected official listed below may request that the county remove that individual's personal information, including address and phone number, from any Internet Web site maintained by the county and available to the general public, including local tax records:

(1) A federal, State, or local law enforcement officer.
(2) A State criminal magistrate.
(3) An assistant district attorney.
(4) A prosecutor employed by the North Carolina Department of Justice.
(5) A United States Attorney or Assistant United States Attorney.
(6) A federal judge.

(b) The request to remove personal information must specify the personal information to be removed from the Web site. The request is not a public record as defined by G.S. 132-1 and the county shall keep the request confidential. The county must remove the information if properly requested under this section. Information removed from the Web site continues to be a public record if it would otherwise be subject to disclosure under Chapter 132 of the General Statutes.

(c) A county and its officers, officials, employees, and agents, both past and present, in their official and individual capacity, shall be immune and held harmless from liability in any action brought by or on behalf of any person injured or harmed by the action or inaction, in good faith, of the county or its officers, officials, employees, and agents in implementing the provisions of this section. However, if the actions of an officer, official, employee, or agent which result in harm were not within the course and scope of the duties of the officer, official,

employee, or agent, the officer, official, employee, or agent may be subject to liability as an individual to the extent permitted by the laws of this State.

(d) The provisions of this section shall not apply to any Internet Web site maintained by the register of deeds."

SECTION 2. Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-208.2. Removal of personal information from public Web sites; law enforcement personnel and others.**

(a) Each city shall develop and make available a process by which a nonelected official listed below may request that the city remove that individual's personal information, including address and phone number, from any Internet Web site maintained by the city and available to the general public, including local tax records:

(1) A federal, State, or local law enforcement officer.

(2) A State criminal magistrate.

(3) An assistant district attorney.

(4) A prosecutor employed by the North Carolina Department of Justice.

(5) A United States Attorney or Assistant United States Attorney.

(6) A federal judge.

(b) The request to remove personal information must specify the personal information to be removed from the Web site. The request is not a public record as defined by G.S. 132-1 and the city shall keep the request confidential. The city must remove the information if properly requested under this section. Information removed from the Web site continues to be a public record if it would otherwise be subject to disclosure under Chapter 132 of the General Statutes.

(c) A city and its officers, officials, employees, and agents, both past and present, in their official and individual capacity, shall be immune and held harmless from liability in any action brought by or on behalf of any person injured or harmed by the action or inaction, in good faith, of the city or its officers, officials, employees, and agents in implementing the provisions of this section. However, if the actions of an officer, official, employee, or agent which result in harm were not within the course and scope of the duties of the officer, official, employee, or agent, the officer, official, employee, or agent may be subject to liability as an individual to the extent permitted by the laws of this State."

SECTION 3. G.S. 132-1.7 is amended by adding a new subsection to read:

"(b1) Public records, as defined in G.S. 132-1, shall not include mobile telephone numbers issued by a local, county, or State government to any of the following:

(1) A sworn law enforcement officer or non-sworn employee of a public law enforcement agency.

(2) An employee of a fire department.

(3) Any employee whose duties include responding to an emergency.

SECTION 4. The process required by Section 1 and Section 2 of this act shall be developed and implemented by October 1, 2015.

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

IV

HOUSE BILL 477:
LEO Privacy Protection

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 22, 2015
Introduced by:	Reps. Malone, Saine, Faircloth, McNeill	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H477-CSSA-40		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 477 would require cities and counties to remove personal information from records available on internet web sites maintained by counties and cities when requested by certain law enforcement personnel, prosecutors, and judicial officers and exempt government issued mobile telephone numbers of public safety personnel from disclosure as a public record.***

BILL ANALYSIS:

Section 1 would require counties to develop a process allowing certain nonelected officials to request that personal information be removed from county websites. The information removed from the website continues to be public record if it would otherwise be subject to disclosure. The request to remove personal information from the website is not public record. The county and its officials and employees are immune from liability for good faith action or inaction unless the action was not within the course and scope of their duties, in which case they may be held liable individually. This section would not apply to web sites maintained by a register of deeds.

Section 2 would enact the same provisions as Section 1, but applicable to websites maintained by cities.

Section 3 would provide that mobile telephone numbers issued by a local, county, or State government to certain public safety personnel are not public record.

Section 4 requires counties and cities to develop and implement the process to administer the website provisions by October 1, 2015.

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

O. Walker Reagan
Director

H477-SMSA-42 CSSA-40 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

2 Date 4/22

Bill Number H479

PCS NO

Motion to be before the committee by _____

Rep. Pittman explained the bill.

Discussion on the Bill YES or NO

Amendments: _____

Rep. _____ motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report _____ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Ed Turlington - Brooks Pierce

Handouts:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

V

H 1

HOUSE BILL 479

Short Title:	Auto Salvage Dealer Protection Act.	(Public)
Sponsors:	Representatives Pittman, Speciale, Ford, and Saine (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LIABILITY OF SECONDARY METALS RECYCLERS AND SALVAGE YARDS WHEN PURCHASING CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-62.1 reads as rewritten:

"**§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.**

...

(c) Violations. – Any person who knowingly and willfully violates any of the provisions of this section, or any person who falsifies the statement required under subsection (a)(1)g. of this section, shall be guilty of a Class I felony and shall pay a minimum fine of one thousand dollars ($1,000). The court may order a defendant seller under this subsection to make restitution to the secondary metals ~~recycler or~~recycler, salvage ~~yard or~~yard, lien ~~holder~~holder, or other registered owner of the motor vehicle for any damage or loss caused by the defendant seller arising out of an offense committed by the defendant seller.

(c1) Liability. – A secondary metals recycler or salvage yard shall not be liable either civilly or criminally for any loss of or damage to a motor vehicle purchased in accordance with the requirements set forth in subsections (a) and (a1) of this section.

...."

SECTION 2. This act is effective when it becomes law and applies to motor vehicles purchased on or after that date.

HOUSE BILL 479:
Auto Salvage Dealer Protection Act

VI

2015-2016 General Assembly

Committee:	House Judiciary III	**Date:**	April 21, 2015
Introduced by:	Reps. Pittman, Speciale, Ford, Saine	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 479 would clarify the liability of secondary metal recyclers and salvage yards when purchasing certain motor vehicles.***

CURRENT LAW: G.S. 20-62.1 requires secondary metal recyclers and salvage yards to follow specific procedures when purchasing motor vehicles for the purposes of dismantling and wrecking such motor vehicles to recover scrap metal or for the sale of parts only. The statute also makes violations of this law punishable as a Class I felony.

BILL ANALYSIS:

House Bill 479 amends G.S. 20-62.1 (c) to clarify a defendant seller may be ordered to make restitution to the secondary metals recycler, salvage yard, lien holder, or other registered owner of the motor vehicle for damage or loss caused by an offense under this subsection.

This bill also adds a new subsection providing a secondary metals recycler or salvage yard is not liable civilly or criminally for any loss of damage to a motor vehicle when purchased in accordance with G.S. 20-62.1(a) and (a1).

EFFECTIVE DATE: This act is effective when it becomes law and applies to motor vehicles purchased on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

3 Date 4/22

Bill Number H641

PCS Yes

Motion to be before the committee by Reives

Rep. Reives explained the bill.

Discussion on the Bill YES or NO

Amendments: IX

Rep. _____ motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report _____ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Mark Black - NC Bail Agency

Handouts:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

VII

H D

HOUSE BILL 641
PROPOSED COMMITTEE SUBSTITUTE H641-CSSA-32 [v.1]

4/20/2015 10:44:10 AM

Short Title: Amend Bail Bondsmen Statutes. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO REVISE THE STATUTES GOVERNING BAIL BONDSMEN BY CLARIFYING CERTAIN DEFINITIONS, BY CLARIFYING THE STATUTES GOVERNING RETURN OF PREMIUM, ARREST ORDERS, AND APPOINTMENT OF SURETY BONDSMEN, BY BROADENING THE ENTITIES WHO MAY PROVIDE CONTINUING EDUCATION, AND BY MAKING VARIOUS OTHER CHANGES TO THE BAIL BONDSMEN LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following definitions apply in this Article:

...

(1a) Address. – Any dwelling, home, building, lodging, or "address of record" as defined in G.S. 15A-531(2)(a) where a principal may occupy or take up residence.

(1b) Approved provider. – Either of the following types of entities:

a. An entity otherwise qualified to provide continuing education and which has offered such instruction for a period of three years or more and to at least 500 students.

b. An entity otherwise qualified to provide prelicensing instruction which has provided such instruction for a period of three years or more and to at least 200 students.

...

(3a) Cash deposit. – The posting of coin, currency, or valid appearance bond by an accommodation bondsman, an insurer, a professional bondsman, or runner in order to effect pretrial release for a defendant for which a release order indicates a cash deposit or United States currency.

...

(6a) Personal identification. – Date of birth, Social Security number, drivers license number, alien registration number, or any other similar means of distinguishing between individuals.

...."

SECTION 2. G.S. 58-71-20 reads as rewritten:

"**§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.**

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the sheriff of the county in which the

defendant is bonded to appear or to the sheriff where the defendant was bonded; in such case the full premium shall be returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if any indemnitor on the defendant's bond presents a notarized written request, with notice, to the surety or surety's agent to terminate the bond and the indemnitor's liability, and the surety then surrenders the defendant, or if the defendant does any of the following:

(1) Willfully fails to pay the premium to the surety or willfully fails to make a premium payment under the agreement specified in G.S. 58-71-167.

(2) Changes his or her address without notifying the surety before the address change.

(3) Physically hides ~~from~~ from, avoids contact with, or makes himself or herself unavailable, in any manner, to the surety.

(4) Leaves the State without the permission of the surety.

(5) Violates any order of the court.

(6) Fails to disclose information or provides false information regarding any failure to appear in court, any previous felony convictions within the past 10 years, or any charges pending in any State or federal court.

(7) Knowingly provides the surety with incorrect personal identification, or uses a false name or alias."

SECTION 3. G.S. 58-71-20 reads as rewritten:

"**§ 58-71-30. Arrest of defendant for purpose of surrender.**

For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by his written authority endorsed on a certified copy of the undertaking, may request any judicial officer to order arrest of the defendant. Upon receipt of the request by surety or the surety's agent and the certified copy of the undertaking, the judicial officer shall order arrest of the defendant."

SECTION 4. G.S. 58-71-71 reads as rewritten:

"**§ 58-71-71. Examination; educational requirements; penalties.**

(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least 12 hours of education as provided by ~~the North Carolina Bail Agents Association~~an approved provider in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman.

(b) Each year every licensee shall complete at least three hours of continuing education as provided by ~~the North Carolina Bail Agents Association~~an approved provider in subjects related to the duties and responsibilities of a runner or bail bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals.

...

(d) Educational courses offered by ~~the North Carolina Bail Agents Association~~approved providers under this section must be approved by the Commissioner before they may be offered. Before approving a course, the Commissioner must be satisfied that the course will enhance the professional competence and professional responsibility of bail bondsmen and runners. ~~The North Carolina Bail Agents Association~~Approved providers shall not offer, sponsor, or conduct any course under this section unless the Commissioner has given authorization to do so.

...."

SECTION 5. G.S. 58-71-141 reads as rewritten:

"**§ 58-71-141. Appointment of bail bondsmen; affidavit required.**

(a) Before receiving an appointment, a surety bondsman shall submit to the Commissioner an affidavit, signed under oath, by the surety bondsman and by any former insurer, stating that the surety bondsman does not owe any premium or unsatisfied judgment to any insurer and that the bondsman agrees to discharge all outstanding forfeitures and judgments on bonds previously written. The affidavit shall be in a form prescribed by the Commissioner and shall be submitted by the surety bondsman to the former insurer. If the surety bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer shall submit a notice, with supporting documents, to the appointing insurer, the surety bondsman, and the Commissioner, which states, under oath, that the surety bondsman has failed to satisfy, in a timely manner, the forfeitures and judgments on bonds written by the surety bondsman and that the former insurer has satisfied the forfeiture or judgment from its own funds. If the surety bondsman does not owe any premium or unsatisfied judgments, a former insurer must release the bondsman by certifying that status to the Commissioner via e-mail, fax, or mail and providing a corresponding notice of release to the bondsman within three days of receipt of the surety bondsman's affidavit. ~~The~~ Otherwise, the former insurer shall submit the notice and supporting ~~documents~~ documents, including evidence of owed premium or unsatisfied judgments, to the appointing insurer, the surety bondsman, and the Commissioner within ~~30~~ 10 days after the former insurer receives the affidavit from the surety bondsman. Upon receipt of the notice and supporting documents, the appointing insurer shall immediately cancel the surety bondsman's appointment. The surety bondsman may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds written by the surety bondsman have been discharged. The appointing insurer or surety bondsman may, within 10 days after receiving the notice and supporting documents from the former insurer, appeal to the Commissioner. For the purposes of this section, owed premium and unsatisfied judgments only pertain to insurers and not general agents, managing general agents, or supervising agents.

...."

SECTION 6. G.S. 15A-531(4) reads as rewritten:

"(4) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond signed by any surety, as defined in G.S. 15A-531(8)a. and b., is considered the same as a cash deposit or United States currency for all purposes in this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash."

SECTION 7. This act becomes effective October 1, 2015.

VIII

HOUSE BILL 641:
Amend Bail Bondsmen Statutes

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Reives, Saine	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H641-CSSA-32		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 641 would revise the statutes governing bail bondsmen by clarifying certain definitions, by clarifying the statutes governing return of premium, arrest orders, and appointment of surety bondsmen, by broadening the entities who may provide continuing education, and by making various other changes to the bail bondsmen laws.

BILL ANALYSIS:

Section 1 of the PCS would add new definitions to G.S. 58-71-1 for terms used in Article 71 of Chapter 58, Bail Bondsmen and Runners. The new definitions are for "address", "approved provider", "cash deposit", and "personal identification".

Section 2 would provide that if an indemnitor submits a notarized written request, with notice to the surety, to terminate the bond and the indemnitor's liability, and the surety then surrenders the defendant, the defendant may be surrendered without the return of premium for the bond.

Section 3 would require a judicial officer to order the defendant's arrest upon receipt of a request by the surety and the certified copy of the undertaking.

Section 4 would amend the statute requiring bail bondsmen to complete 12 hours of education before licensing and 3 hours of annual continuing education to reflect that the education has to be provided by "an approved provider". The current law specifies the North Carolina Bail Agents Association.

Section 5 would provide that if a surety bondsman does not owe any premium or unsatisfied judgments, a former insurer must release the bondsman by certifying that status to the Commissioner via e-mail, fax, or mail and providing a corresponding notice of release to the bondsman within 3 days of receipt of the surety bondsman's affidavit. If the surety bondsman does owe premiums or unsatisfied judgments, the PCS changes the time period for submitting notice and supporting documents, including evidence of the owed premiums or unsatisfied judgments, from 30 days to 10 days after the former insurer receives the affidavit from the surety bondsman.

Section 6 would make a clarifying change to the definition of "bail bond" in G.S. 15A-531.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

O. Walker Reagan
Director

H641-SMSA-40 CSSA-32 V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 641

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

H641-ASA-19 [v.1]

Amends Title [NO]
H641-CSSA-32

Date _____,2015

Representative _____

moves to amend the bill on page 1, lines 16-22
by rewriting those lines to read:
"(1b) Approved provider. – An entity who has been issued a Certificate of Authority by the Commissioner to provide either bail bond continuing education or pre-licensing courses in this State in accordance with G.S. 58-71-72.";

And on page 2, line 3
By deleting "if any indemnitor" and inserting "if all indemnitors and payers of bail bond premium";

And on page 2, lines 11-12
By rewriting those lines to read:
"(3) Physically hides from the surety. This includes non-compliance with any signed, written agreement between the defendant and the surety outlining requirements for communications with the surety."

and on page 3, line 25
by rewriting that line to read:
"pertain to insurers.";

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 641

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

H641-ASA-19 [v.1]

Amends Title [NO]
H641-CSSA-32

Date _____,2015

Representative Reives

moves to amend the bill on page 1, lines 16-22
by rewriting those lines to read:
"(1b) Approved provider. – An entity who has been issued a Certificate of Authority by the Commissioner to provide either bail bond continuing education or pre-licensing courses in this State in accordance with G.S. 58-71-72.";

And on page 2, line 3
By deleting "if any indemnitor" and inserting "if all indemnitors and payers of bail bond premium";

And on page 2, lines 11-12
By rewriting those lines to read:
"(3) Physically hides from the surety. This includes non-compliance with any signed, written agreement between the defendant and the surety outlining requirements for communications with the surety."

and on page 3, line 25
by rewriting that line to read:
"pertain to insurers.";

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

#4 Date 4/22

Bill Number H880

PCS _____

Motion to be before the committee by _____

Rep. Jordan explained the bill.

Discussion on the Bill YES or NO

Amendments: ~~XXXX~~

Rep. Glazier motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report ✓ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Handouts:

X

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 880

Short Title:	Detain Respondents for First Examinations.	(Public)
Sponsors:	Representatives Jordan, Elmore, Faircloth, and Floyd (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT AUTHORIZING COMPANY POLICE OFFICERS TO USE APPROPRIATE AND REASONABLE FORCE TO KEEP A RESPONDENT AT THE FACILITY WHERE THE RESPONDENT IS TO OBTAIN AN EXAMINATION BY A PHYSICIAN OR PSYCHOLOGIST PURSUANT TO COURT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-251 is amended by adding a new subsection to read:

"(i) If a respondent is being temporarily detained in accordance with G.S. 122C-261(d), 122C-263(a), or 122C-263(d)(2) and the law enforcement officer vacates the facility after finding, in collaboration with the facility, that the respondent is safe to be temporarily detained under the appropriate supervision provided by the facility, then an individual commissioned to act as a company police officer under G.S. 74E-2(b) who is employed by a hospital certified as a company police agency under G.S. 74E-2(b) may use appropriate and reasonable force and means to accomplish either of the following:

(1) Keep the respondent at the facility where the respondent is to be detained.

(2) Return the respondent to the facility where the respondent is to be detained, if pursuant to a continuous and immediate pursuit."

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

XT

HOUSE BILL 880:
Detain Respondents for First Examinations

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 21, 2015
Introduced by:	Reps. Jordan, Elmore, Faircloth, Floyd	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 880 would authorize company police officers to use appropriate and reasonable force to keep a respondent at the facility where the respondent is to obtain an examination by a physician or psychologist pursuant to a court order.***

CURRENT LAW: G.S. 122C-251 governs the transportation of respondents for involuntary commitment proceedings. The law provides the parameters for who should transport and the requirements for officers engaged in transporting respondents under this statute.

BILL ANALYSIS:

House Bill 880 adds a new subsection to G.S. 122C-251 which would authorize a certified company police officer employed by a hospital may use *appropriate and reasonable force* to (1) keep the respondent at the facility where detained; or (2) return the respondent to the facility where detained if pursuant a continuous and immediate pursuit.

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

O. Walker Reagan
Director

* H 8 8 0 - S M T V - 2 5 E 1 - V 2 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

5 Date 4/22

Bill Number #872

PCS _____

Motion to be before the committee by _____

Rep. Jordan explained the bill.

Discussion on the Bill (YES or NO)

Amendments: _____

Rep. Jordan motioned for:

✓ Favorable Report _____ Adoption

_____ Unfavorable Report ✓ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: Approp.

Speakers:

Handouts:

XII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 872

Short Title:	Administrative Law Judges' Salaries.	(Public)
Sponsors:	Representative Jordan (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE SALARIES PAID TO ADMINISTRATIVE LAW JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-751 reads as rewritten:

"**§ 7A-751. Agency head; powers and duties; salaries of Chief Administrative Law Judge and other administrative law judges.**

(a) The head of the Office of Administrative Hearings is the Chief Administrative Law Judge, who shall serve as Director of the Office. The Chief Administrative Law Judge has the powers and duties conferred on that position by this Chapter and the Constitution and laws of this State and may adopt rules to implement the conferred powers and duties.

The salary of the Chief Administrative Law Judge shall be the same as that fixed from time to time for ~~district~~superior court judges. The salary of a Senior Administrative Law Judge shall be ~~ninety-five percent (95%) of the salary of the Chief Administrative Law Judge.~~the same as that fixed from time to time for district attorneys.

In lieu of merit and other increment raises, the Chief Administrative Law Judge and any Senior Administrative Law Judge shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the North Carolina Human Resources Act.

(b) The salary of other administrative law judges shall be ~~ninety percent (90%) of the salary of the Chief Administrative Law Judge.~~the same as that fixed from time to time for district court judges.

In lieu of merit and other increment raises, an administrative law judge shall receive longevity pay on the same basis as is provided to employees who are subject to the North Carolina Human Resources Act."

SECTION 2. This act becomes effective July 1, 2015.

XIII

HOUSE BILL 872:
Administrative Law Judges' Salaries

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 22, 2015
Introduced by:	Rep. Jordan	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 872 adjusts the salaries of administrative law judges. The salary of the Chief Administrative Law Judge shall be the same as superior court judges (was district court judges). The salary of a Senior Administrative Law Judge shall be the same as district attorneys (was 95% of the salary of the Chief Administrative Law Judge). The salary of other administrative law judges shall be the same as district court judges (was 90% of the salary of the Chief Administrative Law Judge).***

EFFECTIVE DATE: The act becomes effective July 1, 2015.

O. Walker Reagan
Director

H872-SMRN-31 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

8 Date 4/22

Bill Number H879

PCS _____

Motion to be before the committee by _____

Rep. Staff explained the bill.

Discussion on the Bill (YES) or NO

Amendments: ~~XX, XXI, XXII, XXIII~~

Rep. McGrady motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report ✓ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Eric Zogry –
Eddie Caldwell – Sheriffs
Lassiter – DPS

Handouts:

XIV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 879

Short Title:	Juvenile Code Reform.	(Public)
Sponsors:	Representatives Jordan, Glazier, McGrady, and Avila (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE CODE IN REGARD TO DUE PROCESS PROTECTIONS, REENTRY OF JUVENILES IN THE DELINQUENCY SYSTEM, AND CONFINEMENT OF JUVENILES.

The General Assembly of North Carolina enacts:

PART I. DUE PROCESS CHANGES

SECTION 1.1. G.S. 7B-2101(b) reads as rewritten:

"(b) When the juvenile is less than ~~14~~16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile."

SECTION 1.2. G.S. 7B-2202(f) reads as rewritten:

"(f) If the court does not find probable cause for a felony offense, the court shall:

(1) Dismiss the proceeding, or

(2) If the court finds probable cause to believe that the juvenile committed a lesser included offense that would constitute a misdemeanor if committed by an adult, either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause."

SECTION 1.3. G.S. 7B-2203(d) reads as rewritten:

"(d) If the court does not transfer the case to superior court, the court shall either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause."

SECTION 1.4. Article 24 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-2408.5. Motion to suppress evidence in adjudicatory hearings; procedure; appeal.**

(a) A motion to suppress evidence in court made before the adjudicatory hearing must be in writing and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. The motion must be accompanied by an affidavit containing facts supporting the motion. The affidavit may be based upon personal knowledge, or upon information and belief, if the source of the information and the basis for the belief are stated. The State may file an answer denying or admitting any of the allegations. A copy of the answer

must be served on the juvenile's counsel or the juvenile's parent, guardian, or custodian, if the juvenile has no counsel.

(b) The judge must summarily grant the motion to suppress evidence if:

(1) The motion complies with the requirements of subsection (a) of this section, it states grounds which require exclusion of the evidence, and the State concedes the truth of allegations of fact which support the motion; or

(2) The State stipulates that the evidence sought to be suppressed will not be offered in evidence in any juvenile proceeding.

(c) The judge may summarily deny the motion to suppress evidence if:

(1) The motion does not allege a legal basis for the motion; or

(2) The affidavit does not as a matter of law support the ground alleged.

(d) If the motion is not determined summarily the judge must make the determination after a hearing and finding of facts. Testimony at the hearing must be under oath.

(e) A motion to suppress made during the adjudicatory hearing may be made in writing or orally and may be determined in the same manner as when made before the adjudicatory hearing.

(f) The judge must set forth in the record his or her findings of facts and conclusions of law.

(g) An order finally denying a motion to suppress evidence may be reviewed upon an appeal of a final order of the court in a juvenile matter."

PART II. REDUCE FURTHER ENTRY OF JUVENILES

SECTION 2.1. G.S. 7B-1701 reads as rewritten:

"**§ 7B-1701. Preliminary inquiry.**

When a complaint is received, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

If a complaint against the juvenile has not been previously received, as determined by the juvenile court counselor, the juvenile court counselor shall make reasonable efforts to meet with the juvenile and the juvenile's parent, guardian, or custodian if the offense is divertable.

When requested by the juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

(1) Murder;

(2) First-degree rape or second degree rape;

(3) First-degree sexual offense or second degree sexual offense;

(4) Arson;

(5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;

(6) First degree burglary;

(7) Crime against nature; or

(8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon."

SECTION 2.2. G.S. 7B-2404 reads as rewritten:

"**§ 7B-2404. Participation of the ~~prosecutor.~~prosecutor; voluntary dismissal.**

(a) A prosecutor shall represent the State in contested delinquency hearings including first appearance, detention, probable cause, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings.

(b) A prosecutor may dismiss any allegations stated in a juvenile petition with or without leave by entering an oral dismissal in open court at any time, or by filing a written dismissal with the clerk. The juvenile, the juvenile's parent, guardian, or custodian, and the juvenile's counsel shall be notified of the dismissal by the prosecutor, either in open court or by being served with the written dismissal. In addition, the written dismissal shall be served on (i) the chief court counselor or his or her designee, and (ii) if the juvenile is being held in a detention center, the director of the detention center. If the prosecutor dismisses the petition with leave because of the failure of the juvenile to appear in court, the prosecutor may refile the petition if the juvenile is apprehended or apprehension is imminent."

SECTION 2.3. G.S. 7B-2507(a) reads as rewritten:

"(a) Generally. – The delinquency history level for a delinquent juvenile is determined by calculating the sum of the points assigned to each of the juvenile's prior adjudications and to the juvenile's probation status, if any, that the court finds to have been proved in accordance with this section. For the purposes of this section, a prior adjudication is an adjudication of an offense that occurs before the adjudication of the offense before the court."

SECTION 2.4. G.S. 7B-2510 reads as rewritten:

"**§ 7B-2510. Conditions of probation; violation of probation.**

...

(c) An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the court may extend it for an additional period of one year after notice and a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile. At the discretion of the court, the hearing to determine to extend probation may occur after the expiration of an order of probation if the juvenile fails to appear in court.

(d) On motion of the juvenile court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing.

(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new ~~disposition at the next higher level on the disposition chart in G.S. 7B-2508.~~disposition. In the court's discretion, ~~part of the new disposition may include an~~ the court may order a new disposition at the next higher level on the disposition chart or order a term of confinement in a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-2508.

(f) A court shall not order a Level 3 disposition for violation of the conditions of probation by a juvenile adjudicated delinquent for an offense classified as minor under G.S. 7B-2508."

SECTION 2.5. G.S. 7B-2512 reads as rewritten:

"**§ 7B-2512. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) The court shall include information at the time of issuing the dispositional order, either orally in court or in writing, on the expunction of juvenile records as provided for in G.S. 7B-3200 that are applicable to the dispositional order."

SECTION 2.6. G.S. 7B-3200 reads as rewritten:

"**§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined.**

(a) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated undisciplined for expunction of all records of that adjudication.

(b) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

(1) ~~The~~Except for an offense eligible for expunction under subsection (e1) of this section, the offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.

(2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult 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.

Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult shall not be expunged.

...

(e1) Any person who was adjudicated delinquent for a minor offense as defined in G.S. 7B-2508 and has attained the age of 16 years may file a petition in the court in which the person was adjudicated to be delinquent for expunction of all juvenile records of the juvenile having been adjudicated delinquent for the minor offense. Prior to the filing of a petition under this subsection, at least 18 months must have elapsed since the person was released from juvenile court jurisdiction and the person must not have subsequently been adjudicated delinquent or convicted as an adult 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. The petition shall also satisfy the conditions set forth in subdivisions (1) through (3) of subsection (c) of this section. The petition shall be served on the chief court counselor in the district where the juvenile petition was filed. The chief court counselor shall have 10 days thereafter in which to file a written objection in the court. If no objection is filed, the court may grant the petition without a hearing. If an objection is filed or the court so directs, a hearing shall be scheduled and the chief court counselor shall be notified as to the date of the hearing. If the court finds that the petitioner satisfies the conditions specified herein, the court shall order the clerk and the appropriate law enforcement agencies to expunge their records of the adjudication, including all references to arrests, complaints, referrals, juvenile petitions, and orders. The clerk shall forward a certified copy of the order of expunction to the sheriff, chief of police, or other appropriate law enforcement agency.

...."

PART III. JUVENILE CONFINEMENT

SECTION 3.1. G.S. 7B-1903 reads as rewritten:

"**§ 7B-1903. Criteria for secure or nonsecure custody.**

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult. An order

for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and that:

(1) The juvenile is a runaway and consents to nonsecure custody; or

(2) The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

(1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.

(2) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.

(2a) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with a violation of G.S. 20-138.1 or G.S. 20-138.3.

(3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.

(4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.

(5) The juvenile is an absconder from (i) any residential facility operated by the Division or any detention facility in this State or (ii) any comparable facility in another state.

(6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.

(7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.

(8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays.

(c) When a juvenile has been adjudicated delinquent, the court may order secure custody pending the dispositional hearing or pending placement of the juvenile pursuant to G.S. 7B-2506. As long as the juvenile remains in secure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days.

(d) The court may order secure custody for a juvenile who is alleged to have violated the conditions of the juvenile's probation or post-release supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.

(e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this section are met, the court may enter an order directing an officer or other authorized person to assume custody of the juvenile and to take the juvenile to the place designated in the order. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which secure custody is to achieve.

(f) If the court finds that there is a need for an evaluation of a juvenile for medical or psychiatric treatment pursuant to subsection (b) of this section and that juvenile is under 10 years of age and does not have a pending delinquency charge, the law enforcement officer or other authorized person assuming custody of the juvenile shall not use physical restraints during the transport of the juvenile to the place designated in the order, unless in the discretion of the officer or other authorized person, the restraints are reasonably necessary for the safety of the officer or authorized person and the juvenile."

SECTION 3.2. G.S. 7B-2506 reads as rewritten:

"**§ 7B-2506. Dispositional alternatives for delinquent juveniles.**

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

...

(12) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to not more than five 24-hour periods, the timing and imposition of which is determined by the court in its discretion.

...

(20) Order that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods, which confinement shall not be imposed consecutively with intermittent confinement pursuant to subdivision (12) of this section at the same dispositional hearing. The timing and imposition of this confinement shall be determined by the court in its discretion.

...."

PART IV. EFFECTIVE DATE

SECTION 4. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

XV

HOUSE BILL 879:
Juvenile Code Reform

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 22, 2015
Introduced by:	Reps. Jordan, Glazier, McGrady, Avila	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 879 would make various changes to the juvenile code in regard to due process protections, reentry of juveniles in the delinquency system, and confinement of juveniles.***

BILL ANALYSIS:

Part I. Due Process

Section 1.1 would increase the age requirement for a juvenile's parent to be present during interrogation from 14 to 16 years old.

Sections 1.2 & 1.3 would clarify that an adjudicatory hearing is a separate hearing from a probable cause or transfer hearing and may be continued for good cause.

Section 1.4 would codify the process for a motion to suppress evidence.

Part II. Reentry

Section 2.1 would require juvenile court counselors to make reasonable efforts to meet with a juvenile who has not had a previous complaint and who has had a complaint filed for a divertable offense.

Section 2.2 would clarify that the district attorney may dismiss any allegations stated in a juvenile petition, with or without leave, either orally in open court, or in writing with notice.

Section 2.3 would clarify what prior adjudications count in determining delinquency history level.

Section 2.4 would clarify extension of probation must have notice and a hearing and would allow extension after the period of probation has ended if the juvenile fails to appear in court. This section would also clarify that in modifying a disposition for violation of probation, the court may order disposition at the next higher level, but is not required to do so.

Section 2.5 would require the court to provide notice of the ability to expunge juvenile offenses, if applicable.

Section 2.6 would allow a juvenile to expunge adjudications for Class 1, 2, or 3 misdemeanors at age 16 or 18 months after release from juvenile court jurisdiction, whichever is later, rather than having to wait until age 18 as required for all other offenses.

Part III. Juvenile confinement

Section 3.1 would clarify that secure custody review hearings must be conducted every 10 days so long as the juvenile remains in secure custody pending disposition or placement pursuant to a disposition order. Any order for secure custody would be required to include findings of fact that include the evidence relied upon in reaching the decision and the purposes the secure custody is to achieve.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

This section would also require that a juvenile under the age of 10 being transported for medical or psychiatric treatment while in secure custody, not be transported in physical restraints if they have no delinquency charge, unless it is reasonably necessary for the safety of the officer or authorized person and the juvenile.

Section 3.2 would clarify that only the court may order intermittent periods of confinement for a delinquent juvenile.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

XVI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 879

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

H879-ASA-20 [v.1]

Amends Title [NO]
First Edition

Date _____, 2015

Representative Jordan

moves to amend the bill on page 4, line 13
by rewriting that line to read:
"(1) ~~The~~Unless otherwise expunged pursuant to subsection (e1) of";

And on page 6, line 12
By rewriting that line to read:
"of the officer, authorized person, or the juvenile.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT XVII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 879 DATE 4/22/2015

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

COMMITTEE SUBSTITUTE _____

Rep.) Jordan
Sen.)

moves to amend the bill on page 4, line 27-28

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"person was adjudicated to be delinquent for expunction of all juvenile records related to the minor offense for which the juvenile was adjudicated delinquent. Prior to the filing of a petition under.

and on page 4, line 40, by deleting "of the adjudication," and inserting "related to the minor offense for which the juvenile was adjudicated delinquent,"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT XVIII

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 879 DATE 4/24/2015

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Stam

1 moves to amend the bill on page 2, line s 21-22

2 ( ) WHICH CHANGES THE TITLE

3 by inserting the following new subsection between those lines:

4

5 "(h) The provisions of G.S. 15A-974

6 shall apply to this section."

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SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT XIX

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 879 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Jordan
Sen.)

moves to amend the bill on page 3, line 39

( ) WHICH CHANGES THE TITLE

by rewriting that line to read

"twice the term authorized by ~~G.S. 7B-2508.~~ G.S. 7B-2508, in addition to any other Level 2 dispositional option."

and on page 5, line 48

by rewriting that line to read:

"days but may be waived for no more than 30 calendar days only with the consent of the juvenile through counsel for the juvenile either in writing or orally in open court. ~~the order for~~ Continued secure custody shall be in writing with appropriate findings of fact."

and on page 6, lines 3-5

by deleting the underlined language.

and on page 3, line 27

by inserting between "probation" and "if" the following:

"at the next regularly scheduled court date or"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

6 Date 4/22

Bill Number H446

PCS yes

Motion to be before the committee by Reives

Rep. Jordan explained the bill.

Discussion on the Bill YES or NO

Amendments: _____

Rep. Jordan motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report ✓ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Handouts:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 446
PROPOSED COMMITTEE SUBSTITUTE H446-CSRN-17 [v.3]

4/21/2015 8:23:18 PM

Short Title: Amend Statutes Governing Bail Bondsmen. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING BAIL BONDSMEN TO INCREASE THE AGE OF QUALIFICATION FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER, TO LENGTHEN THE TIME LIMIT FOR THE RETURN OF SECURITY TO INCLUDE THE TIME PERIOD IN WHICH AN APPEAL FROM DISTRICT COURT MAY BE FILED, TO REQUIRE THE COMMISSIONER OF INSURANCE TO RETURN THE AMOUNT OF A BONDSMAN'S SECURITY DEPOSIT ABOVE OUTSTANDING BOND LIABILITY IN EVENT THE BONDSMAN IS KILLED OR CEASES WRITING BONDS, AND TO ALLOW A BONDSMAN TO HAVE ACCESS TO THE ADMINISTRATIVE OFFICE OF THE COURTS' CIVIL INFORMATION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-50(b)(1) reads as rewritten:

"(1) Be ~~18~~ 21 years of age or over."

SECTION 2. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within ~~72 hours~~15 days after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars ($1,500), is guilty of a Class I felony. All collateral security, such as personal and real property, subject to be returned must be done so under the same conditions as requested and received by the bail bondsman."

SECTION 3. G.S. 58-71-151 reads as rewritten:

"**§ 58-71-151. Securities held in trust by Commissioner; authority to dispose of same.**

The securities deposited by a professional bondsman with the Commissioner shall be held in trust for the protection and benefit of the holder of bail bonds executed by or on behalf of the undersigned bondsman in this State. Notwithstanding any other provision of law, the Commissioner is authorized to select a bank or trust company as master trustee to hold cash securities to be pledged to the State when deposited with the Commissioner pursuant to statute. Securities may be held by the master trustee in any form that in fact perfects the security interest of the State in the securities. The Commissioner shall by rule establish the manner in

which the master trust shall operate. The master trustee may charge the person making the deposit reasonable fees for services rendered in connection with the operation of the trust, and the assets of the account may be used to pay such charges.

A pro rata portion of the securities shall be returned to the bondsman when the Commissioner is satisfied that the deposit of securities is in excess of the amount required to be maintained with the Commissioner by said bondsman; and all the securities shall be returned if the Commissioner is satisfied that the bondsman has satisfied, or satisfactory arrangements have been made to satisfy, the obligations of the bondsman on all the bondsman's bail bonds written in the State.

If a bondsman discontinues writing bonds due to death, permanent incapacitation, or some other circumstance that results in the bondsman returning the license issued under this Article to the Commissioner and the Commissioner is satisfied that no more bonds can be written against the bondsman's security deposit, the Commissioner shall return the portion of the security deposit in excess of that required to secure the bondsman's outstanding bond liability.

The Commissioner may sell or transfer any and all of said securities or utilize the proceeds thereof for the purpose of satisfying the liabilities of the professional bondsman on bail bonds given in this State on which the bondsman is liable."

SECTION 4. G.S. 58-71-200 reads as rewritten:

"**§ 58-71-200. Bondsman access to criminal ~~court~~and civil records.**

(a) In order to assist licensed sureties and their agents in evaluating potential and current clients for the purposes of bail, the Administrative Office of the Courts shall provide any individual with a current license to act as professional bondsman, surety bondsman, or runner with access to search criminal records in the Administrative Office of the Courts' real-time criminal and civil information systems.

(b) Access granted under subsection (a) of this section shall be limited to information systems containing general criminal and civil case information, as maintained by the clerks of superior court. Access shall not include systems for the production of criminal process by law enforcement officials and judicial officials under G.S. 15A-301.1 or other information not subject to public disclosure.

(c) Access provided pursuant to subsection (a) of this section shall be without charge for individual searches of the Administrative Office of the Courts' criminal and civil information systems. In order to defray the costs of establishing access, the Administrative Office of the Courts shall charge initial setup fees equivalent to its fees for governmental agencies granted access to its systems to each individual granted access pursuant to subsection (a) of this section.

. . . ."

SECTION 5. Section 1 of this is effective when it becomes law and applies to applications for licenses filed on or after that date. The remainder of this act is effective when it becomes law.

XXI

HOUSE BILL 446:
Amend Statutes Governing Bail Bondsmen

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 22, 2015
Introduced by:	Reps. Jordan, Wray, R. Turner, Schaffer	**Prepared by:**	Brad Krehely Committee Counsel
Analysis of:	PCS to First Edition H446-CSRN-17		

SUMMARY: ***House Bill 446 amends the law governing the licensure of bail bondsmen to increase the minimum age to be eligible for a license, to extend the time limit for the return of collateral security to include the time period in which an appeal from district court may be filed, and to require the Commissioner of Insurance to return the amount of a bondsman's security deposit above outstanding bond liability in the event the bondsman ceases writing bonds. The Proposed Committee Substitute (PCS) grandfathers current licensees who are under the age of 21 so that they are not subject to the new minimum age requirement, deletes former Sections 4 and 5 which appeared in the First Edition of the bill, and allows bondsmen to have access to certain civil information systems of the Administrative Office of the Courts (AOC).***

BILL ANALYSIS:

Section 1 increases the minimum age to qualify for licensure as a bail bondsman or a runner from 18 to 21 years of age. Under the PCS, current licensees who are under the age of 21 are grandfathered in, so that they are not subject to the new minimum age requirement.

Section 2 amends the law related to prohibited practices by a bail bondsman or a runner. Currently, a bondsman can accept collateral security or other indemnity from a principal, but the collateral must be reasonable in relation to the amount of the bond and must be returned within 72 hours after final termination of liability on the bond. This section would lengthen the time limit for return of collateral to 15 days.

Section 3 adds a new provision directing the Commissioner of Insurance to return the portion of the security deposit in excess of that required to secure outstanding bond liability, if the bondsman ceases to write bonds due to death, permanent incapacitation, or other circumstance that results in the return of the license.

Section 4 amends the law to allow bondsmen to have access to AOC's civil information system.

EFFECTIVE DATE: Section 1 is effective when the bill becomes law and applies to applications for licenses filed on or after that date. The remainder of the act is effective when it becomes law.

Karen Cochrane-Brown, Counsel to the House Regulatory Reform Committee, contributed substantially to this summary.

O. Walker Reagan
Director

* H 4 4 6 - S M R N - 3 2 C S R N - 1 7 - V 4 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

7 Subcommittee Date 4/22

Bill Number H876

PCS [redacted]

Motion to be before the committee by _____

Rep. S _____ explained the bill.

Discussion on the Bill YES or NO

Amendments: _____.

Rep. _____ motioned for:

_____ Favorable Report _____Adoption

_____ Unfavorable Report _____Unfavorable to original bill, favorable to PCS

_____ No vote

_____Other: _____

Serial referral to:_____

Speakers:

Handouts:

XXII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 876
PROPOSED COMMITTEE SUBSTITUTE H876-CSSA-41 [v.1]

4/21/2015 10:25:39 PM

Short Title: Cell Phone Location Tracking. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A SEARCH WARRANT TO OBTAIN THE LOCATION INFORMATION OF A CELL PHONE OR OTHER ELECTRONIC DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Subdivisions (2) and (3) of G.S. 15A-260 are recodified as subdivisions (5) and (6) of that section.

SECTION 1.(b) G.S. 15A-260, as amended by subsection (a) of this section, reads as rewritten:

"**§ 15A-260. Definitions.**

As used in this Article:

(1) "Electronic communication," "electronic communication service," and "wire communication" shall have the meaning as set forth in Section 2510 of Title 18 of the United States ~~Code;~~Code.

(2) "Electronic device" means any device that enables access to or use of an electronic communication service as defined in 18 U.S.C. § 2510(15), remote computing service as defined in 18 U.S.C. § 2711(2), or location information service.

(3) "Investigative or law enforcement officer" means any officer of the State of North Carolina or any political subdivision thereof who is empowered by the laws of this State to conduct investigations or to make arrests for offenses enumerated in G.S. 15A-290 and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.

(4) "Location information" means any information concerning the location of an electronic device that, in whole or in part, is generated by or derived from the operation of that device.

(5) "Pen register" means a device which records or decodes electronic or other impulses which identify numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but the term does not include any device used by a provider or customer of a wire or electronic service for billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business, nor shall the term include any device which allows the listening or recording of communications transmitted on the telephone line to which the device is attached.

(6) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted."

SECTION 2. Article 12 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-265. Location information; warrant requirement; exceptions.**

(a) In General. – Except as provided in subsection (b) of this section, no person or investigative or law enforcement officer may obtain location information without first obtaining a search warrant as provided for in Article 11 of Chapter 15A of the General Statutes.

(b) Exception. – The prohibition of subsection (a) of this section does not apply to an investigative or law enforcement officer obtaining location information under any of the following circumstances:

(1) The user of the service has consented.

(2) In response to a missing persons report.

(3) In response to a report by the parent or legal guardian of a minor that the minor is missing, regardless of whether an official missing persons report has been filed or what amount of time has elapsed.

(4) The active pursuit of a fleeing fugitive.

(5) In response to (i) the user's call for emergency services or (ii) a notification that a user may be at risk for suicide from a third party, if an investigative or law enforcement officer believes that an emergency involving danger of death or serious physical injury to any person requires obtaining without delay the location information relating to the emergency, and the request for the location information is narrowly tailored to address the emergency, subject to both of the following limitations:

a. The request shall document the factual basis for believing that an emergency involving immediate danger of death or physical injury to a person requires obtaining without delay the location information relating to the emergency.

b. Not later than 48 hours after the date on which an investigative or law enforcement officer obtains access to the records under this section, a government entity shall file with the appropriate court a signed, sworn statement of a supervising officer or a rank designated by the head of the government entity setting forth the grounds for the emergency access.

(c) Penalty. – A person who willfully and knowingly violates subsection (a) of this section is guilty of a Class 1 misdemeanor. No evidence obtained in violation of this section shall be admissible in any criminal, civil, administrative, or other proceeding, except as proof of a violation of this section.

(d) Location Information. – Any location information obtained pursuant to subsection (a) of this section or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or State court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the search warrant and accompanying application under which the search warrant was obtained, as well as any additional documentation submitted to the entity that provided the location information. If the location information was obtained pursuant to the exception in subdivision (5) of subsection (b) of this section, each party must be furnished with a copy of the documentation required by that subdivision within the same 10 day period. This 10-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with

the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(e) Prohibition on Disclosure of Incidentally Collected Data. – Except as provided in subsections (a) and (b) of this section, a government entity may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device that is not the subject of the warrant that is collected as part of an effort to obtain the location information, stored data, or transmitted data of the electronic device that is the subject of the warrant or search pursuant to subsections (a) and (b).

(f) Exception. – An investigative or law enforcement agency may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the investigative or law enforcement agency believes that the transmitted data is necessary to achieve the objective of the warrant.

(g) Destruction of Collected Data. – The data described in subsection (e) of this section shall be destroyed in an unrecoverable manner by the person, investigative agency, or law enforcement agency no later than 24 hours after the data is collected.

(h) Judicial Reporting Requirements. – By January 31 of each calendar year, any judge issuing or denying any application for a search warrant for location information under this section and during the preceding year shall report on each such warrant to the Administrative Office of the Courts. The report shall include the following information:

(1) The fact that the order was applied for.
(2) The identity of the agency making the application.
(3) The offense specified in the order or application therefore.
(4) The nature of the facilities from which or the place where the location information was obtained.
(5) The fact that the order was granted as applied for, was modified, or was denied.
(6) The period of disclosures authorized by the order and the number and duration of any extensions of the order.

(i) Annual Report to the General Assembly. – By April 1 of each year, beginning in 2016, the Administrative Office of the Courts shall transmit to the General Assembly a full and complete report concerning the number of applications for orders authorizing or requiring the disclosure of location information pursuant to this section, the number of times access to the location information was obtained, and the number of orders granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the Administrative Office of the Courts by subsection (e) of this section. The Administrative Office of the Courts may issue binding regulations dealing with the content and form of the report required to be filed by subsection (e) of this section. In April of each year, beginning in 2016, a nonclassified summary of the report shall be made publicly available on the Web site for the North Carolina General Assembly and the Administrative Office of the Courts."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses occurring on or after that date, and the requirements of this act apply to persons seeking location information 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.

XXIII

HOUSE BILL 876:
Cell Phone Location Tracking

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 22, 2015
Introduced by:	Reps. Jordan, Glazier, Jeter, Brockman	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 876 would require a search warrant to obtain the location information of a cell phone or other electronic device except in certain circumstances.

BILL ANALYSIS:

Section 1 would add definitions for electronic device, investigative or law enforcement officer, and location information.

Section 2 would create a new G.S. 15A-265, subsection (a) of which would prohibit an investigative or law enforcement officer or any person from obtaining location information without first obtaining a search warrant as provided for in Article 11 of GS Chapter 15A.

Subsection (b) would provide exceptions to the warrant requirement under the following circumstances:

- In response to a missing person's report.
- With the consent of the user of the service.
- In response to a report from a parent or a legal guardian of a minor that the minor is missing
- In the active pursuit of a fleeing fugitive.
- In response to the user's call for emergency services or a notification from a third party that a user may be at risk of suicide or the user's call for emergency services if the investigative or law enforcement officer believes that there is an emergency situation with danger of death or serious physical injury to any person and the request for location information is narrowly tailored to address the emergency and subject to specified limitations.

Subsection (c) would make a willful and knowing violation of the search warrant requirement a Class 1 misdemeanor and any evidence obtained in violation would be inadmissible in any criminal, civil, administrative, or other proceeding, except as proof of a violation of the section.

Subsection (d) would prohibit receiving into evidence or otherwise disclosing in a trial or hearing or any procedure in federal or state court any location information or evidence derived from location information unless each party has been furnished, not less than 10 days before the court proceeding, with a copy of the order and application under which the information was obtained. It would authorize the judge to waive the 10-day period if the judge finds that meeting that deadline was not possible and that the party receiving the information less than 10 days before the proceeding will not be prejudiced by the delay in receiving the information.

Subsections (e), (f), and (g) would prohibit the disclosure of incidentally collected data that is not the subject of the warrant that is collected as part of the effort to obtain the location information or stored or

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

transmitted data of the electronic device that is the subject of the warrant or search and would provide that the incidentally collected data must be destroyed in a manner that makes the data unrecoverable no later than 24 hours after the data is collected. It would provide an exception that allows an investigative or law enforcement agency to use, copy, or disclose the transmitted data of an electronic device that is used to communicate with the electronic device that is the subject of the warrant if the investigative or law enforcement agency believes that the transmitted data is necessary to achieve the objective of the warrant.

Subsection (h) would require any judge issuing or denying any application for a search warrant for location information during the preceding year to report on those warrants by January 31 of each calendar year to the Administrative Office of the Courts (AOC).

Subsection (i) would direct the AOC to provide the General Assembly, by April 1 of each year beginning with 2016, with a complete report concerning the number of applicants for orders authorizing or requiring the disclosure of location information under this section, the number of times access to the location information was obtained, and the number of orders granted or denied. A non-classified summary of the report would be made publicly available on the website for the General Assembly and the AOC in April of each year, beginning with 2016.

EFFECTIVE DATE: This act becomes effective December 1, 2015k, and applies to offenses occurring on or after that date, and the requirements of this act apply to person seeking location information on or after that date.

**This summary is a modification of the bill digest prepared by the School of Government.*

House Committee on Judiciary II
Thursday, April 23, 2015 at 15 Minutes After Session
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 15 Minutes After Session on April 23, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 3:05 PM. The Chairman recognized the Sergeants-at-Arms.

The following bills were considered:

HB 641 Amend Bail Bondsmen Statutes. (Representatives Reives, Saine)

Representative Reives made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Reives to present the bill. Representative Glazier made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 479 Auto Salvage Dealer Protection Act. (Representatives Pittman, Speciale, Ford, Saine)

Representative Pittman was recognized to present the bill. Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 740 Allison's Law/GPS Tracking Pilot Prog/Dom Vio. (Representatives Lambeth, Conrad, Hanes, Terry)

Representative Lambeth was recognized to present the bill. Representative Glazier made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 797 Alarm Registration Info Not Public Record. (Representatives S. Martin, Farmer-Butterfield, Stam, Jones)

Representative S. Martin was recognized to present the bill. Representative Conrad made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 477 LEO Privacy Protection. (Representatives Malone, Saine, Faircloth, McNeill)
Representative Stam made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Malone to present the bill. Representative Stam made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 835 Open Meetings/Three-Member Public Bodies. (Representative Robinson)

This bill was moved to another committee.

HB 598 Revise Rule 11/Allow Cure Before Sanctions. (Representatives Bishop, Stam, Glazier, L. Hall)

Representative Glazier was recognized to present the bill. After a brief discussion, Representative Stam made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 565 Threaten LEO or Correctional Officer. (Representatives Faircloth, McNeill, Hurley, G. Graham)

Representative Faircloth was recognized to present the bill. There was a brief discussion. Representative Faircloth offered an amendment, and it was adopted. This bill was displaced until Tuesday, April 28, 2015.

HB 747 Electronic Supervision Waiver. (Representatives Dollar, R. Turner, Dobson, Jordan)

Representative Jordan made the motion to bring the Proposed Committee Substitute before the committee. Representative Dollar was recognized to present the bill. An amendment was offered by Representative Jordan, and it was adopted. Representative Jordan made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

HB 649 Amend Corp. Gov/Shareholder Derivative Suits. (Representative Ross)

This bill was displaced until Tuesday, April 28, 2015.

HB 292 Beach Bingo Licenses.-AB (Representative Hurley)

Representative Hurley was recognized to present the bill. Representative McGrady made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report and was re-referred to the Committee on Finance.

HB 355 Evidence Passed Vehicle is a School Bus. (Representatives Reives, Stam)

Representative Michaux made the motion to bring the Proposed Committee Substitute [v.3] before the committee, and the motion passed. Chairman Blust recognized Representative Reives to present the bill. There was a brief discussion. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute No. 2, with an unfavorable report for the Proposed Committee Substitute No 1. The motion carried, and the Proposed Committee Substitute No. 2 received a favorable report.

HB 375 Real Prop./Error Correction & Title Curative. (Representatives Jordan, Bryan, Stevens)

Representative Jordan made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Jordan to present the bill. Mr. Steve Brown, Investors Title Insurance Company, spoke on the bill. There was a brief discussion. Representative Stam made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 870 Cert. of Title/Manuf. Home Changes. (Representative Jordan)

Representative Jordan made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Jordan was recognized to present the bill. An amendment was offered by Representative Jordan, and it was adopted. Representative Jordan made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

The meeting adjourned at 3:51 PM.

Respectfully submitted,

Representative John M. Blust, Chairman
Presiding

Gennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Thursday, April 23, 2015
TIME: **15 Minutes After Session**
LOCATION: **421 LOB**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 479	Auto Salvage Dealer Protection Act.	Representative Pittman Representative Speciale Representative Ford Representative Saine
HB 641	Amend Bail Bondsmen Statutes.	Representative Reives Representative Saine
HB 740	Allison's Law/GPS Tracking Pilot Prog/Dom Vio.	Representative Lambeth Representative Conrad Representative Hanes Representative Terry
HB 477	LEO Privacy Protection.	Representative Malone Representative Saine Representative Faircloth Representative McNeill
HB 835	Open Meetings/Three-Member Public Bodies.	Representative Robinson
HB 747	Electronic Supervision Waiver.	Representative Dollar Representative R. Turner Representative Dobson Representative Jordan
HB 598	Revise Rule 11/Allow Cure Before Sanctions.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 797	Alarm Registration Info Not Public Record.	Representative S. Martin Representative Farmer-Butterfield Representative Stam Representative Jones
HB 292	Beach Bingo Licenses.-AB	Representative Hurley

HB 355	Enhance Protection for Group Home Residents.	Representative Reives Representative Stam
HB 565	Threaten LEO or Correctional Officer.	Representative Faircloth Representative McNeill Representative Hurley Representative G. Graham
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 375	Real Prop./Error Correction & Title Curative.	Representative Jordan Representative Bryan Representative Stevens
HB 870	Cert. of Title/Manuf. Home Changes.	Representative Jordan

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:17 AM on Thursday, April 23, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Dianne Russell (Committee Assistant)

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 II** will **NOT** meet as follows:

DAY & DATE: Thursday, April 23, 2015
TIME: **15 minutes after Session**
LOCATION: **421 LOB**
COMMENTS: **THIS MEETING WILL STILL BE HELD< BUT THE BILLS WILL CHANGE. NEW NOTICE FORTHCOMING**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 477	LEO Privacy Protection.	Representative Malone Representative Saine Representative Faircloth Representative McNeill
HB 187	Stalking by GPS/Criminal Offense.	Representative Glazier Representative Horn Representative Faircloth Representative McGrady
HB 292	Beach Bingo Licenses.-AB	Representative Hurley
HB 355	Enhance Protection for Group Home Residents.	Representative Reives Representative Stam
HB 375	Real Prop./Error Correction & Title Curative.	Representative Jordan Representative Bryan Representative Stevens
HB 445	Reorganize Crim. Just. Standards Comm.	Representative Jordan Representative Pendleton Representative Stam Representative Glazier
HB 483	Land Use Regulatory Changes.	Representative Jordan
HB 508	Alarm Registration Info Not Public Record.	Representative S. Martin Representative Farmer-Butterfield
HB 565	Threaten LEO or Correctional Officer.	Representative Faircloth Representative McNeill Representative Hurley

		Representative G. Graham
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 598	Revise Rule 11/Allow Cure Before Sanctions.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 626	Amend Prop Damage Offenses.	Representative Reives
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 726	School Bds Can't Sue County.	Representative Conrad Representative Hunter Representative Jordan Representative Collins
HB 740	Allison's Law/GPS Tracking Pilot Prog/Dom Vio.	Representative Lambeth Representative Conrad Representative Hanes Representative Terry
HB 747	Electronic Supervision Waiver.	Representative Dollar Representative R. Turner Representative Dobson Representative Jordan
HB 797	Alarm Registration Info Not Public Record.	Representative S. Martin Representative Farmer-Butterfield Representative Stam Representative Jones
HB 802	Ignition Interlock/Expand Scope.	Representative Jackson Representative Jordan Representative Faircloth
HB 804	Kelsey Smith Act.	Representative Hurley Representative Glazier Representative Schaffer Representative Lambeth
HB 835	Open Meetings/Three-Member Public Bodies.	Representative Robinson
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative R. Turner Representative Hardister
HB 870	Cert. of Title/Manuf. Home Changes.	Representative Jordan
HB 873	Hospital Police Officers/Powers.	Representative Jordan
HB 877	Ignition Interlock Req'd/All DWIs.	Representative Jordan Representative Faircloth

		Representative Jackson
HB 882	Comm. Mgr. Licensing & Planned Comm. Act Chgs.	Representative Jordan Representative R. Moore Representative Iler
HB 887	Amend Criminal Contempt.	Representative Setzer
HB 906	Qualified Business Investments Credit.	Representative R. Moore Representative Hamilton Representative Goodman Representative Alexander

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:13 AM on Thursday, April 23, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Dianne Russell (Committee Assistant)

Corrected #1: Room Number and Bills Added

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 II** will meet as follows:

DAY & DATE: Thursday, April 23, 2015
TIME: **15 minutes after Session**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 477	LEO Privacy Protection.	Representative Malone Representative Saine Representative Faircloth Representative McNeill
HB 187	Stalking by GPS/Criminal Offense.	Representative Glazier Representative Horn Representative Faircloth Representative McGrady
HB 292	Beach Bingo Licenses.-AB	Representative Hurley
HB 355	Enhance Protection for Group Home Residents.	Representative Reives Representative Stam
HB 375	Real Prop./Error Correction & Title Curative.	Representative Jordan Representative Bryan Representative Stevens
HB 445	Reorganize Crim. Just. Standards Comm.	Representative Jordan Representative Pendleton Representative Stam Representative Glazier
HB 483	Land Use Regulatory Changes.	Representative Jordan
HB 508	Alarm Registration Info Not Public Record.	Representative S. Martin Representative Farmer-Butterfield
HB 565	Threaten LEO or Correctional Officer.	Representative Faircloth Representative McNeill Representative Hurley Representative G. Graham
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam

		Representative Glazier
		Representative L. Hall
HB 598	Revise Rule 11/Allow Cure Before Sanctions.	Representative Bishop
		Representative Stam
		Representative Glazier
		Representative L. Hall
HB 626	Amend Prop Damage Offenses.	Representative Reives
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 726	School Bds Can't Sue County.	Representative Conrad
		Representative Hunter
		Representative Jordan
		Representative Collins
HB 740	Allison's Law/GPS Tracking Pilot Prog/Dom Vio.	Representative Lambeth
		Representative Conrad
		Representative Hanes
		Representative Terry
HB 747	Electronic Supervision Waiver.	Representative Dollar
		Representative R. Turner
		Representative Dobson
		Representative Jordan
HB 797	Alarm Registration Info Not Public Record.	Representative S. Martin
		Representative Farmer-Butterfield
		Representative Stam
		Representative Jones
HB 802	Ignition Interlock/Expand Scope.	Representative Jackson
		Representative Jordan
		Representative Faircloth
HB 804	Kelsey Smith Act.	Representative Hurley
		Representative Glazier
		Representative Schaffer
		Representative Lambeth
HB 835	Open Meetings/Three-Member Public Bodies.	Representative Robinson
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon
		Representative R. Turner
		Representative Hardister
HB 870	Cert. of Title/Manuf. Home Changes.	Representative Jordan
HB 873	Hospital Police Officers/Powers.	Representative Jordan
HB 877	Ignition Interlock Req'd/All DWIs.	Representative Jordan
		Representative Faircloth
		Representative Jackson
HB 882	Comm. Mgr. Licensing & Planned Comm. Act Chgs.	Representative Jordan
		Representative R. Moore
		Representative Iler
HB 887	Amend Criminal Contempt.	Representative Setzer
HB 906	Qualified Business Investments Credit.	Representative R. Moore
		Representative Hamilton

Representative Goodman
Representative Alexander

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:48 PM on Wednesday, April 22, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (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 II** will meet as follows:

DAY & DATE: Thursday, April 23, 2015
TIME: **15 minutes after Session**
LOCATION: **TBD**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 477	LEO Privacy Protection.	Representative Malone Representative Saine Representative Faircloth Representative McNeill

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:52 PM on Wednesday, April 22, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Thursday, April 23, 2015, 15 Minutes After Session
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 292	Beach Bingo Licenses.-AB	Representative Hurley
HB 355	Enhance Protection for Group Home Residents.	Representative Reives Representative Stam
HB 375	Real Prop./Error Correction & Title Curative.	Representative Jordan Representative Bryan Representative Stevens
HB 477	LEO Privacy Protection.	Representative Malone Representative Saine Representative Faircloth Representative McNeill
HB 479	Auto Salvage Dealer Protection Act.	Representative Pittman Representative Speciale Representative Ford Representative Saine
HB 565	Threaten LEO or Correctional Officer.	Representative Faircloth Representative McNeill Representative Hurley Representative G. Graham
HB 598	Revise Rule 11/Allow Cure Before Sanctions.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 641	Amend Bail Bondsmen Statutes.	Representative Reives Representative Saine
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 740	Allison's Law/GPS Tracking Pilot Prog/Dom Vio.	Representative Lambeth Representative Conrad Representative Hanes Representative Terry
HB 747	Electronic Supervision Waiver.	Representative Dollar Representative R. Turner Representative Dobson

		Representative Jordan
HB 797	Alarm Registration Info Not Public Record.	Representative S. Martin Representative Farmer-Butterfield Representative Stam Representative Jones
HB 835	Open Meetings/Three-Member Public Bodies.	Representative Robinson
HB 870	Cert. of Title/Manuf. Home Changes.	Representative Jordan

Presentations

Other Business

Adjournment

4-23-2015

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **375** Real Prop./Error Correction & Title Curative.

Draft Number:	H375-PCS20332-RN-22
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jordan

HB **477** LEO Privacy Protection.

Draft Number:	H477-PCS10362-SA-46
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Malone

HB **641** Amend Bail Bondsmen Statutes.

Draft Number:	H641-PCS10361-SA-45
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Reives

HB **747** Electronic Supervision Waiver.

Draft Number:	H747-PCS30351-TV-13
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Dollar

HB **870** Cert. of Title/Manuf. Home Changes.

Draft Number:	H870-PCS30352-SA-47
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jordan



FAVORABLE COM SUB NO. 2, UNFAVORABLE COM SUB NO. 1

HB **355** **(CS#1)** Enhance Protection for Group Home Residents.

Draft Number:	H355-PCS40431-RN-23
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Reives

TOTAL REPORTED: 6



4-23-2015

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

HB **479** Auto Salvage Dealer Protection Act.

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

HB **598** Revise Rule 11/Allow Cure Before Sanctions.

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

HB **740** Allisons Law/GPS Tracking Pilot Prog/Dom Vio.

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

HB **797** Alarm Registration Info Not Public Record.

Draft Number:	None
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	S. Martin

FAVORABLE AND RE-REFERRED

HB **292** Beach Bingo Licenses.-AB

Draft Number:	None
Serial Referral:	**FINANCE**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Hurley

TOTAL REPORTED: 5



Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 4-23-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: John Brandon
3. Name: Mark Cone
4. Name:
5. Name:

Senate Sgt-At Arms:

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 641
PROPOSED COMMITTEE SUBSTITUTE H641-CSSA-45 [v.1]

4/22/2015 8:10:39 PM

Short Title: Amend Bail Bondsmen Statutes. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO REVISE THE STATUTES GOVERNING BAIL BONDSMEN BY CLARIFYING CERTAIN DEFINITIONS, BY CLARIFYING THE STATUTES GOVERNING RETURN OF PREMIUM, ARREST ORDERS, AND APPOINTMENT OF SURETY BONDSMEN, BY BROADENING THE ENTITIES WHO MAY PROVIDE CONTINUING EDUCATION, AND BY MAKING VARIOUS OTHER CHANGES TO THE BAIL BONDSMEN LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following definitions apply in this Article:

...

(1a) Address. – Any dwelling, home, building, lodging, or "address of record" as defined in G.S. 15A-531(2)(a) where a principal may occupy or take up residence.

(1b) Approved provider. – An entity who has been issued a Certificate of Authority by the Commissioner to provide either bail bond continuing education or pre-licensing courses in this State in accordance with G.S. 58-71-72.

...

(3a) Cash deposit. – The posting of coin, currency, or valid appearance bond by an accommodation bondsman, an insurer, a professional bondsman, or runner in order to effect pretrial release for a defendant for which a release order indicates a cash deposit or United States currency.

...

(6a) Personal identification. – Date of birth, Social Security number, drivers license number, alien registration number, or any other similar means of distinguishing between individuals.

...."

SECTION 2. G.S. 58-71-20 reads as rewritten:

"**§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.**

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded; in such case the full premium shall be returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if all indemnitors and payers of bail

bond premium on the defendant's bond presents a notarized written request, with notice, to the surety or surety's agent to terminate the bond and the indemnitor's liability, and the surety then surrenders the defendant, or if the defendant does any of the following:

(1) Willfully fails to pay the premium to the surety or willfully fails to make a premium payment under the agreement specified in G.S. 58-71-167.

(2) Changes his or her address without notifying the surety before the address change.

(3) Physically hides from the surety. This includes non-compliance with any signed, written agreement between the defendant and the surety outlining requirements for communications with the surety.

(4) Leaves the State without the permission of the surety.

(5) Violates any order of the court.

(6) Fails to disclose information or provides false information regarding any failure to appear in court, any previous felony convictions within the past 10 years, or any charges pending in any State or federal court.

(7) Knowingly provides the surety with incorrect personal identification, or uses a false name or alias."

SECTION 3. G.S. 58-71-20 reads as rewritten:

"**§ 58-71-30. Arrest of defendant for purpose of surrender.**

For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by his written authority endorsed on a certified copy of the undertaking, may request any judicial officer to order arrest of the defendant. Upon receipt of the request by surety or the surety's agent and the certified copy of the undertaking, the judicial officer shall order arrest of the defendant."

SECTION 4. G.S. 58-71-71 reads as rewritten:

"**§ 58-71-71. Examination; educational requirements; penalties.**

(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least 12 hours of education as provided by ~~the North Carolina Bail Agents Association~~an approved provider in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman.

(b) Each year every licensee shall complete at least three hours of continuing education as provided by ~~the North Carolina Bail Agents Association~~an approved provider in subjects related to the duties and responsibilities of a runner or bail bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals.

...

(d) Educational courses offered by ~~the North Carolina Bail Agents Association~~approved providers under this section must be approved by the Commissioner before they may be offered. Before approving a course, the Commissioner must be satisfied that the course will enhance the professional competence and professional responsibility of bail bondsmen and runners. ~~The North Carolina Bail Agents Association~~Approved providers shall not offer, sponsor, or conduct any course under this section unless the Commissioner has given authorization to do so.

...."

SECTION 5. G.S. 58-71-141 reads as rewritten:

"**§ 58-71-141. Appointment of bail bondsmen; affidavit required.**

(a) Before receiving an appointment, a surety bondsman shall submit to the Commissioner an affidavit, signed under oath, by the surety bondsman and by any former insurer, stating that the surety bondsman does not owe any premium or unsatisfied judgment to

any insurer and that the bondsman agrees to discharge all outstanding forfeitures and judgments on bonds previously written. The affidavit shall be in a form prescribed by the Commissioner and shall be submitted by the surety bondsman to the former insurer. If the surety bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer shall submit a notice, with supporting documents, to the appointing insurer, the surety bondsman, and the Commissioner, which states, under oath, that the surety bondsman has failed to satisfy, in a timely manner, the forfeitures and judgments on bonds written by the surety bondsman and that the former insurer has satisfied the forfeiture or judgment from its own funds. If the surety bondsman does not owe any premium or unsatisfied judgments, a former insurer must release the bondsman by certifying that status to the Commissioner via e-mail, fax, or mail and providing a corresponding notice of release to the bondsman within three days of receipt of the surety bondsman's affidavit. ~~The~~ Otherwise, the former insurer shall submit the notice and supporting ~~documents~~ documents, including evidence of owed premium or unsatisfied judgments, to the appointing insurer, the surety bondsman, and the Commissioner within ~~30~~ 10 days after the former insurer receives the affidavit from the surety bondsman. Upon receipt of the notice and supporting documents, the appointing insurer shall immediately cancel the surety bondsman's appointment. The surety bondsman may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds written by the surety bondsman have been discharged. The appointing insurer or surety bondsman may, within 10 days after receiving the notice and supporting documents from the former insurer, appeal to the Commissioner. For the purposes of this section, owed premium and unsatisfied judgments only pertain to insurers.

...."

SECTION 6. G.S. 15A-531(4) reads as rewritten:

"(4) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond signed by any surety, as defined in G.S. 15A-531(8)a. and b., is considered the same as a cash deposit or United States currency for all purposes in this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash."

SECTION 7. This act becomes effective October 1, 2015.

HOUSE BILL 641

Short Title:	Amend Bail Bondsmen Statutes.	(Public)
Sponsors:	Representatives Reives and Saine (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO REVISE THE STATUTES GOVERNING BAIL BONDSMEN BY CLARIFYING CERTAIN DEFINITIONS, BY CLARIFYING THE STATUTES GOVERNING RETURN OF PREMIUM, ARREST ORDERS, AND APPOINTMENT OF SURETY BONDSMEN, BY BROADENING THE ENTITIES WHO MAY PROVIDE CONTINUING EDUCATION, AND BY MAKING VARIOUS OTHER CHANGES TO THE BAIL BONDSMEN LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following definitions apply in this Article:

...

(1a) Address. – Any dwelling, home, building, lodging, or "address of record" as defined in G.S. 15A-531(2)(a) where a principal may occupy or take up residence.

(1b) Approved provider. – Either of the following types of entities:

a. An entity otherwise qualified to provide continuing education and which has offered such instruction for a period of three years or more and to at least 500 students.

b. An entity otherwise qualified to provide prelicensing instruction which has provided such instruction for a period of three years or more and to at least 200 students.

...

(3a) Cash deposit. – The posting of coin, currency, or valid appearance bond by an accommodation bondsman, an insurer, a professional bondsman, or runner in order to effect pretrial release for a defendant for which a release order indicates a cash deposit or United States currency.

...

(6a) Personal identification. – Date of birth, Social Security number, drivers license number, alien registration number, or any other similar means of distinguishing between individuals.

...."

SECTION 2. G.S. 58-71-20 reads as rewritten:

"**§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.**

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded; in such case the full premium shall be returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if any indemnitor on the defendant's bond presents a notarized request to the surety or surety's agent to terminate the bond and the indemnitor's liability, or if the defendant does any of the following:

(1) Willfully fails to pay the premium to the surety or willfully fails to make a premium payment under the agreement specified in G.S. 58-71-167.
(2) Changes his or her address without notifying the surety before the address change.
(3) Physically hides from the surety.
(4) Leaves the State without the permission of the surety.
(5) Violates any order of the court.
(6) Fails to disclose information or provides false information regarding any failure to appear in court, any previous felony convictions within the past 10 years, or any charges pending in any State or federal court.
(7) Knowingly provides the surety with incorrect personal identification, or uses a false name or alias."

SECTION 3. G.S. 58-71-20 reads as rewritten:

"**§ 58-71-30. Arrest of defendant for purpose of surrender.**

For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by his written authority endorsed on a certified copy of the undertaking, may request any judicial officer to order arrest of the defendant. Upon receipt of the request by surety or the surety's agent and the certified copy of the undertaking, the judicial officer shall order arrest of the defendant."

SECTION 4. G.S. 58-71-71 reads as rewritten:

"**§ 58-71-71. Examination; educational requirements; penalties.**

(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least 12 hours of education as provided by ~~the North Carolina Bail Agents Association~~an approved provider in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman.

(b) Each year every licensee shall complete at least three hours of continuing education as provided by ~~the North Carolina Bail Agents Association~~an approved provider in subjects related to the duties and responsibilities of a runner or bail bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals.

...

(d) Educational courses offered by ~~the North Carolina Bail Agents Association~~approved providers under this section must be approved by the Commissioner before they may be offered. Before approving a course, the Commissioner must be satisfied that the course will enhance the professional competence and professional responsibility of bail bondsmen and runners. ~~The North Carolina Bail Agents Association~~Approved providers shall not offer, sponsor, or conduct any course under this section unless the Commissioner has given authorization to do so.

...."

SECTION 5. G.S. 58-71-141 reads as rewritten:

"**§ 58-71-141. Appointment of bail bondsmen; affidavit required.**

(a) Before receiving an appointment, a surety bondsman shall submit to the Commissioner an affidavit, signed under oath, by the surety bondsman and by any former insurer, stating that the surety bondsman does not owe any premium or unsatisfied judgment to any insurer and that the bondsman agrees to discharge all outstanding forfeitures and judgments on bonds previously written. The affidavit shall be in a form prescribed by the Commissioner and shall be submitted by the surety bondsman to the former insurer. If the surety bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer shall submit a notice, with supporting documents, to the appointing insurer, the surety bondsman, and the Commissioner, which states, under oath, that the surety bondsman has failed to satisfy, in a timely manner, the forfeitures and judgments on bonds written by the surety bondsman and that the former insurer has satisfied the forfeiture or judgment from its own funds. If the surety bondsman does not owe any premium or unsatisfied judgments, a former insurer must release the bondsman by certifying that status to the Commissioner via e-mail, fax, or mail and providing a corresponding notice of release to the bondsman within three days of receipt of the surety bondsman's affidavit. ~~The~~ Otherwise, the former insurer shall submit the notice and supporting ~~documents~~ documents, including evidence of owed premium or unsatisfied judgments, to the appointing insurer, the surety bondsman, and the Commissioner within ~~30~~ 10 days after the former insurer receives the affidavit from the surety bondsman. Upon receipt of the notice and supporting documents, the appointing insurer shall immediately cancel the surety bondsman's appointment. The surety bondsman may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds written by the surety bondsman have been discharged. The appointing insurer or surety bondsman may, within 10 days after receiving the notice and supporting documents from the former insurer, appeal to the Commissioner. For the purposes of this section, owed premium and unsatisfied judgments only pertain to insurers and not general agents, managing general agents, or supervising agents.

...."

SECTION 6. G.S. 15A-531(4) reads as rewritten:

"(4) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond signed by any surety, as defined in G.S. 15A-531(8)a. and b., is considered the same as a cash deposit or United States currency for all purposes in this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash."

SECTION 7. This act becomes effective October 1, 2015.

HOUSE BILL 479

Short Title:	Auto Salvage Dealer Protection Act.	(Public)
Sponsors:	Representatives Pittman, Speciale, Ford, and Saine (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LIABILITY OF SECONDARY METALS RECYCLERS AND SALVAGE YARDS WHEN PURCHASING CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-62.1 reads as rewritten:

"**§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.**

...

(c) Violations. – Any person who knowingly and willfully violates any of the provisions of this section, or any person who falsifies the statement required under subsection (a)(1)g. of this section, shall be guilty of a Class I felony and shall pay a minimum fine of one thousand dollars ($1,000). The court may order a defendant seller under this subsection to make restitution to the secondary metals ~~recycler or~~recycler, salvage ~~yard or~~yard, lien ~~holder~~holder, or other registered owner of the motor vehicle for any damage or loss caused by the defendant seller arising out of an offense committed by the defendant seller.

(c1) Liability. – A secondary metals recycler or salvage yard shall not be liable either civilly or criminally for any loss of or damage to a motor vehicle purchased in accordance with the requirements set forth in subsections (a) and (a1) of this section.

...."

SECTION 2. This act is effective when it becomes law and applies to motor vehicles purchased on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 740

Short Title:	Allison's Law/GPS Tracking Pilot Prog/Dom Vio.	(Public)
Sponsors:	Representatives Lambeth, Conrad, Hanes, and Terry (Primary Sponsors).	
	For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM ON ALLOWING THE USE OF A GPS TRACKING DEVICE ON A PERSON WHO HAS COMMITTED ACTS OF DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Department of Public Safety, in consultation with local law enforcement agencies, the courts, and any other appropriate local entities, shall conduct a pilot program for the use of global positioning system (GPS) tracking devices on domestic violence offenders. The pilot program shall be conducted in Forsyth County. The offender subject to the GPS monitoring may be responsible for paying the costs associated with use of the device. In developing and implementing the pilot program, the Department and all entities involved shall consider the following:

(1) The type of offender that will be subject to GPS monitoring, such as all offenders who violate a domestic violence protective order or only violent offenders, and what constitutes a violent offender.
(2) How offender monitoring will be staffed and whether a local law enforcement agency will staff the monitoring of the offender's location or whether it will be outsourced to an independent agency.
(3) The costs associated with monitoring the offender's location.
(4) The type of GPS tracking device that will be used.
(5) The type of GPS monitoring that will be used, such as active tracking, which provides real-time location of the offender 24 hours a day, versus passive tracking, in which an offender wears a device, but the monitoring official may not receive information but once a day when it is uploaded.
(6) Whether the victim's location will be monitored or tracked as well and what privacy or safety concerns such monitoring or tracking raises.
(7) Review any other systems for monitoring offenders currently in place in this State that may assist in implementing the GPS monitoring program established under this act.
(8) Review whether other states have implemented similar systems and the means by which those systems were implemented and costs associated with implementation.
(9) Any other information or practices deemed relevant.

SECTION 2. The Department of Public Safety shall report to the Joint Legislative Oversight Committee on Justice and Public Safety on the effectiveness of the pilot program by

April 1, 2018. The report shall include any recommendations regarding the continuation, expansion, or elimination of the pilot program, as well as costs associated with implementing the program or any recommended legislation.

SECTION 3. This act becomes effective January 1, 2016.

HOUSE BILL 740:
Allison's Law/GPS Tracking Pilot Prog/Dom Vio

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Reps. Lambeth, Conrad, Hanes, Terry	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 740 would establish a pilot program on allowing the use of a global positioning system (GPS) tracking device on a person who has committed acts of domestic violence.***

[As introduced, this bill was identical to H722, as introduced by Reps. Lambeth, Conrad, Hanes, Terry, which is currently in Rules, Calendar, and Operations of the House.]

BILL ANALYSIS:

Section 1 of House Bill 740 would require the N.C. Department of Public Safety (DPS) in consultation with local law enforcement agencies, courts, and any other appropriate local entities to conduct a pilot program for the use of GPS tracking devices on domestic violence offenders.

DPS and all entities shall consider the following:

1) Type of offender to be subject to GPS monitoring
2) How offender monitoring will be staffed
3) Costs associated with monitoring
4) Type of GPS tracking to be used
5) Type of GPS monitoring to be used
6) Whether the victim's location will also be monitored or tracked
7) Review of any other monitoring systems currently in place for monitoring offenders
8) Review of other states who have implemented similar systems
9) Any other information or practices deemed relevant

Section 2 requires DPS to report on the effectiveness of the pilot program to the Joint Legislative Oversight Committee on Justice and Public Safety by April 1, 2018. The report shall include recommendations regarding the continuation, expansion, or elimination of the pilot program, as well as costs associated with implementing the program or any recommended legislation.

EFFECTIVE DATE: This act becomes effective January 1, 2016.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 797

Short Title:	Alarm Registration Info Not Public Record.	(Public)
Sponsors:	Representatives S. Martin, Farmer-Butterfield, Stam, and Jones (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT REGISTRATION AND SENSITIVE SECURITY INFORMATION RECEIVED OR COMPILED BY A CITY IN THE COURSE OF ADMINISTERING AN ALARM REGISTRATION ORDINANCE IS NOT A PUBLIC RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read as follows:

"**§ 132-1.7A. Alarm registration information.**

A public record, as defined by G.S. 132-1, does not include any registration or sensitive security information received or compiled by a city pursuant to an alarm registration ordinance. For purposes of this section, the term "alarm registration ordinance" means an ordinance adopted by a city that requires owners of security, burglar, fire, or similar alarm systems to register with the city. Information that is deemed confidential under this section and is not open to public inspection, examination, or copying includes registration information, including the name, home and business telephone number, and any other personal identifying information provided by an applicant pursuant to an alarm registration ordinance, and any sensitive security information pertaining to an applicant's alarm system, including residential or office blueprints, alarm system schematics, and similar drawings or diagrams."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 477*
PROPOSED COMMITTEE SUBSTITUTE H477-CSSA-46 [v.2]

4/22/2015 9:07:53 PM

Short Title: LEO Privacy Protection. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE JOINT LEGISLATIVE COMMITTEE ON LOCAL GOVERNMENT TO STUDY REQUIRING CITIES AND COUNTIES TO REMOVE PERSONAL INFORMATION FROM RECORDS AVAILABLE ON INTERNET WEB SITES MAINTAINED BY COUNTIES AND CITIES WHEN REQUESTED BY CERTAIN LAW ENFORCEMENT PERSONNEL, PROSECUTORS, AND JUDICIAL OFFICERS AND TO EXEMPT GOVERNMENT ISSUED MOBILE TELEPHONE NUMBERS OF PUBLIC SAFETY PERSONNEL FROM DISCLOSURE AS A PUBLIC RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Committee on Local Government shall study the development of a process to remove personal information of nonelected officials from records available on Internet Web sites maintained by cities and counties. In conducting the study, the Committee shall consider the following:

(1) The nonelected officials, including law enforcement personnel, prosecutors, and judicial officers, who may request removal of their personal information.
(2) The city and county Web sites from which nonelected officials may request removal of their personal information.
(3) The information subject to removal from Web sites.
(4) The process for removal of personal information from Web sites.
(5) Under what circumstances the information removed from Web sites is subject to disclosure as a public record.
(6) The costs of such a process to cities and counties.
(7) Any other matters that the Committee deems relevant.

SECTION 2. In conducting the study required by this act, the Joint Legislative Committee on Local Government shall consult with any other agencies, institutions, or individuals that it deems appropriate.

SECTION 3. The Joint Legislative Committee on Local Government shall report its findings and recommendations, together with any recommended legislation, to the 2016 Session of the 2015 General Assembly.

SECTION 4. G.S. 132-1.7 is amended by adding a new subsection to read:

"(b1) Public records, as defined in G.S. 132-1, shall not include mobile telephone numbers issued by a local, county, or State government to any of the following:

(1) A sworn law enforcement officer or non-sworn employee of a public law enforcement agency.

(2) An employee of a fire department.
(3) Any employee whose duties include responding to an emergency.

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

HOUSE BILL 477:
LEO Privacy Protection

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Reps. Malone, Saine, Faircloth, McNeill	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H477-CSSA-46		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 477 would direct the Joint Legislative Committee on Local Government to study requiring cities and counties to remove personal information from records available on internet Web sites maintained by counties and cities when requested by certain law enforcement personnel, prosecutors, and judicial officers and exempt government issued mobile telephone numbers of public safety personnel from disclosure as a public record.***

BILL ANALYSIS:

Sections 1, 2 & 3 would direct the Joint Legislative Committee on Local Government to study the development of a process to remove personal information of nonelected officials from records available on Internet Web sites maintained by cities and counties. The Committee would be required to report to the 2016 Session of the 2015 of the General Assembly.

Section 4 would provide that mobile telephone numbers issued by a local, county, or State government to certain public safety personnel are not public record.

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

O. Walker Reagan
Director

H477-SMSA-49 CSSA-46 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 477*

Short Title:	LEO Privacy Protection.	(Public)
Sponsors:	Representatives Malone, Saine, Faircloth, and McNeill (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CITIES AND COUNTIES TO REMOVE PERSONAL INFORMATION FROM RECORDS AVAILABLE ON INTERNET WEB SITES MAINTAINED BY COUNTIES AND CITIES WHEN REQUESTED BY CERTAIN LAW ENFORCEMENT PERSONNEL, PROSECUTORS, AND JUDICIAL OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-148.2. Removal of personal information from public Web sites; law enforcement personnel and others.**

(a) Each county shall develop and make available a process by which a nonelected official listed below may request that the county remove that individual's personal information, including address and phone number, from any Internet Web site maintained by the county and available to the general public, including local tax records:

(1) A federal, State, or local law enforcement officer.
(2) A State criminal magistrate.
(3) An assistant district attorney.
(4) A prosecutor employed by the North Carolina Department of Justice.
(5) A United States Attorney or Assistant United States Attorney.
(6) A federal judge.

(b) The request to remove personal information must specify the personal information to be removed from the Web site. The request is not a public record as defined by G.S. 132-1 and the county shall keep the request confidential. The county must remove the information if properly requested under this section. Information removed from the Web site continues to be a public record if it would otherwise be subject to disclosure under Chapter 132 of the General Statutes.

(c) A county and its officers, officials, employees, and agents, both past and present, in their official and individual capacity, shall be immune and held harmless from liability in any action brought by or on behalf of any person injured or harmed by the action or inaction, in good faith, of the county or its officers, officials, employees, and agents in implementing the provisions of this section. However, if the actions of an officer, official, employee, or agent which result in harm were not within the course and scope of the duties of the officer, official, employee, or agent, the officer, official, employee, or agent may be subject to liability as an individual to the extent permitted by the laws of this State."

SECTION 2. Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-208.2. Removal of personal information from public Web sites; law enforcement personnel and others.**

(a) Each city shall develop and make available a process by which a nonelected official listed below may request that the city remove that individual's personal information, including address and phone number, from any Internet Web site maintained by the city and available to the general public, including local tax records:

(1) A federal, State, or local law enforcement officer.

(2) A State criminal magistrate.

(3) An assistant district attorney.

(4) A prosecutor employed by the North Carolina Department of Justice.

(5) A United States Attorney or Assistant United States Attorney.

(6) A federal judge.

(b) The request to remove personal information must specify the personal information to be removed from the Web site. The request is not a public record as defined by G.S. 132-1 and the city shall keep the request confidential. The city must remove the information if properly requested under this section. Information removed from the Web site continues to be a public record if it would otherwise be subject to disclosure under Chapter 132 of the General Statutes.

(c) A city and its officers, officials, employees, and agents, both past and present, in their official and individual capacity, shall be immune and held harmless from liability in any action brought by or on behalf of any person injured or harmed by the action or inaction, in good faith, of the city or its officers, officials, employees, and agents in implementing the provisions of this section. However, if the actions of an officer, official, employee, or agent which result in harm were not within the course and scope of the duties of the officer, official, employee, or agent, the officer, official, employee, or agent may be subject to liability as an individual to the extent permitted by the laws of this State."

SECTION 3. The process required by Section 1 and Section 2 of this act shall be developed and implemented by October 1, 2015.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 835

Short Title:	Open Meetings/Three-Member Public Bodies.	(Public)
Sponsors:	Representative Robinson (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC MEETING LAW AS APPLIED TO THREE-MEMBER PUBLIC BODIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.10 is amended by adding a new subsection to read:

"(f) A majority of the members of a three-member public body may meet, in person or otherwise, to discuss business for the purpose of planning an official meeting if the planning meeting is not intended to evade the spirit and purposes of this Article and notes about the planning meeting are recorded contemporaneously. The notes of the planning meeting are a public record under G.S. 132-1. For the purposes of this section, the term "planning meeting" means a meeting to discuss matters related to the agenda and organization of an official meeting."

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

HOUSE BILL 835:
Open Meetings/Three-Member Public Bodies

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Rep. Robinson	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 835 would provide that a majority of members of a three-member public body may meet to discuss business for the purpose of planning an official meeting if the planning meeting is not intended to evade the purposes of the law and notes of the meeting are recorded. The notes of the planning meeting are a public record. A planning meeting is a meeting to discuss matters related to the agenda and organization of an official meeting.***

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

O. Walker Reagan
Director

Research Division
(919) 733-2578

* H 8 3 5 - S M R N - 3 8 E 1 - V 2 *

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 598

Short Title:	Revise Rule 11/Allow Cure Before Sanctions.	(Public)
Sponsors:	Representatives Bishop, Stam, and Glazier (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 9, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING G.S. 1A-11, RULE 11 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE, TO PROVIDE THAT AN ATTORNEY OR PARTY RECEIVE NOTICE AND A REASONABLE OPPORTUNITY TO CURE A VIOLATION OF THE RULE BEFORE SANCTIONS MAY BE ORDERED BY THE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 11(a), reads as rewritten:

"(a) Signing by Attorney. – Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in ~~his~~ the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign ~~his~~ the pleading, motion, or other paper and state his or her address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by ~~him~~ the attorney or party that he or she has read the pleading, motion, or other paper; that to the best of ~~his~~ the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ~~If~~

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. ~~If~~

If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's ~~fee.~~fee, if after notice and a reasonable opportunity to cure the violation the person who signed the motion, pleading, or other paper failed to do so."

SECTION 2. This act becomes effective October 1, 2015, and applies to pleadings, motions, and other papers filed on or after that date.

HOUSE BILL 598:
Revise Rule 11/Allow Cure Before Sanctions

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Reps. Bishop, Stam, Glazier, L. Hall	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 598 would amend Rule 11 of the North Carolina Rules of Evidence to provide that an attorney or party receive notice and a reasonable opportunity to cure a violation of the rule before sanctions are ordered by the court.***

CURRENT LAW: Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. A party who is not represented by an attorney shall sign his pleading, motion, or other paper. The signature of an attorney or party constitutes a certificate by him that the attorney has read the pleading, motion, or other paper; that to the best of the attorney's knowledge it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

BILL ANALYSIS: House Bill 598 would amend Rule 11 of the North Carolina Rules of Evidence to provide that an attorney or party receive notice and a reasonable opportunity to cure a violation of the rule before sanctions are ordered by the court.

EFFECTIVE DATE: October 1, 2015, and applies to pleadings, motions, and other papers filed on or after that date.

O. Walker Reagan
Director

H598-SMRN-36 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 565

Short Title:	Threaten LEO or Correctional Officer.	(Public)
Sponsors:	Representatives Faircloth, McNeill, Hurley, and G. Graham (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO THREATEN TO INFLICT SERIOUS BODILY HARM UPON OR TO KILL A LAW ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, OR ANOTHER PERSON AS RETALIATION AGAINST THE OFFICER FOR PERFORMING THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.6. Threats against law enforcement officers or correctional officers.**

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any law enforcement officer or correctional officer or who knowingly and willfully makes any threat to inflict serious bodily injury upon or kill any other person as retaliation against any law enforcement officer or correctional officer because of the exercise of that officer's duties is guilty of a Class I felony.

(b) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document containing a threat to commit an offense described in subsection (a) of this section is guilty of a Class I felony.

(c) In prosecutions under this section, it is not necessary to prove that any law enforcement officer or correctional officer actually received the threatening communication or actually believed the threat."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 565:
Threaten LEO or Correctional Officer

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Reps. Faircloth, McNeill, Hurley, G. Graham	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 565 would make it a felony to threaten to inflict serious bodily harm upon or to kill a law enforcement officer, correctional officer, or another person as retaliation against the officer for performing the officer's official duties.

CURRENT LAW:

G.S. 14-34.5 provides a Class E felony for assault with a firearm upon a law enforcement officer, probation officer, parole officer, or person employed at a State or local detention center while they are discharging their duties.

G.S. 14-34.7 provides a Class F felony for assault inflicting serious bodily injury and a Class I felony for assault inflicting physical injury upon a law enforcement officer, probation officer, parole officer, or person employed at a State or local detention center while they are discharging their duties.

BILL ANALYSIS:

House Bill 565 would create a Class I felony for any of the following:

- Knowingly and willfully threatening to inflict serious bodily injury upon or to kill any law enforcement officer or correctional officer because of the exercise of that officer's duties.
- Knowingly and willfully threatening to inflict serious bodily injury upon or to kill any other person as retaliation against any law enforcement officer or correctional officer because of the exercise of that officer's duties.
- Knowingly and willfully depositing for conveyance in the mail any letter, writing, or other document containing a threat to commit an offense described.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

* H S 6 5 - S M S A - 4 8 E 1 - V 1 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 565

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

H565-ASA-22 [v.1]

Amends Title [NO]
First Edition

Date _____,2015

Representative Faircloth

moves to amend the bill on page 1, lines 10 - 20

"(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any law enforcement officer, probation officer, parole officer, or a person who is employed at a detention facility operated under the jurisdiction of the State or a local government because of the exercise of that officer or person's duties is guilty of a Class I felony.

(b) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or kill any other person as retaliation against any law enforcement officer, probation officer, parole officer, or a person who is employed at a detention facility operated under the jurisdiction of the State or a local government because of the exercise of that officer or person's duties is guilty of a Class I felony.

(c) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document containing a threat to commit an offense described in subsection (a) or (b) of this section is guilty of a Class I felony.

(d) In prosecutions under this section, it is not necessary to prove that any law enforcement officer or correctional officer actually received the threatening communication or actually believed the threat.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 747
PROPOSED COMMITTEE SUBSTITUTE H747-PCS30351-TV-13

Short Title: Electronic Supervision Waiver. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FOR THE PILOT PROGRAM TO STUDY THE USE OF ELECTRONIC SUPERVISION DEVICES IN CERTAIN FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, the pilot program established by the Department of Health and Human Services, Division of Health Service Regulation, to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance shall remain in effect and shall extend to facilities that are authorized to provide services in accordance with Section .1700 of the North Carolina Administrative Code, Residential Treatment Staff Secure for Children or Adolescents, currently owned or operated with the facility currently authorized to waive the requirement set forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver for these facilities shall remain in effect; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey that are related to electronic supervision.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 747 DATE April 23, 2015

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

COMMITTEE SUBSTITUTE _____

Rep.)
) ~~Dollar~~ Jordan
Sen.)

1 moves to amend the bill on page 1, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by re writing the lines to read:
4 " to facilities that are authorized to provide services
5 in accordance with Section .1700 of the North
6 Carolina Administrative Code; Residential Treatment
7 Staff Secure for Children or Adolescents, currently
8 owned or operated with the facility currently
9 authorized to waive the".
10
11
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16
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18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 747

Short Title:	Electronic Supervision Waiver.	(Public)
Sponsors:	Representatives Dollar, R. Turner, Dobson, and Jordan (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FOR THE PILOT PROGRAM TO STUDY THE USE OF ELECTRONIC SUPERVISION DEVICES IN CERTAIN FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, the pilot program established by the Department of Health and Human Services, Division of Health Service Regulation, to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance shall remain in effect and shall extend to all facilities owned or operated with the facility currently authorized to waive the requirement set forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver for these facilities shall remain in effect; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey that are related to electronic supervision.

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

HOUSE BILL 747:
Electronic Supervision Waiver

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Reps. Dollar, R. Turner, Dobson, Jordan	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 747 would remove the sunset for the pilot program to study the use of electronic supervision devises in certain facilities.***

CURRENT LAW: Session Law 2009-490 required the Department of Health and Human Services, Division of Health Service Regulation to establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours in certain facilities authorized to waive the requirements in 10A NCAC 27G.1704. The waiver was to remain in effect until December 31, 2012.

10A NCAC 27G.1704 establishes the minimum staffing requirements for residential treatment facilities for children and adolescents. Sub-section .1704(c) requires two direct care staff to be present and one staff member to be awake for 1-4 children or adolescents; two direct care staff to be present and both to be awake for 5-8 children or adolescents; and three direct care staff to be present and two to be awake for 9-12 children or adolescents.

BILL ANALYSIS: House Bill 747 would require the pilot program remain in effect and extend it to all facilities owned or operated by the facility currently authorized to waive the requirements for minimum staffing.

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

O. Walker Reagan
Director

H747-SMTV-27-E1-V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 649

Short Title:	Amend Corp. Gov/Shareholder Derivative Suits.	(Public)
Sponsors:	Representative Ross (Primary Sponsor).	
	For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.	
Referred to:	Judiciary II.	

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES RELATING TO THE PROCEDURES IN SHAREHOLDER DERIVATIVE SUITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-7-40.1 reads as rewritten:

"**§ 55-7-40.1. Definitions.**

In this Part:

(1) ~~"Derivative proceeding" means a~~ Complaint. – A civil complaint filed in a derivative proceeding.

(1a) Derivative proceeding. – A civil suit in the right of a domestic corporation or, to the extent provided in G.S. 55-7-47, in the right of a foreign corporation.

(2) ~~"Shareholder" has~~ Shareholder. – Has the same meaning as in G.S. 55-1-40 and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf."

SECTION 2. G.S. 55-7-42 reads as rewritten:

"**§ 55-7-42. ~~Demand.~~Demand; rejection of demand.**

(a) No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made ~~unless.~~unless one of the following applies:

a. Prior ~~prior~~ to the expiration of the 90 days, the shareholder was notified that the corporation rejected the ~~demand, or unless~~ demand.

b. The shareholder alleges with particularity, and the court determines, that imminent irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

(b) The failure of the corporation to respond to a demand shall not be deemed to be a decision or acknowledgement that the derivative proceeding is in the best interest of the corporation or should proceed, and such a failure does not compromise or affect any of the rights of the corporation under this Part or other applicable law.

(c) In the event that the corporation rejects a demand, the corporation shall promptly provide the shareholder written notice of the rejection. The notice must include a summary of the reasons for the rejection of the demand and the identity of the directors of the corporation who approved the rejection of the demand."

SECTION 3. G.S. 55-7-43 reads as rewritten:

"**§ 55-7-43. Stay of proceedings.**

(a) If the corporation commences or has commenced an inquiry into the allegations set forth in ~~the~~ a demand or ~~complaint,~~ complaint as permitted by G.S. 55-7-44(a)(2) or (3), except for motions and submittals in connection with the inquiry and such discovery as the court may expressly permit pursuant to G.S. 55-7-44(a)(2) or (3), the court ~~may~~ shall stay a derivative proceeding for a reasonable time period ~~of time the court deems appropriate.~~while the corporation completes its inquiry and while the results of the inquiry are presented to and considered by the court.

(b) The corporation or other defendants in a derivative proceeding may move to dismiss a complaint under G.S. 55-7-44(a)(4) or (5) at any time (i) prior to, during, or subsequent to any inquiry by the corporation into the allegations set forth in a demand or complaint, and (ii) either before or after the court's ruling on any motion that may be brought under G.S. 55-7-44(a)(2) or (3). If a corporation or any other defendant in a derivative proceeding files a motion to dismiss under G.S. 55-7-44(a)(4) or (5), all discovery in the proceeding is stayed until the motion to dismiss is denied, with the exception of any discovery expressly permitted by the court pursuant to G.S. 55-7-44(a)(2) or (3).

(c) Nothing in this section restricts the right of a shareholder to inspect records of the corporation as provided in Article 16 of this Chapter."

SECTION 4. G.S. 55-7-44 reads as rewritten:

"**§ 55-7-44. Dismissal.**

~~(a) The court shall dismiss a derivative proceeding on motion of the corporation if one of the groups specified in subsection (b) or (f) of this section determines in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interest of the corporation.~~

~~(b) Unless a panel is appointed pursuant to subsection (f) of this section, the inquiry and determination shall be made by:~~

~~(1) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or~~

~~(2) A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.~~

~~(c) For purposes of this section, none of the following factors by itself shall cause a director to be considered not independent:~~

~~(1) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;~~

~~(2) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or~~

~~(3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.~~

~~(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that the requirements of subsection (a) of this section have not been met. Defendants may make a motion to dismiss a complaint under subsection (a) of this section for failure to comply with this subsection. Prior to the court's ruling on such a motion to dismiss, the plaintiff shall be entitled to discovery only with respect to the issues presented by the motion and only if and to the extent that the plaintiff has alleged such facts with particularity. The preliminary discovery shall be limited solely to matters germane and necessary to support~~

~~the facts alleged with particularity relating solely to the requirements of subsection (a) of this section.~~

~~(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.~~

~~(f) The court may appoint a panel of one or more independent persons upon motion of the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interest of the corporation. The plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.~~

(a) The court shall dismiss a derivative proceeding on motion of the corporation or any other defendant in the derivative proceeding in any of the following circumstances:

(1) A corporation institutes or has instituted its own proceeding to address or seek relief on account of, or with respect to, the events, transactions, or occurrences set forth in the demand or the complaint.

(2) Prior to the commencement of the derivative proceeding, a majority of the qualified directors of the corporation or a majority of a committee comprised of one or more qualified directors has determined, following a reasonable inquiry, that the institution of a derivative proceeding is not in the best interests of the corporation and rejects the shareholder's demand. If the complaint alleges with particularity facts demonstrating that the determination was not approved either by a majority of the qualified directors or a majority of a committee comprised of one or more qualified directors acting in good faith and after a reasonable inquiry, the court may permit discovery limited to the facts that are alleged with particularity. The court shall dismiss the proceeding if the plaintiff fails to sustain the burden of showing by clear and convincing evidence that the determination was not so approved.

(3) After commencement of a derivative proceeding, a majority of the qualified directors of the corporation, a majority of a committee comprised of one or more qualified directors, or a majority of a panel appointed by the court under subsection (e) of this section has determined, following a reasonable inquiry, that the maintenance of the derivative proceeding is not in the best interests of the corporation and authorizes the corporation to request dismissal of the derivative proceeding. If in response to the motion requesting dismissal, the plaintiff alleges with particularity facts demonstrating that the determination was not approved by a majority of the qualified directors, a majority of a committee comprised of one or more qualified directors, or a majority of the court-appointed panel acting in good faith and after a reasonable inquiry, the court may permit discovery limited to the facts that are alleged with particularity. The court shall dismiss the proceeding if the plaintiff fails to sustain the burden of showing by clear and convincing evidence that the determination was not so approved.

(4) The shareholder has failed to comply with the requirements of G.S. 55-7-42(a).

(5) The court determines that the proceeding should be dismissed for failure to state a claim upon which relief can be granted, or for any other reason enumerated in G.S. 1A-1, Rule 12.

(b) A court's decision not to dismiss a derivative proceeding under subdivision (a)(2) of this section does not preclude the corporation from commencing an inquiry into the allegations set forth in a complaint and seeking dismissal thereof as provided in subdivision (a)(3) of this section, nor does it preclude the corporation or any defendant in a derivative proceeding from seeking dismissal under subdivision (a)(4) or (5) of this section.

(c) An inquiry in response to a demand or complaint may be conducted by directors, officers, employees, attorneys, or agents of the corporation acting at the direction of the corporation, its board of directors or a committee thereof. In determining whether such an inquiry is reasonable, the court shall consider, among other relevant matters, the scope of the inquiry relative to the particularity of the allegations made in the demand or complaint, as the case may be.

(d) A board of directors may appoint a committee of one or more qualified directors, even though a majority of the board of directors is not comprised of qualified directors, so long as the board of directors acts with approval of a majority of the qualified directors.

(e) Upon motion by the corporation, the court may appoint a panel of one or more individuals to direct an inquiry and make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

(f) The following definitions apply in this section:

(1) Material interest. – An actual or potential benefit or detriment (other than one which would devolve on the corporation or the shareholders generally) that would reasonably be expected to impair the objectivity of a director's judgment when participating in the action to be taken.

(2) Material relationship. – A familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of a director's judgment when participating in the action to be taken.

(3) Qualified director. – A director of the corporation who, at the time action is taken that relates to this Part, does not have a material interest in the outcome of the proceeding or a material relationship with a person who has such an interest. The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

a. Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others.

b. Service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director.

c. Status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged."

SECTION 5. G.S. 55-7-45(a) reads as rewritten:

"(a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected. Notice may be provided in any method approved by the court, including, for a public corporation, by publication of a press release through a news release service with national distribution."

SECTION 6. G.S. 55-7-47 reads as rewritten:

"**§ 55-7-47. Applicability to foreign corporations.**

In any derivative proceeding in the right of a foreign corporation, the matters covered by this Part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for the matters governed by G.S. 55-7-43, 55-7-45, and 55-7-46. The repose period in G.S. 55-7-48(2) applies to a foreign corporation if its principal office is located in North Carolina."

SECTION 7. G.S. 55-7-48 reads as rewritten:

"**§ 55-7-48. Suits against directors of public corporations.**

In addition to the requirements of this Part, the plaintiff in ~~an action~~ a derivative proceeding brought on behalf of a corporation that is a public corporation ~~at the time of the action~~ against one or more of its directors for monetary damages shall:

(1) Allege, and it must appear, that each plaintiff has been a shareholder or holder of a beneficial interest in shares of the corporation for at least one year;

(2) Bring the action within two years of the date of the transaction of which the plaintiff complains; and

(3) If the court orders, upon motion made by the corporation at any time prior to the final resolution of the proceeding, execute and deposit with the clerk of court a written undertaking with sufficient surety, approved by the court, to indemnify the corporation against any and all expenses reasonably expected to be incurred by the corporation in connection with the proceeding, including attorneys' fees and any expenses arising by way of indemnity. In determining whether to require such an undertaking, the court shall consider whether the derivative proceeding appears to have been commenced or maintained without reasonable cause or for an improper purpose."

SECTION 8. G.S. 55-8-25(b1) is repealed.

SECTION 9. This act becomes effective October 1, 2015, and applies to demands made and complaints filed on or after that date.

HOUSE BILL 649:
Amend Corp. Gov/Shareholder Derivative Suits

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Rep. Ross	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 649 amends procedures in shareholder derivative suits.

CURRENT LAW: Part 4 of Article 7 of Chapter 55 of the General Statutes establishes the process for a shareholder to bring a derivative proceeding in superior court.

BILL ANALYSIS:

Section 1 amends definitions.

Section 2 provides that no shareholder may commence a derivative proceeding until the shareholder has made written demand for the corporation to take action and 90 days have expired from the date of the demand unless one of the following applies:

- Before the expiration of the 90 days, the shareholder was notified that the corporation rejected the demand.
- The court determines that imminent irreparable injury to the corporation would result by waiting for the 90 days to expire.

The failure of the corporation to respond to a demand is not an acknowledgement that the derivative proceeding is in the best interest of the corporation and should proceed. If the corporation rejects a demand, then the corporation must promptly provide written notice to the shareholder. The notice must include a summary of the reasons for the rejection and the identity of the directors who approved the rejection.

Section 3 addresses stays of proceedings. If a corporation has commenced an inquiry into allegations as to whether or not a derivative proceeding is in the best interests of the corporation, the court must stay the derivative proceeding for a reasonable period of time while the corporation completes its inquiry.

A corporation or other defendants may move to dismiss a complaint if (1) the shareholder has failed to comply with the requirements for a written demand or (2) the court determines the proceeding should be dismissed for failure to state a claim for which relief can be granted at any of the following times:

- Prior to, during, or subsequent to any inquiry by the corporation into the allegations set forth in a demand or complaint
- Either before or after the court's ruling on any motion for dismissal that may be brought under the procedures for dismissal when determination has been made that a derivative proceeding is not in the best interests of the corporation

If a corporation or other defendant files a motion to dismiss for failure to comply with the requirements for a written demand or failure to state a claim for which relief can be granted, all discovery in the proceeding is stayed until the motion to dismiss is denied, with the exception of any discovery expressly

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

permitted by the court in dismissal proceedings when a determination has been made that a derivative proceeding is not in the best interests of the corporation.

These requirements do not restrict the right of a shareholder to inspect records of the corporation as provided by the Article on records and reports (Article 16) of the NC Business Corporation Act.

Section 4

Section 4 creates a new dismissal process for derivative suits which directs the court to dismiss a derivative proceeding on motion of the corporation or any other defendant in any of the following circumstances:

(1) A corporation institutes or has instituted its own proceeding to address or seek relief related to the events, transactions, or occurrences set forth in the demand or the complaint.

(2) Prior to the commencement of the derivative proceeding, a majority of the qualified directors of the corporation or a majority of a committee comprised of one or more qualified directors has determined that the institution of a derivative proceeding is not in the best interests of the corporation and rejects the shareholder's demand. The court may permit limited discovery based on allegations that the determination was not approved in the appropriate manner. The court must dismiss the proceeding if the plaintiff fails to sustain the burden of showing by clear and convincing evidence that the determination was not so approved. A court's denial of dismissal under this circumstance does not preclude dismissal under the circumstances in the next three paragraphs.

(3) After commencement of a derivative proceeding, a majority of the qualified directors of the corporation, a majority of a committee comprised of one or more qualified directors, or a majority of a panel appointed by the court has determined that the maintenance of the derivative proceeding is not in the best interests of the corporation and authorizes the corporation to request dismissal of the derivative proceeding. The court may permit limited discovery based on allegations that the determination was not approved in the appropriate manner. The court must dismiss the proceeding if the plaintiff fails to sustain the burden of showing by clear and convincing evidence that the determination was not so approved.

(4) The shareholder has failed to comply with the requirements for a written demand.

(5) The court determines that the proceeding should be dismissed for failure to state a claim upon which relief can be granted, or for any other reason under Rule 12 of the Rules of Civil Procedure.

An inquiry in response to a demand or complaint may be conducted by directors, officers, employees, attorneys, or agents of the corporation acting at the direction of the corporation, its board of directors or a committee thereof. In determining whether such an inquiry is reasonable, the court must consider, the scope of the inquiry relative to the particularity of the allegations made.

A board of directors may appoint a committee of one or more qualified directors, even though a majority of the board of directors is not comprised of qualified directors, so long as the board of directors acts with approval of a majority of the qualified directors.

Upon motion of the corporation, the court may appoint a panel of one or more individuals to determine whether the maintenance of the derivative proceeding is in the best interests of the corporation.

Section 5 provides that notice of a discontinuance or proposed settlement may be provided in any method approved by the court, including, for a public corporation, by publication of a press release through a news release service with national distribution.

Section 6 provides that the repose period (actions against directors of corporations must be brought within two years from the date of the transaction) also applies to a foreign corporation if its principal office is located in North Carolina.

Section 7 amends the requirements for a plaintiff bringing a derivative proceeding. It clarifies that a court ordered surety, which indemnifies the corporation against expenses expected to be incurred, includes the cost of attorneys' fees. When deciding whether to require a surety, the court also must consider whether the derivative proceeding has been maintained without reasonable cause or for an improper purpose.

Section 8 repeals the statute dealing with committees of directors.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to demands made and complaints filed on or after that date.

*Kara McCraw, Staff Attorney with the Research Division, contributed substantially to this summary.

HOUSE BILL 292

Short Title:	Beach Bingo Licenses.-AB	(Public)
Sponsors:	Representative Hurley (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary I, if favorable, Finance.	

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A LICENSE TO OPERATE A BEACH BINGO GAME, TO AUTHORIZE THE DEPARTMENT OF PUBLIC SAFETY TO CHARGE AND COLLECT THAT LICENSING FEE, AND TO MAKE IT A CRIMINAL OFFENSE TO VIOLATE THE BEACH BINGO LICENSING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-309.14 is amended by adding the following new subdivision:

"(5) A person shall not operate a beach bingo game at any location without first obtaining a license as provided by this subdivision. Any person operating a beach bingo game without a license is guilty of a Class 2 misdemeanor. The procedure for obtaining an application for a beach bingo license shall be as follows:

a. The application for a beach bingo license shall be made to the Department of Public Safety on a form prescribed by the Department. The Department shall charge an initial application fee of three hundred dollars ($300.00) and an annual renewal fee of three hundred dollars ($300.00) to defray the cost of issuing beach bingo licenses and handling enforcement. The fees collected shall be deposited in the General Fund of the State. This license shall expire one year after the granting of the license but may be renewed yearly upon payment of the renewal fee.

b. Each application and renewal application shall contain all of the following information:

1. The name and address of the applicant and if the applicant is a corporation, association, or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

2. The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

c. Any false information provided in an application for a beach bingo license is cause for suspension of that license and is also a Class 2 misdemeanor.

d. All books, papers, records, and documents relevant to determining whether an individual has acted or is acting in compliance with this section shall be open to inspection by the Department of Public Safety at reasonable times and during reasonable hours."

SECTION 2. The Department of Public Safety may take the necessary actions to develop and implement the application process. Beginning October 1, 2015, the Department of Public Safety may accept applications, charge and collect application fees, and issue licenses as provided by G.S. 14-309.14(5) as enacted by this act.

SECTION 3. Except as provided otherwise, Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. G.S. 14-309(5)c. as enacted by Section 1 of this act becomes effective October 1, 2015, and applies to applications submitted on or after October 1, 2015, and offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 292:
Beach Bingo Licenses.-AB

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	April 22, 2015
Introduced by:	Rep. Hurley	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Staff Attorney

SUMMARY: ***House Bill 292 would establish a licensure process for the operation of beach bingo games.***

CURRENT LAW: Except as specifically provided by law, any person operating a game of chance or any person who plays or bets on ay game of chance is guilty of a Class 2 misdemeanor.

Raffles are permitted under limited circumstances. Nonprofits may conduct two raffles per year. The maximum cash prize that may be offered or paid for any one raffle is $125,000, and if merchandise is used as a prize, the maximum fair market value of that prize may not exceed $125,000. The total prizes offered in any calendar year for a raffle/raffles may not exceed $125,000. Real property, not to exceed $500,000 per year, may also be offered as a prize. No less than 90% of the net proceeds of a raffle must be used for charitable, religious, education, civic, or other nonprofit purposes. A raffle cannot be conducted in conjunction with bingo. A person who conducts a raffle in violation of law is guilty of a Class 2 misdemeanor and cannot conduct a raffle for a year. G.S. 14-309.15.

Bingo is permitted in accordance with the procedures set forth in statute. Organizations conducting bingo games must obtain a license from the Department of Public Safety (DPS). The number of sessions and the amount of prizes is limited. The statutes prescribe the accounting procedures for bingo, including annual audits that must be prepared and filed with the DPS.

Beach bingo is also authorized, with the following constraints:

- Prizes may not exceed $10.
- Beach bingo may not be held in conjunction with any other lawful bingo game or any offering of an opportunity to obtain anything of value.
- No free bingo games may be offered as prizes or promotions.
- No alcohol may be served.

BILL ANALYSIS: The bill would make it a Class 2 misdemeanor to operate a beach bingo game without a license issued by the Department of Public Safety (DPS). The fee to apply for a license, and for annual renewal, would be $300.

The applicant would have to provide the following information, upon application and renewal:

- The name and address of the applicant. If the applicant is a corporation, association, or other similar legal entity, the name and home address of each of the officers of the organization and the name and address of the directors, or other persons similarly situated, of the organization.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

DPS would have the authority to inspect all books, papers, records, and documents relevant to determining whether an individual has acted or is acting in compliance with the law. The inspection would need to be at reasonable times and during reasonable hours.

EFFECTIVE DATE: December 1, 2015, except that DPS may begin accepting, and ruling upon, applications for licensure on October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Incarceration Fiscal Note

REVISED

BILL NUMBER: House Bill 292 (First Edition)

SHORT TITLE: Beach Bingo Licenses.-AB

SPONSOR(S): Representative Hurley

FISCAL IMPACT

($ in millions)

☐ Yes ☐ No ☑ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
NET STATE IMPACT	**Likely budget cost. See Assumptions & Methodology section for additional details.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts; Office of Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
None

Revision Note: ***This note has been revised to correct the fiscal year column headers in the table above.***

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offenses. However, given that there is no historical data on these new offenses or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: $88 per disposition
- Indigent Defense Services: $181 per disposition
- Department of Public Safety (DPS) - Prison Section: No cost
- DPS - Community Corrections: Minimum of $1,697

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill creates two new Class 2 misdemeanor offenses related to new licensure requirements for beach bingo. Section 1 makes it a Class 2 misdemeanor offense to operate a beach bingo game without a license and Section 5(c) makes it a Class 2 misdemeanor offense to provide false information in a license application.

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 F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

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.

Sections 1 and 5(c) of the bill create new Class 2 misdemeanor offenses. 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. For every additional person charged with a Class 2 misdemeanor, the average cost to the court would be $88.

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. 30% of Class 2 misdemeanor cases are handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class 2 misdemeanor will be $181 per case for a private appointed counsel (PAC) attorney. This estimate assumes 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.

Department of Public Safety –Prison Section

This bill creates two new Class 2 misdemeanor offenses. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

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, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs $130.50 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, intermediate sanctions and supervised probations.

In FY 2013-14, 33% of Class 2 misdemeanor offenders received active sentences; 67% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 13 months. Therefore, at a minimum, one conviction resulting from this bill will require at least 13 months of supervision. The cost of 13 months of supervision is $1,697 per offender ($130.50 per month times 13 months).[1]

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

[1] Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: April 22, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 355
Committee Substitute Favorable 4/15/15
PROPOSED COMMITTEE SUBSTITUTE H355-CSRN-23 [v.3]
4/23/2015 9:21:43 AM

Short Title: Evidence Passed Vehicle is a School Bus. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL METHODS FOR PROVING THAT A STOPPED VEHICLE PASSED BY ANOTHER MOTOR VEHICLE IS A "SCHOOL BUS" SUBJECT TO THE PROVISIONS OF G.S. 20-217.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(b) reads as rewritten:

"(b) For the purpose of this section, ~~a school bus~~the term "school bus" includes a public school bus transporting children or school personnel, a public school bus transporting senior citizens under G.S. 115C-243, or a privately owned school bus transporting children. ~~This section applies only in the event the school bus bears upon the front and rear a plainly visible sign containing the words "school bus."~~The following shall be prima facie evidence that a vehicle was a school bus, as defined in this section and Chapter, at the time of a violation of subsection (a) of this section:

(1) A certified copy of a record from the Division showing the vehicle was registered as a school bus at the time of the violation of subsection (a) of this section. A certified copy of a record under this subdivision shall be admissible as evidence without further authentication.

(2) Testimony from the school bus driver, a passenger on the school bus, or the law enforcement officer investigating the violation of subsection (a) of this section."

SECTION 2. This act becomes effective October 1, 2015, and applies to offenses committed on or after that date.

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HB 355: *Evidence Passed Vehicle is a School Bus*

- This PCS language comes from the Child Fatality Task Force's recommendation and it was in HB 233 that passed out of House Transportation Committee this week.

- There is corresponding provision to appropriate funds for additional stop-arm cameras for local boards of education. This was re-referred to appropriations.

- This PCS amends GS 20-217 to specify two ways to prove, *prima facie,* that a vehicle is a "school bus" at the time of the violation.

    - **1st way**: provide a certified copy of record from the Division showing the vehicle was registered as a school bus at the time of the violation. A certified copy is admissible as evidence without further authentication.

    - **2nd way**: testimony from the school bus driver, a passenger on the bus, or the law enforcement officer investigating the violation.

- **Problem with current law**:
    - School bus drivers need to be subpoenaed to prove that in fact they were driving the school bus and ID the driver. So many openings for drivers, lack of leave to come to court... how do we get them to come to court?
    - Law enforcement has to prove that the bus is a "school bus" by seeing the words "school bus" on the front, back and sides of the bus.
    - If an ADA fails to get this information across, the cases are found not guilty.

- **We have a strong criminal law on unlawfully passing a stopped school bus.**
    - Most of our statutes do not prohibit PJCs but this one does, meaning, there is more of a chance for a trial in district court and no relief.
    - We need the strongest statutory authority possible to get these cases properly heard so both parties are treated fair.

- There are around 450 stop-arm cameras in NC and over 60% of the buses have internal cameras.
- In 2013, we appropriated 2 stop-arm cameras per LEA. Of these in '12-'13, there was a 66% conviction rate.
- While there is a problem with guilty verdicts, our data we are given regarding convictions do not differentiate between the charges that resulted in no conviction because of evidentiary issues from the charges that were disposed of through plea agreements.

HOUSE BILL 375*

Short Title:	Real Prop./Error Correction & Title Curative.	(Public)
Sponsors:	Representatives Jordan, Bryan, and Stevens (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II, if favorable, Appropriations.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURES FOR CORRECTING TYPOGRAPHICAL, OBVIOUS DESCRIPTION, OR OTHER MINOR ERRORS IN RECORDED INSTRUMENTS AND TO CREATE A TEN-YEAR CURATIVE PROVISION FOR CERTAIN DEFECTS IN RECORDED INSTRUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-36.1 is repealed.

SECTION 2. Article 2 of Chapter 47 of the General Statutes is amended by adding a new subsection to read:

"**§ 47-36.2. Correction of errors in recorded instruments.**

(a) The following definitions apply to this section, unless the context requires a different meaning:

(1) Attorney. – A person licensed to practice law under Chapter 84 of the General Statutes.

(2) Corrective affidavit. – An affidavit executed by an attorney to correct an obvious description error, typographical error, or other minor error in a deed, deed of trust, or other instrument recorded with the register of deeds.

(3) Obvious description error. – An error in the legal description of real property that is contained in a recorded deed, deed of trust, mortgage, or other conveyance that is evidenced by any of the following:

a. The subject parcel is properly identified and shown on a recorded subdivision plat.

b. The error is made apparent by reference to other information contained in the instrument or an attachment to the instrument, or by reference to another instrument in the chain of title for the subject parcel.

c. The instrument contains the correct address or tax map identification number for the subject parcel.

d. The instrument contains one or more errors transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles and compass directions.

e. The instrument contains an erroneous incorporation of an incorrect plat or deed reference.

f. The instrument contains an error in a lot number or designation.

g. The instrument omits an exhibit or attachment intended to supply the legal description of the subject property.

The term does not include missing or improper signatures or acknowledgements, or any designation of the type of ownership interest or right of survivorship.

(4) Recorded subdivision plat. – A plat that has been prepared by a registered land surveyor licensed pursuant to Chapter 89C of the General Statutes and has been recorded with the register of deeds in the county where the property is situated.

(5) Title insurance company. – A company certified pursuant to Article 26 of Chapter 58 of the General Statutes that has issued a policy of title insurance covering a conveyance needing correction.

(b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors or typographical or other minor errors in a recorded deed, deed of trust, or other instrument purporting to convey or transfer an interest in real property may be corrected by recording a corrective affidavit with the register of deeds in every county where the real property is situated; provided that no correction of an obvious description error shall be inconsistent with the description of the property in any recorded subdivision plat.

(c) Prior to recording a corrective affidavit as described in subsection (b) of this section, the attorney seeking to record the affidavit shall deliver a notice and copy of the affidavit to the last known address for all of the persons listed in this subsection.

The notice and copy of the corrective affidavit shall be delivered by personal service or sent by certified mail, return receipt requested. The attorney may rely on the last known address as contained in (i) the instrument needing correction, (ii) any recorded instruments relating to the transaction involving the instrument needing correction, (iii) any forwarding address information provided to the attorney, or (iv) any other source that can establish a current address with reasonable certainty.

If a county or a municipality is a party to the instrument needing correction, the notice and copy of the corrective affidavit shall be sent to the attorney for the county or municipality, or to the manager of the county or municipality. If the State is a party to the instrument needing correction, the notice and copy of the corrective affidavit shall be sent to the Attorney General and to the director, chief executive officer, or head of the state agency, department, or entity in possession of the subject property.

The persons entitled to notice and a copy of the corrective affidavit pursuant to this section are as follows:

(1) All parties to the deed, deed of trust, or other instrument being corrected.

(2) The current record owner of the real property at the property address and any other address reflected in the tax records of the county where the property is situated.

(3) The attorney who prepared the deed, deed of trust, or other instrument being corrected, if known.

(4) Any title insurer who has issued a policy covering the subject property, if known.

(5) All adjoining parcel owners affected by the correction of an error of the type described in sub-subdivision d. of subdivision (3) of subsection (a) of this section.

(d) If, after 30 days of receipt of the notice described in subsection (c) of this section, no written objection to the recordation of the corrective affidavit or dispute of the facts recited in the affidavit has been received, the attorney may record the corrective affidavit and all parties to the instrument being corrected shall be bound by the terms contained in the affidavit. The corrective affidavit shall be notarized and shall contain (i) a statement that no objection

was received from any party entitled to notice, (ii) a copy of the notice sent to the parties, and (iii) the attorney's North Carolina State Bar number.

(e) A corrective affidavit that is recorded pursuant to this section shall operate as a correction of the deed, deed of trust, or other instrument and relates back to the date of the original recordation of the deed, deed of trust, or other instrument as if the deed, deed of trust, or other instrument was correct when first recorded. A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the title policy that can be located.

(f) The register of deeds shall record the corrective affidavit in the deed book and index the affidavit in the names of parties to the deed, deed of trust, or other instrument as grantees and grantors, irrespective of their designation in the deed, deed of trust, or other instrument needing correction. The costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party submitting the affidavit to the register of deeds. An affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorney fees and costs.

(g) The remedies prescribed by this section are not exclusive and do not abrogate any rights or remedies available under the laws of this State.

(h) A corrective affidavit made pursuant to this section shall be in substantially the following form:

"Corrective Affidavit

This Affidavit, prepared pursuant to § 47-36.1 of the North Carolina General Statutes, shall be indexed in the names of _____ (grantor) and _____ (grantee), whose addresses are _____. The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a North Carolina attorney, North Carolina State Bar No. _____.

2. That the deed, deed of trust, or other instrument needing correction was made in connection with a real estate transaction in which _____ conveyed real property to _____, as shown in a deed recorded in the Register of Deeds of _____ County, on _____ and in Book _____, Page _____.

3. That the property description in the aforementioned deed, deed of trust, or other instrument contains an obvious description error or typographical or other minor error.

4. That the property description (if any) containing the obvious error reads: _____

5. That the correct property description should read: _____

6. That this affidavit is given pursuant to § 47-36.1 of the North Carolina General Statutes to correct the property description in the aforementioned deed, deed of trust, or other instrument and such description shall be as stated in paragraph 5 above upon recordation of this affidavit with the Register of Deeds of _____ County.

7. That the typographical or other minor error (if any) is described as follows: _____.

8. That the typographical or other minor error (if any) should be corrected to read as follows: _____.

9. That this affidavit is given pursuant to § 47-36.1 of the North Carolina General Statutes to correct the property description in the aforementioned deed, deed of trust, or other instrument and such description shall be as stated in paragraph 8 above upon recordation of this affidavit with the Register of Deeds of _____ County.

10. That notice of the intent to record this corrective affidavit and a copy of this affidavit was delivered to all parties to the deed, deed of trust, or other instrument being corrected pursuant to § 47-36.1 of the North Carolina General Statutes and that no objection to the recordation of this affidavit was received within the applicable period of time as set forth in § 47-36.1 of the North Carolina General Statutes.

_____
(Name of attorney)

_____
(Signature of attorney)

_____
(Address of attorney)

_____
(Telephone number of attorney)

_____

The foregoing affidavit was acknowledged before me this _____ day of _____, 20__, by _____
(Notary Public)

My commission expires: _____"

(i) Notice of a corrective affidavit made pursuant to this section shall be in substantially the following form:

"Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or other instrument described in the corrective affidavit, a copy of which is attached to this notice as follows:

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or other instrument recorded as part of a real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record the affidavit with the Register of Deeds of _____ County to correct the error described in the affidavit unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice the following address:

_____

_____

_____

_____

(Name of attorney)

_____

(Signature of attorney)

_____

(Address of attorney)

_____

(Telephone number of attorney)"

(m) If an affidavit is conspicuously identified as a corrective affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy.

(n) Nothing in this section requires that an affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that an affidavit be attached to a previously recorded instrument with a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument.

(o) If a corrective affidavit is solely made by a notary public in order to correct a notarial certificate made by that notary public that was attached to an instrument already recorded with the register of deeds, the notary public shall complete the corrective affidavit identifying the correction and may attach a new acknowledgment completed as of the date the original acknowledgment took place, which shall be deemed attached to the original recording, and the instrument's priority shall remain the date and time originally recorded."

SECTION 2. Article 4 of Chapter 47 of the General Statutes is amended by adding a new subsection to read:

"**§ 47-108.27. Ten year curative statute.**

(a) If an instrument conveying or purporting to convey an interest in real property contains a material defect, irregularity, or omission is recorded by the register of deeds in the county where the property is situated and the defect, irregularity, or omission is not corrected before a period of 10 years has elapsed since the instrument was recorded, then the instrument shall be deemed effective for all purposes and to the same extent as though the instrument had not contained the defect, irregularity, or omission. The proper recordation and indexing of a corrective instrument or a notice of lis pendens shall act as a toll to the 10-year curative period.

(b) For the purposes of this section, a "material defect, irregularity, or omission" occurs when the recorded instrument facially fails to comply with any of the following:

(1) The proper execution of a form of acknowledgment as provided under Article 3 of Chapter 47 of the General Statutes.

(2) The proper execution of a corporate conveyance as provided under G.S. 47-41.01.

(3) The proper affixation of a seal by a sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized

to execute an instrument by virtue of an office or appointment held by the grantor.

(c) Nothing in this section is intended to modify any provisions of law pertaining to the competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes, or to limit any remedies available under the laws of this State."

SECTION 3. This act becomes effective October 1, 2015, and applies to corrective affidavits filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 375*
PROPOSED COMMITTEE SUBSTITUTE H375-CSRN-22 [v.2]
4/22/2015 8:55:40 PM

Short Title: Real Prop./Error Correction & Title Curative. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCESS FOR CORRECTING NON-MATERIAL ERRORS IN RECORDED INSTRUMENTS OF TITLE; TO CREATE A CURATIVE PROCEDURE FOR OBVIOUS DESCRIPTION ERRORS IN DOCUMENTS OF TITLE; AND TO CREATE A TEN-YEAR CURATIVE PROVISION FOR CERTAIN DEFECTS IN RECORDED INSTRUMENTS OF TITLE

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-36.1 reads as rewritten:

"**§ 47-36.1. Correction of obvious description errors in recorded instruments of title.**

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of a non-material typographical or other minor non-material error in a deed or other instrument recorded with the register of deeds may be given by recording ~~an~~ a corrective affidavit. If ~~an~~ a corrective affidavit is conspicuously identified as a corrective ~~or scrivener's~~ affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective affidavit is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.

(a1) A corrective affidavit authorized by this section shall not be used to correct an obvious description error as defined in G.S. 47-36.2.

. . . ."

SECTION 2. Article 2 of Chapter 47 of the General Statutes is amended by adding a new subsection to read:

"**§ 47-36.2. Correction of errors in recorded instruments.**

(a) The following definitions apply to this section, unless the context requires a different meaning:

(1) Attorney. – A person licensed to practice law under Chapter 84 of the General Statutes.

(2) Curatuve affidavit. – An affidavit executed by an attorney to correct an obvious description error in a deed, deed of trust, or other instrument recorded with the register of deeds.

(3) Obvious description error. – An error in the legal description of real property that is contained in a recorded deed, deed of trust, mortgage, or other conveyance that is evidenced by any of the following:

a. The subject parcel is properly identified and shown on a recorded plat.

b. The error is made apparent by reference to other information contained in the instrument or an attachment to the instrument, or by reference to another instrument in the chain of title for the subject parcel, including the recorded plat.

c. The instrument contains the correct address or tax map identification number for the subject parcel.

d. The instrument contains one or more errors transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles and compass directions.

e. The instrument contains an erroneous incorporation of an incorrect plat or deed reference.

f. The instrument contains an error in a lot or unit number or designation.

g. The instrument omits an exhibit or attachment intended to supply the legal description of the subject property.

The term does not include missing or improper signatures or acknowledgements, or any designation of the type of ownership interest or right of survivorship.

(4) Recorded plat. – A plat that has been prepared by a registered land surveyor licensed pursuant to Chapter 89C of the General Statutes and has been recorded with the register of deeds in the county where the property is situated.

(5) Title insurance company. – A company certified pursuant to Article 26 of Chapter 58 of the General Statutes that has issued a policy of title insurance covering a conveyance needing correction.

(6) Title insurance agent. – A person or entity licensed by the Commissioner of Insurance and contractually authorized by one or more title insurance companies to issue commitments and policies on behalf of said title insurance company.

(b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a recorded deed, deed of trust, or other instrument purporting to convey or transfer an interest in real property may be corrected by recording a curative affidavit containing the attorney's North Carolina State Bar Number with the register of deeds in every county where the real property is situated; provided that no correction of an obvious description error shall be inconsistent with the description of the property in any recorded plat.

(c) Prior to recording a curative affidavit as described in subsection (b) of this section, the attorney seeking to record the affidavit shall deliver a notice and copy of the affidavit to the last known address for all of the persons listed in this subsection.

The notice and copy of the curative affidavit shall be made in any manner provided by the Rules of Civil Procedure for service of summons, including delivered by personal service or sent by registered mail or by certified mail, return receipt requested. The attorney may rely on the last known address as contained in (i) the instrument needing correction, (ii) any recorded instruments relating to the transaction involving the instrument needing correction, (iii) any forwarding address information provided to the attorney, or (iv) any other source that can establish a current address with reasonable certainty.

If a county or a municipality is a party to the instrument needing correction, the notice and copy of the curative affidavit shall be sent to the attorney for the county or municipality, or to the manager of the county or municipality. If the State is a party to the instrument needing correction, the notice and copy of the curative affidavit shall be sent to the Attorney General and to the director, chief executive officer, or head of the state agency, department, or entity in possession of the subject property.

The persons entitled to notice and a copy of the curative affidavit pursuant to this section are as follows:

(1) All parties to the deed, deed of trust, or other instrument being corrected.

(2) The current record owner of the real property at the property address and any other address reflected in the tax records of the county where the property is situated.

(3) The attorney who prepared the deed, deed of trust, or other instrument being corrected, if known.

(4) Any title insurance company and title insurance agent. if applicable, who has issued a policy covering the subject property, if known.

(5) All adjoining record parcel owners, record holders of any mineral or timber rights, or record easement holders affected by the correction of an error of the type described in sub-subdivision d. of subdivision (3) of subsection (a) of this section.

(d) If, after 30 days of receipt of the notice described in subsection (c) of this section, no written objection to the recordation of the curative affidavit or dispute of the facts recited in the affidavit has been received, the attorney may record the curative affidavit and all parties to the instrument being corrected shall be bound by the terms contained in the affidavit. The curative affidavit shall be notarized and shall contain (i) a statement that no objection was received from any party entitled to notice, (ii) a copy of the notice sent to the parties, and (iii) the attorney's North Carolina State Bar number.

(e) A curative affidavit that is recorded pursuant to this section shall operate as a correction of the deed, deed of trust, or other instrument and relates back to the date of the original recordation of the deed, deed of trust, or other instrument as if the deed, deed of trust, or other instrument was correct when first recorded. A title insurance company, upon request, and receipt of the written opinion of the attorney who filed the curative affidavit that the curative affidavit complies with this statute may issue an endorsement to reflect the corrections made by the curative affidavit and shall deliver a copy of the endorsement to all parties to the title policy that can be located.

(f) The register of deeds shall record the curative affidavit in the deed book and index the affidavit in the names of parties to the deed, deed of trust, or other instrument as grantees and grantors, irrespective of their designation in the deed, deed of trust, or other instrument needing correction. The costs associated with the recording of a curative affidavit pursuant to this section shall be paid by the party submitting the affidavit to the register of deeds. An affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorney fees and costs.

(g) The remedies prescribed by this section are not exclusive and do not abrogate any rights or remedies available under the laws of this State.

(h) A curative affidavit made pursuant to this section shall be in substantially the following form:

" Curative Affidavit

This Affidavit, prepared pursuant to § 47-36.2 of the North Carolina General Statutes, shall be indexed in the names of _____ (grantor) and _____ (grantee), whose addresses are _____. The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a North Carolina attorney, North Carolina State Bar No. _____.

2. That the deed, deed of trust, or other instrument needing correction was made in connection with a real estate transaction in which _____ conveyed real property to _____, as shown in a deed recorded in the Register of Deeds of _____ County, on _____ and in Book _____, Page _____.

3. That the property description in the aforementioned deed, deed of trust, or other instrument contains an obvious description error.

4. That the property description (if any) containing the obvious description error reads: _____

5. That the correct property description should read: _____

6. That this affidavit is given pursuant to § 47-36.1 of the North Carolina General Statutes to correct the property description in the aforementioned deed, deed of trust, or other instrument and such description shall be as stated in paragraph 5 above upon recordation of this affidavit with the Register of Deeds of _____ County.

7. That notice of the intent to record this curative affidavit and a copy of this affidavit was delivered to all parties to the deed, deed of trust, or other instrument being corrected or otherwise required to be noticed pursuant to § 47-36.2 of the North Carolina General Statutes and that no objection to the recordation of this affidavit was received within the applicable period of time as set forth in § 47-36.1 of the North Carolina General Statutes.

_____
(Name of attorney)

_____
(Signature of attorney)

(North Carolina State Bar Number)

_____
(Address of attorney)

_____
(Telephone number of attorney)

_____

The foregoing affidavit was acknowledged before me this _____ day of _____, 20__, by _____

(Notary Public)

My commission expires: _____"

(i) Notice of a curative affidavit made pursuant to this section shall be in substantially the following form:

"Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or other instrument described in the curative affidavit, a copy of which is attached to this notice as follows:

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or other instrument recorded as part of a real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record the affidavit with the Register of Deeds of _____ County to correct the error described in the affidavit unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice the following address:

_____

_____

_____

_____

(Name of attorney)

_____

(Signature of attorney)

_____

(North Carolina State Bar Number

_____

(Address of attorney)

_____

(Telephone number of attorney)"

(m) If an affidavit is conspicuously identified as a curative affidavit in its title and contains the North Carolina State Bar number of the attorney affiant, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. The register of deeds may rely upon the curative affidavit containing the North Carolina State Bar number of the attorney affiant and is not responsible for confirming that the attorney affiant is licensed to practice law under Chapter 84 of the General Statutes.

(n) Nothing in this section requires that an affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that an affidavit be attached to a previously recorded instrument with a

copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument."

SECTION 3. Article 4 of Chapter 47 of the General Statutes is amended by adding a new subsection to read:

"**§ 47-108.27. Ten year curative statute.**

(a) If an instrument conveying or purporting to convey an interest in real property contains a material defect, irregularity, or omission is recorded by the register of deeds in the county where the property is situated and the defect, irregularity, or omission is not corrected before a period of 10 years has elapsed since the instrument was recorded, then the instrument shall be deemed effective to vest title as stated therein and to the same extent as though the instrument had not contained the defect, irregularity, or omission. The proper recordation and indexing of a curative instrument or a notice of lis pendens shall act as a toll to the 10-year curative period.

(b) For the purposes of this section, a "material defect, irregularity, or omission" occurs when the recorded instrument facially fails to comply with any of the following:

(1) The proper execution of a form of acknowledgment as provided under Article 3 of Chapter 47 of the General Statutes.

(2) The proper recitals of consideration, residence, address, or date.

(3) The proper affixation of a seal by a sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute an instrument by virtue of an office or appointment held by the grantor.

(c) Nothing in this section is intended to modify any provisions of law pertaining to the competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes, or to limit any remedies available under the laws of this State."

SECTION 4. This act becomes effective October 1, 2015, and applies to curative affidavits filed on or after that date.

HOUSE BILL 375:
Real Prop./Error Correction & Title Curative

2015-2016 General Assembly

Committee:	House Serial Referral To Appropriations Stricken	**Date:**	April 23, 2015
Introduced by:	Reps. Jordan, Bryan, Stevens	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H375-CSRN-22		Committee Counsel

SUMMARY: ***House Bill 375 would clarify the process for correcting non-material errors in recorded instruments of title, would create a curative procedure for obvious description errors in documents of title, and would create a 10-year curative provision for certain defects in recorded instruments of title. The Proposed Committee Substitute (PCS) would amend, rather than repeal, G.S. 47-36.1, uses the term "curative affidavit" in newly created G.S. 47-36.2, requires a North Carolina State Bar Number on curative affidavits, and makes other conforming changes.***

[As introduced, this bill was identical to S460, as introduced by Sen. Daniel, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 provides that notice of a non-material typographical or minor non-material error in a deed or instrument recorded with the register of deeds may be given by recording a corrective affidavit. However, a corrective affidavit must not be used to correct an obvious description in G.S. 47-36.2.

Section 2 creates G.S. 47-36.2 dealing with correction of errors in recorded instruments. It allows curative affidavits to correct an "obvious description error" in a recorded deed, deed of trust, or other instrument conveying an interest in real property. The curative affidavit must contain the attorney's NC State Bar Number and be filed in in the county in which the real property is located. Prior to recording the curative affidavit, the attorney must deliver a notice and copy of the affidavit to the last known address of:

- All parties to the instrument being corrected.
- The current record owner of the real property at the property address and any other address reflected in the tax records of the county where the property is situated.
- The attorney who prepared the instrument being corrected, if known.
- Any title insurance company and title insurance agent. if applicable, who has issued a policy covering the subject property, if known.
- All adjoining record parcel owners, record holders of any mineral or timber rights, or record easement holders affected by the correction.

If, after 30 days of receipt of the notice, there is no written objection to the curative affidavit or dispute of the facts recited in the affidavit, the attorney may record the curative affidavit and all parties to the instrument being corrected are bound by the terms contained in the affidavit. The curative affidavit must be notarized and contain specific information.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

A curative affidavit that is recorded operates as a correction of the instrument and relates back to the date of the original recordation of the instrument as if the instrument was correct when first recorded. A title insurance company may issue an endorsement to reflect the corrections made by the curative affidavit and shall deliver a copy of the endorsement to all parties to the title policy that can be located if the attorney who recorded the instrument gives a written opinion that the curative affidavit complies with the law.

The register of deeds must record the curative affidavit in the deed book and index the affidavit in the names of parties to the instrument as grantees and grantors, irrespective of their designation in the instrument needing correction. The costs associated with the recording of a curative affidavit must be paid by the party submitting the affidavit. An affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorney fees and costs.

The statute offers a form showing how the curative affidavit must be made. The register of deeds may rely upon the curative affidavit containing the North Carolina State Bar number of the attorney affiant and is not responsible for confirming that the attorney affiant is licensed to practice law.

Nothing in this section requires that an affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that an affidavit be attached to a previously recorded instrument with a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument.

Section 3 creates a 10-year curative statute. If an instrument conveying or purporting to convey an interest in real property contains a material defect is recorded by the register of deeds in the county where the property is situated and the defect is not corrected before a period of 10 years has elapsed since the instrument was recorded, then the instrument shall be deemed effective to vest title as stated therein. The proper recordation and indexing of a curative instrument or a notice of lis pendens shall act as a toll to the 10 year curative period.

EFFECTIVE DATE: October 1, 2015, and applies to curative affidavits filed on or after that date.

HOUSE BILL 870

Short Title:	Cert. of Title/Manuf. Home Changes.	(Public)
Sponsors:	Representative Jordan (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RENEWAL, RELEASE, AND CANCELLATION PROCESS FOR SECURITY INTERESTS ON A CERTIFICATE OF TITLE FOR A MANUFACTURED HOME, TO CLARIFY THE CALCULATION OF THE COST OF THE UNDERTAKING FOR THE INSTALLATION OF A MANUFACTURED HOME, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE LAW AND PROCESS RELATED TO MANUFACTURED HOME TITLES AND SECURITY INTERESTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(14) House Trailer. – Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle. This term shall not include a manufactured home as defined in G.S. 20-4.01(18a).

...

(18a) Manufacured Home. – Defined in G.S. 143-143.9(6).

...

(32b) Recreational Vehicle. – A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. This term shall not include a manufactured home as defined in G.S. 143-143.9(6).

a. Motor home. – As defined in G.S. 20-4.01(27)d2.

b. Travel trailer. – A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.

c. Fifth-wheel trailer. – A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized

vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

d. Camping trailer. – A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

e. Truck camper. – A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

...

(49) Vehicle. – Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement. This term shall not include an electric personal assistive mobility device as defined in G.S. 20-4.01(7a). Unless the context requires otherwise, and except as provided under G.S. 20-109.2, 47-20.6, or 47-20.7, a manufactured home shall be deemed a vehicle.

...."

SECTION 2. G.S. 20-58 reads as rewritten:

"**§ 20-58. Perfection by indication of security interest on certificate of title.**

...

(c) On and after January 1, 2016, an application for the notation of a security interest pursuant to subsection (a) of this section on a certificate of title for a manufactured home shall state the maturity date of the secured obligation. The Division shall include the stated maturity date for the certificate of title, including the notation of the maturity date on the certificate of title, in its public records and in any reports regarding the certificate of title provided to third parties. For the purposes of this subsection, the maturity date of the security interest is defined in G.S. 45-36.24."

SECTION 3. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-58.3A. Automatic expiration of security interest in manufactured home; renewal of security interests in manufactured homes.**

(a) For the purposes of this section, the term "secured party" means the secured party named on a certificate of title for a manufactured home and those parties that succeed to the rights of the secured party as a secured creditor by assignment or otherwise. The term "borrower" means the borrower of the obligation secured by the security interest noted on the certificate of title for a manufactured home.

(b) With the exception of a security interest in a manufactured home perfected pursuant to G.S. 20-58(c), unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, a security interest in a manufactured home that is perfected by a notation on the certificate of title shall

automatically expire 30 years after the date of the issuance of the original certificate of title containing the notation of the security interest.

(c) Unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, a security interest in a manufactured home perfected by a notation on the certificate of title pursuant to G.S. 20-58(c) shall automatically expire as follows:

(1) If the perfection of the security interest has not been renewed as provided in this section, on the earlier of (i) 90 days after the maturity date stated on the application for the security interest or (ii) 15 years plus 180 days after the date of issuance of the original certificate of title containing the notation of the security interest.

(2) If the perfection of the security interest has been renewed as provided in this section, on the earlier of (i) 10 years after the date of the renewal of the perfection of the security interest, (ii) 90 days after the original maturity date of the security interest, or (iii) 90 days after any extended maturity date stated on the application of renewal.

(d) Prior to the date that perfection of a secured party's security interest in a manufactured home automatically expires pursuant to subsection (c) of this section, the secured party may deliver to the Division an application for renewal of the perfection of the secured party's security interest. The application for the renewal of the perfection of the secured party's security interest shall be in a form prescribed by the Division. Nothing in this section shall be construed to extend the maturity date of the secured obligation unless an agreement in writing has been executed by the borrower extending the original maturity date. The application for renewal of the perfection of the secured party's security interest shall contain all of the following:

(1) The secured party's signature.

(2) The existing certificate of title, unless it is in the possession of a prior secured party.

(3) An affirmative statement of any agreement executed by the borrower to extend the maturity date.

(4) If the application is submitted by the assignee or successor in interest of the secured party listed on the certificate of title, documentary evidence that the applicant is the assignee or successor in interest of the secured party listed on the certificate of title.

(5) The name and address of the party from whom information concerning the security interest may be obtained.

(6) Any other information requested by the Division.

(e) Upon receipt of the application for renewal of the perfection of the secured party's security interest, the Division shall do one of the following:

(1) If the existing certificate of title is included with the application for renewal, the Division shall issue a new certificate of title bearing (i) the date of the original security interest, (ii) a notation of the renewed perfection of the security interest, (iii) the maturity date of the security interest, and (iv) the date of renewal.

(2) If the existing certificate of title is in the possession of a prior secured party, the Division, if satisfied as to the genuineness and regularity of the application for renewal, shall obtain the certificate of title from the party in possession for the purpose of notating (i) the date of the original security interest, (ii) the renewal of the perfection of the security interest, (iii) the original or extended maturity date, and (iv) the date of renewal. Once the notations have been made, the Division shall return the certificate of title to the possession of the secured party.

(3) If the existing certificate of title cannot be obtained, the Division shall cancel the existing certificate of title and issue a new certificate of title. The new certificate of title shall list all known security interests and shall bear notation that shows (i) the date of the original security interest, (ii) the renewal of the perfection of the security interest, (iii) the original or extended maturity date, and (iv) the date of renewal.

(f) An application for the renewal of a secured party's security interest pursuant to this section shall be effective to renew the perfection of the security interest as of the date the application is delivered to the Division. Each renewed security interest shall retain its original date of perfection and shall thereafter expire on the earlier to occur of (i) 10 years after the date of renewal of the perfection of the security interest or (ii) the original or extended maturity date. Perfection of a security interest in a manufactured home may be renewed more than once pursuant to this section."

SECTION 4. G.S. 20-58.4 reads as rewritten:

"**§ 20-58.4. Release of security interest.**

...

(e) If it is impossible for the owner to secure from the secured party the release contemplated by this section, the owner may exhibit to the Division either such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been ~~satisfied,~~satisfied or a sworn affidavit by the owner that the debt has been satisfied and that either (i) after diligent inquiry the owner has been unable to determine the identity or the current location of the secured creditor or its successor in interest or (ii) the secured creditor has not responded within 30 days to a written request from the owner to release the secured creditor's security interest. ~~which the~~The Division may treat either of the above as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least 15 days' notice of the pendency thereof shall be given to the secured party at his last known address by the Division by registered letter. The Division shall not cancel a security interest pursuant to this subsection if, within 15 days after the Division gives notice, the secured party responds to the Division indicating that the security interest remains in effect.

(f) In addition to the methods described in this section for the release of a security interest noted on a certificate of title, the owner of a manufactured home or the owner of the real property on which the manufactured home is physically located may effect the satisfaction and release of a security interest in a manufactured home noted on the certificate of title as provided in G.S. 20-109.2."

SECTION 5. G.S. 44A-11.1 is amended by adding a new subsection to read:

"(a1) Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 6. G.S. 153A-357(e) reads as rewritten:

"(e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in

the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 7. G.S. 160A-417(d) reads as rewritten:

"(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars ($30,000) or more."

SECTION 8. The Legislative Research Commission may study the law and process related to manufactured housing title and security interests, including the involvement and possible elimination of the Division of Motor Vehicles from the registration and titling process for manufactured homes in this State.

SECTION 9. Section 8 is effective when this act becomes law. The remainder of this act becomes effective January 1, 2016.

HOUSE BILL 870:
Cert. of Title/Manuf. Home Changes

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Rep. Jordan	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 870 would clarify the renewal, release, and cancellation process for security interests on a certificate of title for a manufactured home, clarify the calculation of the cost of the undertaking for the installation of a manufactured home, and authorize the Legislative Research Commission to study the law and process related to manufactured home titles and security interests.

BILL ANALYSIS:

Section 1 would amend the definitions section of Chapter 20 Motor Vehicles to define "manufactured home" in the same manner as it is defined in G.S. 143-143.9(6)[1] under the statutes relating to the Manufactured Housing Board. This section would also clarify that the terms "house trailer" and "recreational vehicle" do not include a manufactured home, but the term "vehicle" does include a manufactured home unless the context requires otherwise or as otherwise provided in G.S. 20-109.2, 47-20.6, or 47-20.7.

Section 2 would that on and after January 1, 2016, an application for the notation of a security interest on a certificate of title for a manufactured home must state the maturity date of the secured obligation. The maturity date notation must be included on the certificate of title, in DMV's public records and in any reports regarding the certificate of title provided to third parties.

Section 3 would enact a new G.S. 20-58.3A to provide for automatic expiration of a security interest and renewal of a security interest on manufactured homes. Unless a notation of a security interest on a certificate of title is perfected pursuant to Section 2 of the bill, and unless it has been satisfied pursuant to G.S. 20-58.4 or 20-109.2, it would automatically expire 30 years after the date of issuance of the original certificate of title. If the security interest has been perfected, but not satisfied, it will automatically expire (i) if the perfection has not been renewed on the earlier of 90 days after the stated maturity date or 15 years plus 180 days after the date of issuance of the original certificate, or (ii) if the perfection has been renewed on the earlier of 10 years after the date of the renewal, 90 days after the original maturity date, or 90 days after any extended maturity date.

This section provides for a process for renewal of perfection of a security interest, which may only extend the maturity date if an agreement in writing has been executed by the borrower extending the maturity date.

Section 4 would provide a method for the owner of a vehicle to obtain a cancellation of a security interest when they are unable to obtain a release from the secured party.

Section 5 would amend the statutes regarding lien agents to provide that when improvements to a real property leasehold are limited to the purchase, transportation or setup of a manufactured home, with a current certificate of title, the purchase price of the home must be excluded in determining if the costs of the undertaking are $30,000 or more.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Sections 6 & 7 would amend the statutes governing municipalities and counties concerning the prohibition on certain issuance of building permits where the costs of work is $30,000 or more, to provide that when improvements to a real property leasehold are limited to the purchase, transportation or setup of a manufactured home, with a current certificate of title, the purchase price of the home must be excluded in determining if the costs of the undertaking are $30,000 or more.

Section 8 would authorize the Legislative Research Commission to study the law and process related to manufactured housing title and security interests, including the involvement and possible elimination of DMV from the registration and titling process.

EFFECTIVE DATE: Section 8 is effective when this act becomes law. The remainder of this act becomes effective January 1, 2016.

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[i] **§ 143-143.9. Definitions.**

The following definitions apply in this Part:

...

(6) Manufactured home. – A structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 870

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

H870-ASA-21 [v.1]

Amends Title [NO]
First Edition

Date _____,2015

Representative Jordan

moves to amend the bill on page 1, line 19
by deleting "Manufacured" and inserting "Manufactured".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-23-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Baggett	Chiefs assn
Eddie Caldwell	NC Sheriffs' Assn
Nathan Batts	NCBA
Perry Tew	Soto
Jesse Gladson	DHHS/DHSR
David Farrell	NCLTA
Mary Keegan	NMRS
Mark Blue	NCBAA
Daniel Smith	Trial Lawyers
Alison Rowe	UCONN
Mark Bibbs	LLPC

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-23-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed [illegible]	BP
Ryan Combs	DPS
MARIL SENTER	ALCOHOL LAW ENFORCEMENT
Jarret Burr	NCDPS
Jason Deans	JD&A
Steve Brown	Investors Title
Amanda Sm[illegible]	JDA
[illegible]	BP
[illegible]	[illegible]
Andy Brandon	DPS
Annaliese Dolph	DL

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-23-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cady Thomas	Focus Carolina
Derbel Villa-Young	NAR
Colleen Kochanek	KLG
Jack Cozort	NSS
Jaclyn Cozart	NSS
Lauren Whaley	CCUL
Henry Fields	Gordon Tr...
Jillian D. Totman	MUCLLC
	MWC
Brandon McPherson	Schmitzer Sloan PLLC

House Committee on Judiciary II
Tuesday, April 28, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 28, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Saine, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:03 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

House Bill 100 and a summary are provided (Attachment III and Attachment IV)
HOUSE BILL 100: A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS.

Chairman Jordan recognized Representative Cleveland to speak on the bill.

House Bill 100 would provide for the retention of the names of persons requesting excuses from jury service on the basis they are disqualified, along with the reason for the excusal, for a period of not less than two years.

The chair recognized Marsha Johnson, Harnett County Clerk of Courts, to speak on the bill.

The chair recognized Representative Stam, who moved to amend the bill. (Attachment V). The motion passed without dissent.

After a short discussion, the chair recognized Representative Stam who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 565 and summary are provided (Attachment VI and Attachment VII)
HOUSE BILL 565: A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIME TO THREATEN TO INFLICT SERIOUS BODILY HARM UPON OR TO KILL A LAW ENFORCEMENT OFFICER, PROBATION OR PAROLE OFFICER, DETENTION FACILITY

EMPLOYEE, OR ANOTHER PERSON AS RETALIATION AGAINST THE OFFICER FOR PERFORMING THE OFFICER'S OFFICIAL DUTIES.

Chairman Jordan moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Faircloth to speak on the bill.

The chair recognized Representative Blust, who moved to amend the bill. (Attachment VIII). The motion passed without dissent.

The Proposed Committee Substitute (PCS) for House Bill 565 would make it a crime to threaten to inflict serious bodily harm upon or to kill a law enforcement officer, probation or parole officer, detention facility employee, or another person as retaliation against the officer for performing the officer's official duties.

After a short discussion, the chair recognized Representative Blust who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 483 and summary are provided (Attachment IX and Attachment X)
HOUSE BILL 483: A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAND USE REGULATORY LAWS OF THE STATE.

Chairman Blust moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

House Bill 483 would make changes to the land use regulatory laws in North Carolina. The Proposed Committee Substitute provides additional information regarding what a zoning permit includes in Sections 2 and 3, provides that the actions that may be pursued in court in Section 4 apply to county or city ordinances, clarifies that the list of claims set forth in Section 4 is not exclusive, and deletes Section 10 of the First Edition of the bill..

Chairman Blust recognized Representative Jordan to speak on the bill.

The chair recognized Erin Wynia, of the League of Municipalities, to speak on the bill.

The chair recognized Craig Justus, of Van Winkle Law Firm, to speak on the bill.

The chair recognized Representative Stam, who moved to amend the bill. (Attachment XI). The motion passed without dissent.

The chair recognized Representative Glazier, who moved to amend the bill. (Attachment XII). The motion passed without dissent.

After a short discussion, the chair recognized Representative Stam who moved to have the amendment rolled into a committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 847 and summary are provided (Attachment XIII and Attachment XIV)
HOUSE BILL 847: A BILL TO BE ENTITLED AN ACT PROTECTING PARENTS FROM REPORTS OF ABUSE OR NEGLECT BASED SOLELY ON A DECISION TO FOLLOW TREATMENT RECOMMENDED BY A HEALTH CARE PROVIDER OR MENTAL HEALTH CARE PROVIDER AND TO PROVIDE FOR PARENTS' FUNDAMENTAL RIGHTS.

Chairman Blust recognized Representative Saine who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Jordan to speak on the bill.

The Proposed Committee Substitute for House Bill 847 would except from the mandatory reporting requirements for suspected child abuse and neglect, the mere failure of a parent to follow a certain recommended treatment plan suggested by a health care provider. The PCS also sets out the fundamental right of parents to direct the upbringing, education and care of their child.

After a short discussion, the chair recognized Representative Stam who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 445 and summary are provided (Attachment XV and Attachment XVI)
HOUSE BILL 445: A BILL TO BE ENTITLED AN ACT TO MODIFY THE SELECTION PROCESS FOR MEMBERS OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Chairman Blust recognized Representative Reives who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Jordan to speak on the bill.

House Bill 445 makes changes to the Criminal Justice Standards Commission. The Proposed Committee Substitute (PCS) House Bill 445 combines the provisions of House Bill 445 and

House Bill 246. It does all of the following: (1) increases the membership of the North Carolina Criminal Justice Education and Training Standards Commission from 31 members to 32 members, (2) adds one member chosen by the North Carolina Chapter of the FBI National Academy Associates, (3) changes the membership of the Commission to require that: two police officials be appointed by the North Carolina Police Executives Association; one full-time law enforcement officer be certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association; one full-time law enforcement officer be certified by the Commission as selected by the State Lodge of the Fraternal Order of Police; and one full-time law enforcement officer certified by the Commission as selected by the North Carolina Police Benevolent Association, (4) clarifies that a quorum of the Commission is a majority of its members, (5) provides that the Commission may not act unless a quorum is present, (6) provides that the Chairman may vote initially or may reserve this right and vote to break a tie, but cannot vote twice on the same question, and (7) clarifies that the initial term of office for new appointees.

The chair recognized Randy Byrd, of the Police Benevolent Association, to speak on the bill.

The chair recognized Chief Bill Hollingshed, Chairman of the Criminal Justice Commission, to speak on the bill.

The chair recognized John Midgette, of the Police Benevolent Association, to speak on the bill.

The chair recognized Chief Harold Medlock, President of the NC Police Executive Association, to speak on the bill.

The chair recognized Jeff Gray, of the Fraternal Order of Police, to speak on the bill.

The chair recognized Chief Brandon Zuidema, of the NC Association of Chiefs of Police, to speak on the bill.

The chair recognized Sheriff Alan Cloninger, Chair of the Sheriffs' Standards Commission, to speak on the bill.

The chair recognized Representative Glazier, who moved to amend the bill. (Attachment XVII). The motion passed without dissent.

After a short discussion, the chair recognized Representative Glazier who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion failed 7-7.

House Bill 726 and a summary are provided (Attachment XVIII and Attachment XIX)
HOUSE BILL 726: A BILL TO BE ENTITLED AN ACT REPEALING THE STATUTORY AUTHORITY FOR A LOCAL BOARD OF EDUCATION TO FILE A LEGAL ACTION

CHALLENGING THE SUFFICIENCY OF THE FUNDS APPROPRIATED BY THE BOARD OF COUNTY COMMISSIONERS.

Chairman Jordan recognized Representative Conrad to speak on the bill.

House Bill 726 would repeal the statutory authority for a local board of education to file a legal action challenging the sufficiency of funds appropriated by the board of county commissioners.

The chair recognized Leanne Winner, of the NC School Boards Association, to speak on the bill.

The chair recognized San Skinner, of the North Carolina Association of County Commissioners, to speak on the bill.

After a short discussion, the chair recognized Representative Conrad who moved to give a favorable report to the bill. The motion passed 8-5.

Due to time constraints, Chairman Jordan adjourned the meeting at 2:51 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

Corrected #3: Added H847

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 II** will meet as follows:

DAY & DATE: Tuesday, April 28, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative Jonathan Jordan will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 100	Record of Excusals from Jury Duty.	Representative Cleveland
HB 565	Threaten LEO or Correctional Officer.	Representative Faircloth Representative McNeill Representative Hurley Representative G. Graham
HB 483	Land Use Regulatory Changes.	Representative Jordan
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 445	Reorganize Crim. Just. Standards Comm.	Representative Jordan Representative Pendleton Representative Stam Representative Glazier
HB 726	School Bds Can't Sue County.	Representative Conrad Representative Hunter Representative Jordan Representative Collins
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 847	Parental Rights and Med. Treatment of Minors.	Representative Jordan

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:26 PM on Monday, April 27, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **100** Record of Excusals from Jury Duty.

Draft Number:	H100-PCS40444-SA-56
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Cleveland

HB **483** Land Use Regulatory Changes.

Draft Number:	H483-PCS10374-RN-21
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jordan

HB **565** Threaten LEO or Correctional Officer.

Draft Number:	H565-PCS20345-SA-51
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Faircloth

FAVORABLE COM SUB NO. 2, UNFAVORABLE COM SUB NO. 1

HB **847** **(CS#1)** Parental Rights and Med. Treatment of Minors.

Draft Number:	H847-PCS20346-RU-6
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jordan

TOTAL REPORTED: 4



I

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Braun II	PBA
Craig Justus	Van Winkle
Pat A. Yancey	APPCNC
Leanne Winner	NCSBA
Katherine Joyce	NCASA
Steven Weeks	NCAWA
Joshua D. Kohr	Wild animal encounters
DAN BREEDING	WILD ANIMAL ENCOUNTERS INC
[illegible]	TBA
Steve Anthony	PBA
BRUCE OAKLEY	Town of Oak Ridge
Courtney Coyle	NASW-NC

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George McClellan	Town of Oak Ridge, NC
Neil Elks	Pitt Co Sheriff
Ernie Coleman	Beaufort Co. Sheriff
Jeff Klein	PBOT / Charlotte
Susan Sack Peebles	NC DHHS - Div. state Facilities
Nathan Batts	NCBA
Myra Parrish	PBA
Antoine Thomas	PBA
Randy Byrd	PBA
Jeff Gray	Fraternal Order of Police
Ed McMahon	New Hanover Co Sheriff

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lewis Hatcher	Columbus County Sheriff
Kenneth Sealey	Robeson County Sheriff
Dewey Jones	Person County Sheriff
ALAN JONES	CALDWELL COUNTY SHERIFF
John Ingram	Brunswick County Sheriff
Hubert Peterkin	Hoke Co. Sheriff
James Clemmons	Richmond Co Sher. Off
James Knight	Edgecombe Co Sheriff
Dudley Greene	McDowell County Sheriff
Gary Hanks	Yancey County Sheriff
Ryan Mathes	Alleghany Sheriff

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheriff Buck Stokes	Davie County Sheriff
Sheriff Coy Reid	Catawba County Sheriff Office
Sheriff Len Hagaman	Watauga Co. Sheriff's Office
Sheriff James Williams	Asheco. Sheriffs Office
Sheriff Asa Buck	Carteret Co. Sheriff
Eddie Caldwell	NC Sheriffs' Assn.
Johnny Barnes	Washington Co Sheriff.
Neil Godfrey	Sheriff of Moore County
J L Knight	NCFPC
Susan Via	Duke Energy
Brenda Brown	ParentalRights.org

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kent Winstead	Franklin Co. Sheriff Office 285 T Kemp Rd Louisburg N.C.
Chief Branson Zuidema	Garner PD 900 7th Ave Garner, NC 27529
Chief William Hollingsed	Waynesville P.D. 9 S. Main Street Waynesville 28786
Sheriff Alan Cloninger	Gaston County Sheriff's Office
Sheriff Kevin L. Auten	Rowan County Sheriffs Office 232 n. Main St Salisbury NC 28144
Sheriff Steve E. Whisenant	Burke Co. Sheriffs Office 150 Government Dr. Morganton NC 28655
Sheriff Greg Christopher	1620 Brown Ave Waynesville NC 28786
Sheriff Chris Francis	Rutherford County Sheriff's Office 198 N. Washington St. Rutherfordton, N.C. 28139
Sam Skinner	NCACC
Mindy Skinner	Conservators Center
Julie Wagner	Conservators Center

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheriff Steve Bizzell	Johnston County
Steve Johnson	N.C. Law Enforcement Officers Assoc.
Todd Barlow	NC Advocates for Justice
Sheriff Edward C Wilt	Gates Co Sheriff's office
Jere Royall	NCFPC
Penny Hartt	School of Gov
Sheriff Bill Schatzman	FCSO- NCSA
Sheriff Bo Bruns	Guilford Co. Sheriff's office
Sheriff Kevin Frye	Avery County Sheriff office
Sheriff D.L. Goodwin	Chowan Co Sheriff's office
Sheriff Carl Cahoon Jr	Hyde Co Sheriff's office

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Page	Rockingham CO. Sheriff
Johnny Williams	Warren Co Sheriff
Annalise Dolph	DL
Mildred Spearman	NCAOC
David Farrell	VB

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

4-28-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Darren Campbell	Iredell County Sheriff
Kay Castillo	NASW-NC
Chris Agner	DOJ

II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 4-28-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

House Committee on Judiciary II
Tuesday, April 28, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Joe Crook**

Tuesday, April 28 JUDICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Maayan Eaves	Mecklenburg	John R. Bradford, III
Julia Wakeman	Mecklenburg	John A. Fraley

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 100
PROPOSED COMMITTEE SUBSTITUTE H100-PCS40444-SA-56

Short Title: Record of Excusals from Jury Duty. (Public)

Sponsors:

Referred to:

February 24, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"**§ 9-6.2. Records of excusals from jury duty based on disqualification.**

The name and address of each person who requests to be excused from jury duty on the basis that he or she is not qualified to serve as a juror under G.S. 9-3, along with the reason for that request, shall be retained by the clerk of superior court for not less than two years from the date of excusal but are not public record."

SECTION 2. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk shall keep a record of excuses separate from the master jury ~~list.~~list in accordance with G.S. 9-6.2."

SECTION 3. This act becomes effective July 1, 2016.

IV

HOUSE BILL 100:
Record of Excusals from Jury Duty

2013-2014 General Assembly

Committee:	House Judiciary II	**Date:**	April 28, 2015
Introduced by:	Rep. Cleveland	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 100 would provide for the retention of the names of persons requesting excuses from jury service on the basis they are disqualified, along with the reason for the excusal, for a period of not less than two years.***

BILL ANALYSIS:

House Bill 100 would provide the following:

- That the name and address of each person who requests to be excused from jury duty because they do not meet the qualifications for jury service, along with the reason for that request, shall be retained by the Clerk of Superior Court for not less than two years from the date of excusal.
- Medical information submitted to establish that an individual is not physically or mentally competent to serve as a juror is not a public record under G.S. 132-1, and need not be retained by the Clerk.

EFFECTIVE DATE: This act becomes effective July 1, 2015.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

V

EDITION No. _____

H. B. No. 100 DATE 4-28-2015

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Stam

1 moves to amend the bill on page 1, line 12-14

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "date of excusal but are not public record."

5

6 and on page 1, line 19

7 by deleting "July 1, 2015," and inserting "July 1, 2016."

8

9

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11

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19

SIGNED Stam

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 565
PROPOSED COMMITTEE SUBSTITUTE H565-PCS20345-SA-51

Short Title: Threaten LEO or Correctional Officer. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIME TO THREATEN TO INFLICT SERIOUS BODILY HARM UPON OR TO KILL A LAW ENFORCEMENT OFFICER, PROBATION OR PAROLE OFFICER, DETENTION FACILITY EMPLOYEE, OR ANOTHER PERSON AS RETALIATION AGAINST THE OFFICER FOR PERFORMING THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.6. Threats against law enforcement officers; others.**

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill an officer because of the exercise of that officer's duties, when that threat is received and believed by the officer, is guilty of a Class A1 misdemeanor.

(b) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or kill any other person as retaliation against an officer because of the exercise of that officer's duties, when the threat is received and believed by either the officer or the person being threatened, is guilty of a Class I felony.

(c) For purposes of this section, the term "officer" means any law enforcement officer, probation officer, parole officer, or a person who is employed at a detention facility operated under the jurisdiction of the State or a local government."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

VII

HOUSE BILL 565:
Threaten LEO or Correctional Officer

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 28, 2015
Introduced by:	Reps. Faircloth, McNeill, Hurley, G. Graham	**Prepared by:**	Susan Sitze
Analysis of:	PCS to First Edition H565-CSSA-51		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 565 would make it a crime to threaten to inflict serious bodily harm upon or to kill a law enforcement officer, probation or parole officer, detention facility employee, or another person as retaliation against the officer for performing the officer's official duties.

CURRENT LAW:

G.S. 14-34.5 provides a Class E felony for assault with a firearm upon a law enforcement officer, probation officer, parole officer, or person employed at a State or local detention center while they are discharging their duties.

G.S. 14-34.7 provides a Class F felony for assault inflicting serious bodily injury and a Class I felony for assault inflicting physical injury upon a law enforcement officer, probation officer, parole officer, or person employed at a State or local detention center while they are discharging their duties.

G.S. 14-277.1 provides a Class 1 misdemeanor for communicating a threat.

BILL ANALYSIS:

The PCS would define "officer" as any law enforcement officer, probation officer, parole officer, or a person who is employed at a detention facility operated under the jurisdiction of the State or a local government.

The PCS would create a Class A1 misdemeanor for knowingly and willfully threatening to inflict serious bodily injury upon or to kill any officer because of the exercise of that officer's duties, when that threat is received and believed by the officer. If the threat is not received or not believed by the officer, a violation would be a Class 1 misdemeanor.

The PCS would create a Class I felony for knowingly and willfully threatening to inflict serious bodily injury upon or to kill any other person as retaliation against any officer because of the exercise of that officer's duties, when the threat is received and believed by either the officer or the person being threatened. If the threat is not received or not believed by either the officer or the person being threatened, a violation would be a Class 1 misdemeanor.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director

H565-SMSA-57 CSSA-51 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

VIII

EDITION No. _____

H. B. No. 565 DATE 4-28-2015

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

COMMITTEE SUBSTITUTE #565-CSSA-S1

Rep.) Blust

Sen.)

moves to amend the bill on page 1, line ~~[illegible]~~ 13-15

( ) WHICH CHANGES THE TITLE

by ~~deleting the full~~

by rewriting ~~that~~ those lines to read:

"is received and believed by the officer, is guilty of a Class A1 misdemeanor."

and on page 1, lines 19-21

by rewriting those lines to read:

"being threatened, is guilty of a Class I felony."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

TX

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 483
PROPOSED COMMITTEE SUBSTITUTE H483-PCS10374-RN-21

Short Title: Land-Use Regulatory Changes. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-755 reads as rewritten:

"**§ 143-755. Permit choice.**

(a) If a permit applicant submits a permit for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit.

(b) This section applies to all development permits issued by the State and by local ~~governments.~~government, including any zoning permit.

~~(c) This section shall not apply to any zoning permit.~~"

SECTION 2. G.S. 160A-385(b) reads as rewritten:

"(b) Amendments in land development regulations, as defined in G.S. 160A-400.21(6), including zoning ordinances or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to ~~buildings and uses~~buildings, uses, or developments for which either (i) a zoning permit, which includes, but is not limited to, a site plan approval, a special exception permit, or any other permit or approval given under the authority of Article 19 of Chapter 160A of the General Statutes that authorizes the use of land, or (ii) a building ~~permits have~~permit has been issued pursuant to ~~G.S. 160A-417~~this Chapter prior to the enactment of the ordinance making the change or changes so long as ~~the permits remain~~either permit remains valid and unexpired pursuant to ~~G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii)~~law. Amendments shall also not be applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired ~~pursuant to G.S. 160A-385.1.~~or if a vested right is established by the terms of a development agreement authorized by Part 3D of this Article."

SECTION 3. G.S. 153A-344(b) reads as rewritten:

"(b) Amendments in land development regulations, as defined in G.S. 153A-349.2(6), including zoning ordinances or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to ~~buildings and uses~~buildings, uses, or developments for which either (i) a zoning permit, which includes, but is not limited to, a site plan approval, a special exception permit, or any other permit or approval given under the authority of Article 18 of Chapter 153A of the General Statutes that authorizes the use of land, or (ii) a building ~~permits have~~permit has been issued pursuant to

~~G.S. 153A-357~~this Chapter prior to the enactment of the ordinance making the change or changes so long as ~~the permits remain~~either permit remains valid and unexpired pursuant to ~~G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii)~~law. Amendments shall also not be applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired ~~pursuant to G.S. 153A-344.1.~~or if a vested right is established by the terms of a development agreement authorized by Part 3A of this Article."

SECTION 4. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1. Civil action for declaratory relief, injunctive relief, or other remedies.**

(a) Action for Relief Authorized. – Any landowner, permit applicant, or tenant aggrieved by a final and binding decision of an administrative official involving the application or enforcement of a city or county zoning or unified development ordinance or any other ordinance that regulates land use or development may, in lieu of an appeal to a board of adjustment prescribed by Chapter 153A or Chapter 160A of the General Statutes, maintain an original action in superior court or business court for declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, where any of the following claims or defenses are asserted by the aggrieved party:

(1) Constitutional matters.
(2) Ultra vires regulations.
(3) Preemption.
(4) 42 U.S.C. § 1983.
(5) Common law vested rights.

In such original action, the aggrieved party may, in addition to the above, raise any other available claims or defenses, including asserting error in the interpretation of an ordinance.

(b) Time for Filing of Action. – Such action shall be filed within one year after the later of the following occurrence: (i) notice of the decision as provided in G.S. 160A-388(b1)(2) or (ii) where a taking of property is alleged by the aggrieved party, the final decision of a board of adjustment denying a variance has been delivered as provided in G.S. 160A-388(e2)(1), whenever the context makes the granting of such variance discretionary and not prohibited.

(c) Means for Obtaining Relief. – Except for exhausting the administrative remedy of a variance, if applicable, as provided in this section, once the aggrieved party selects an appeal to a board of adjustment as provided in G.S. 160A-388(b1) and the prescribed hearing proceeding is concluded, such procedures, including an appeal thereafter in G.S. 160A-393, shall be the exclusive means for obtaining relief as to the merits of the city or county enforcement action or administrative decision being challenged. Nothing herein shall preclude any other procedure authorized by law for claims arising under 42 U.S.C. § 1983."

SECTION 5. G.S. 160A-364.1(c) reads as rewritten:

"(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance or in an action authorized by G.S. 160A-393.1 from raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance."

SECTION 6. G.S. 160A-393 reads as rewritten:

"**§ 160A-393. Appeals in the nature of certiorari.**

...

(j) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this ~~section.~~section, including an error related to the claims or defenses in subdivision (k)(4) of this section.

(k) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(4) The petitioner may assert and the court shall determine de novo, based on the record in subsection (j) of this section, any of the following claims or defenses:
a. That the applicable ordinance is invalid or otherwise unenforceable.
b. Constitutional matters.
c. Preemption.
d. 42 U.S.C. § 1983.
e. Common law vested rights.
(5) In order to raise any of the claims or defenses listed in subdivision (4) of this subsection, to the extent that they do not involve some act of the decision-making board itself or any of its members, the claim or defense shall be made known to the decision-making board at the hearing.

...."

SECTION 7. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.2. No estoppel effect when challenging unlawful conditions.**

No landowner or permit applicant shall be precluded from timely challenging any unlawful condition imposed on a development as part of the application of land development regulations as defined in G.S. 160A-400.21(6) as a result of actions by the landowner or permit applicant to proceed with the development or use."

SECTION 8. G.S. 6-21.7 reads as rewritten:

"**§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

In any action in which a city or county is a party, upon a finding by the court that the city or county ~~acted outside the scope of its legal authority;~~violated a statute setting forth clear limits on its authority, the court ~~may~~shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's ~~action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs.~~action. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing party."

SECTION 9. G.S. 6-19.1 reads as rewritten:

"**§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

(a) In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court ~~may, in its discretion,~~shall allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter ~~150B,~~150B of the General Statutes, or any other provision of law, to be taxed as court costs against the appropriate agency if:

(1) The court finds that the agency acted without substantial justification in pressing its claim against the ~~party;~~party. The lack of substantial justification shall be conclusively established when an agency acts in violation of a statute setting forth clear limits on its authority; and
(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source.

(b) Expired."

SECTION 10. This act becomes effective October 1, 2015, and applies to permit applications filed, actions filed in court, and claims and defenses asserted on or after that date.

X

HOUSE BILL 483:
Land Use Regulatory Changes

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 28, 2015
Introduced by:	Rep. Jordan	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H483-CSRN-21		Committee Counsel

SUMMARY: ***House Bill 483 would make changes to the land use regulatory laws in North Carolina. The Proposed Committee Substitute provides additional information regarding what a zoning permit includes in Sections 2 and 3, provides that the actions that may be pursued in court in Section 4 apply to county or city ordinances, clarifies that the list of claims set forth in Section 4 is not exclusive, and deletes Section 10 of the First Edition of the bill.***

BILL ANALYSIS:

Section 1 provides that, for zoning permits, if an applicant submits a permit for any type of development and a rule or ordinance changes between the time the application was submitted and a decision is made, then the applicant may choose which version of the rule or ordinance will apply.

Sections 2 and 3 provide that amendments in city and county land development regulations, including zoning ordinances or unified development ordinances, must not be applicable or enforceable without the written consent of the owner with regard to buildings, uses, or developments for which either of the following applies:

- A zoning permit which includes, a site plan approval, a special exception permit or any other permit or approval given under the authority of Chapter 160A, Article 19, that authorizes the use of land.
- A building permit has been issued prior to the enactment of the ordinance making the change or changes so long as either permit remains valid and unexpired.

Amendments must not be applicable or enforceable without the written consent of the owner if a vested right has been established and such vested right remains valid and unexpired or if a vested right is established by the terms of a development agreement.

Section 4 provides that any landowner, permit applicant, or tenant aggrieved by a final decision involving the application or enforcement of a city or county zoning or unified development ordinance or any other ordinance that regulates land use or development may, in lieu of an appeal, sue in superior court or business court where any of the following claims or defenses are asserted by the aggrieved party: (1) Constitutional matters, (2) invalidity of the development regulation, (3) preemption, (4) claims under 42 U.S.C. section 1983, (5) common law vested rights, or (6) damages. This list is not exclusive, and the aggrieved party may raise any other available claims or defenses, including asserting error in the interpretation of an ordinance.

An action must be filed within one year after the later of the following:

- Notice of the decision under 160A-388(b1)(2); or

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Where a taking of property is alleged by the aggrieved party, the final decision of a board of adjustment denying a variance has been delivered whenever the context makes the granting of the variance discretionary and not prohibited.

Except for exhausting the administrative remedy of a variance, if applicable, once the aggrieved party selects an appeal to a board of adjustment and the prescribed hearing proceeding is concluded, such procedures are the exclusive means for obtaining relief as to the merits of the city or county enforcement action or administrative decision being challenged. However, this does not limit other procedures allowed for civil rights claims under federal law.

Section 5 provides that in a civil action providing relief under G.S. 160A-393.1, a party is not barred from raising the invalidity of the ordinance as a defense to enforcement of a zoning or unified development ordinance.

Section 6 provides that a petitioner may assert and the court must determine de novo any of the following claims or defenses: (1) the applicable ordinance is invalid or otherwise unenforceable, (2) Constitutional matters, (3) preemption, (4) claims under 42 U.S.C. section 1983, and (5) common law vested rights. To raise any of these claims or defenses, the claim or defense must be made known to the decision-making board at the hearing if the claim or defense does not involve some act of the decision-making board or its members.

Section 7 provides that a landowner or permit applicant must not be precluded from challenging any unlawful condition imposed on a development as part of the application of land development regulations as a result of the landowner or permit applicant's actions to proceed with the development or use.

Section 8 provides that in any action in which a city or county is a party, if the court finds that the city or county violated a statute setting forth clear limits on its authority or otherwise abused its discretion, then the court must award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant.

Section 9 provides that in any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action, unless the prevailing party is the State, the court must allow the prevailing party to recover reasonable attorney's fees. This includes attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, or any other provision of law, to be taxed as court costs against the appropriate agency if the agency acted without substantial justification in pressing its claim against the party. The lack of substantial justification is conclusively established when an agency acts in violation of a statute setting forth clear limits on its authority and there are no special circumstances that would make the award unjust.

EFFECTIVE DATE: The act becomes effective October 1, 2015.

XI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 483

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

H483-ARN-15 [v.1]

Amends Title [NO]
H-483-CSRN-21[v.3]

Date 4-28 ,2015

Representative Stam

moves to amend the bill on page 2, line 11, by rewriting that line to read:

"(a) Action for Relief Authorized. – Any";

and on page 4, line 1, by rewriting that line to read:

"(4) The petitioner may assert and the"

and on page 4, line 29, by deleting the phrase "private litigant." and substituting "party.";

and on page 5, line 7, by rewriting that line to read:

"**SECTION 10.** This act becomes effective October 1, 2015, and applies to permit applications filed, actions filed in court, and claims or defenses asserted on or after that date.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT XII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 483 DATE 4-28-15

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSRN-21[v.3]

Rep.) Glazier
Sen.)

moves to amend the bill on page 2, line 20

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"(2) Ultra ~~vires~~ vires regulations." ;

and by deleting line 24;

and on page 4, line 25, by deleting the phrase "or otherwise abused its discretion".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

XIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 847
Committee Substitute Favorable 4/27/15
PROPOSED COMMITTEE SUBSTITUTE H847-PCS20346-RU-6

Short Title: Parental Rights and Med. Treatment of Minors. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT PROTECTING PARENTS FROM REPORTS OF ABUSE OR NEGLECT BASED SOLELY ON A DECISION TO FOLLOW TREATMENT RECOMMENDED BY A HEALTH CARE PROVIDER OR MENTAL HEALTH CARE PROVIDER AND TO PROVIDE FOR PARENTS' FUNDAMENTAL RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-301 is amended by adding a new subsection to read:

"(d) No person or institution shall file, or be obligated to file, a report of abuse or neglect under this section based solely on the decision of a parent or legal guardian to follow treatment recommended by a licensed health care provider or licensed provider of mental health services. A parent or legal guardian has the right to follow the advice and treatment plan of a licensed health care provider or a licensed provider of mental health services over a contrary opinion or recommended treatment plan of another licensed health care provider or licensed provider of mental health services if the decision does not involve an immediate, life-threatening situation, and a parent's decision to follow a contrary opinion or recommended treatment plan does not give rise to suspected abuse or neglect for which a person or institution is obligated to report under this section. Even in the case of an immediate, life-threatening situation, the decision of the parent or legal guardian to follow the advice or treatment plan of a licensed health care provider or a licensed provider of mental health services shall not give rise to an obligation to report suspected abuse or neglect under this section."

SECTION 2. Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-6. Parents' fundamental rights.**

The liberty of a parent to direct the upbringing, education, and care of his or her child is a fundamental right. Neither the State nor any agency or locality of the State shall infringe on a parent's fundamental rights to the care, custody, and control of his or her child without demonstrating a compelling State interest and use of the least restrictive means of furthering that compelling State interest. This shall not be construed to apply to a parent's action or decision that would end life."

SECTION 3. This act becomes effective October 1, 2015.

XIV

HOUSE BILL 847:
Parental Rights and Med. Treatment of Minors

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 28, 2015
Introduced by:	Rep. Jordan	**Prepared by:**	Walker Reagan Staff Attorney Tawanda Foster Committee Counsel
Analysis of:	PCS to Second Edition H847-CSRU-6		

SUMMARY: ***The Proposed Committee Substitute for House Bill 847 would except from the mandatory reporting requirements for suspected child abuse and neglect, the mere failure of a parent to follow a certain recommended treatment plan suggested by a health care provider. The PCS also sets out the fundamental right of parents to direct the upbringing, education and care of their child.***

CURRENT LAW: G.S. 7B-301 requires any person or institution who suspects a juvenile is abused, neglected or dependent to report the case of that juvenile to the department of social services. Persons required to report include health care providers. The penalty for failure to report suspected abuse, neglect, or dependency is a Class 1 misdemeanor.

Chapter 115C governs Elementary and Secondary Education. Article 1 of this chapter provides definitions and preliminary provisions.

BILL ANALYSIS:

Section 1 of the proposed committee substitute provides an exception to the duty to report abuse, neglect, and dependency in situations where the action or inaction is the decision of the parent to follow treatment recommended by a health care provider. This section provides that a parent has the right to follow the advice and treatment plan of a health care or mental health services provider over a contrary opinion or recommended treatment plan of another provider if the decision does not involve an "immediate, life threatening situation." If the decision involves an "immediate, life threating situation," the decision of the parent shall not give rise to an obligation to report suspected abuse or neglect.

Section 2 adds a new section to Article 1 of Chapter 115C stating parents have a fundamental liberty right to direct the upbringing, education and care of their child. It also provides the State shall not infringe upon this fundamental right unless there is a compelling State interest and the least restrictive means in furthering that compelling State interest is used. This section shall not apply to a parent's action or decision that would end life.

EFFECTIVE DATE: The act becomes effective October 1, 2015.

O. Walker Reagan
Director

H847-SMTV-34 CSRU-6 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

XV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 445
PROPOSED COMMITTEE SUBSTITUTE H445-CSRN-25 [v.2]

4/27/2015 8:01:42 PM

Short Title: Reorganize Crim. Just. Standards Comm. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SELECTION PROCESS FOR MEMBERS OF THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 17C-3(a) reads as rewritten:

"**§ 17C-3. North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.**

(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of ~~31~~32 members as follows:

...

(2) Police Officers. – ~~Three~~Two police officials appointed by the North Carolina Police Executives ~~Association and two criminal justice officers~~Association; one full-time law enforcement officer certified by the Commission as selected by the North Carolina Law-Enforcement Officers' ~~Association.~~Association; one full-time law enforcement officer certified by the Commission as selected by the State Lodge of the Fraternal Order of Police; and one full-time law enforcement officer certified by the Commission as selected by the North Carolina Police Benevolent Association.

...

(4) At-large Groups. – One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; one member selected by the North Carolina Chapter of the FBI National Academy Associates; and one District Attorney selected by the North Carolina Association of District Attorneys.

...."

SECTION 2. G.S. 17C-5 reads as rewritten:

"**§ 17C-5. Chairman; vice-chairman; other officers; meetings; reports.**

. . .

(c1) A quorum of the Commission shall be a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present. The Chairman may exercise the right to vote, or may reserve this right until there is a tie, in which event the Chairman may vote, but in no instance may the Chairman vote twice on the same question.

. . . ."

SECTION 3. As enacted by Section 1 of this act, the initial term of office for the members selected by the State Lodge of the Fraternal Order of Police, the North Carolina Police Benevolent Association, and the North Carolina Chapter of the FBI National Academy Associates shall begin on July 1, 2015, and shall expire on June 30, 2018. Consistent with G.S. 17C-3(b), subsequent appointees to these slots shall be appointed for a term of three years, but notwithstanding the appointment for a term of years, the members shall serve at the will of the appointing authority.

SECTION 4. This act is effective when it becomes law.

XVI

HOUSE BILL 445:
Reorganize Crim. Just. Standards Comm

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 28, 2015
Introduced by:	Reps. Jordan, Pendleton, Stam, Glazier	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H445-CSRN-25		Committee Counsel

SUMMARY: ***House Bill 445 makes changes to the Criminal Justice Standards Commission. The Proposed Committee Substitute (PCS) House Bill 445 combines the provisions of House Bill 445 and House Bill 246. It does all of the following: (1) increases the membership of the North Carolina Criminal Justice Education and Training Standards Commission from 31 members to 32 members, (2) adds one member chosen by the North Carolina Chapter of the FBI National Academy Associates, (3) changes the membership of the Commission to require that: two police officials be appointed by the North Carolina Police Executives Association; one full-time law enforcement officer be certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association; one full-time law enforcement officer be certified by the Commission as selected by the State Lodge of the Fraternal Order of Police; and one full-time law enforcement officer certified by the Commission as selected by the North Carolina Police Benevolent Association, (4) clarifies that a quorum of the Commission is a majority of its members, (5) provides that the Commission may not act unless a quorum is present, (6) provides that the Chairman may vote initially or may reserve this right and vote to break a tie, but cannot vote twice on the same question, and (7) clarifies that the initial term of office for new appointees.***

CURRENT LAW: The North Carolina Criminal Justice Education and Training Standards Commission establishes minimum employment, training, and retention standards for the State's criminal justice officers. The Commission plans for the implementation of innovations in the State's system of criminal justice employment, training, and education. It is composed of 31 members that come from the following general categories: police chiefs, police officers, departments, at-large groups, citizens and correctional officers.

BILL ANALYSIS: The PCS for House Bill 445 would increase the membership of the North Carolina Criminal Justice Education and Training Standards Commission from 31 members to 32 members. The new member would be chosen by the North Carolina Chapter of the FBI National Academy Associates and would serve an initial term of three years.

It changes the membership of the Commission to require that: two police officials be appointed by the North Carolina Police Executives Association; one full-time law enforcement officer be certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association; one full-time law enforcement officer be certified by the Commission as selected by the State Lodge of the Fraternal Order of Police; and one full-time law enforcement officer certified by the Commission as selected by the North Carolina Police Benevolent Association, The PCS also clarifies that a quorum of the Commission is a majority of its members, and no action may be taken except by a majority vote at a meeting at which a quorum is present. Finally, it provides that the Chairman may vote initially or reserve this right and vote to break a tie, but cannot vote twice on the same question.

O. Walker Reagan
Director

* H 4 4 5 - S M R N - 4 4 C S R N - 2 5 - V 2 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The PCS clarifies that the initial term of office for members selected by the State Lodge of the Fraternal Order of Police, the North Carolina Police Benevolent Association, and the North Carolina Chapter of the FBI National Academy Associates shall begin on July 1, 2015, and shall expire on June 30, 2018.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT XVII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 445 DATE 4-28-15

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSRN-25[v.2]

(Rep.) Glazier
Sen.)

moves to amend the bill on page 1, line 11

( ) WHICH CHANGES THE TITLE

by deleting "32" and substituting "34" ~~and changing~~ and changing the bill to provide that current members of the Commission will stay on the Commission;

and on page 2, line 5, by inserting the following at the end of that line:

"A member of the Commission who has recused himself or herself shall not be counted for purposes of the quorum when considering disciplinary matters."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

XVIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 726

Short Title:	School Bds Can't Sue County.	(Public)
Sponsors:	Representatives Conrad, Hunter, Jordan, and Collins (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT REPEALING THE STATUTORY AUTHORITY FOR A LOCAL BOARD OF EDUCATION TO FILE A LEGAL ACTION CHALLENGING THE SUFFICIENCY OF THE FUNDS APPROPRIATED BY THE BOARD OF COUNTY COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-431 reads as rewritten:

"**§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.**

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations.

Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the boards' differences.

At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, ~~the mediator shall, at the request of either board, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.~~the decision of the county commissioners is final. The local board of education shall not file any legal action challenging the sufficiency of the funds appropriated by the board of county commissioners to the local current expense fund, the capital outlay fund, or both.

~~Unless otherwise agreed upon by both boards, the following individuals shall constitute the two working groups empowered to represent their respective boards during the mediation:~~

~~(1) The chair of each board or the chair's designee;~~

~~(2) The superintendent of the local school administrative unit and the county manager or either's designee;~~

~~(3) The finance officer of each board; and~~
~~(4) The attorney for each board.~~

~~Members of both boards, their chairs, and representatives shall cooperate with and respond to all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. Reports by members of either working group to their respective boards shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.~~

~~Unless both boards agree otherwise, or unless the boards have already resolved their dispute, the mediation shall end no later than August 1. The mediator shall have the authority to determine that an impasse exists and to discontinue the mediation. The mediation may continue beyond August 1 provided both boards agree. If both boards agree to continue the mediation beyond August 1, the board of county commissioners shall appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient to equal the local contribution to this fund for the previous year.~~

~~If the working groups reach a proposed agreement, the terms and conditions must be approved by each board. If no agreement is reached, the mediator shall announce that fact to the chairs of both boards, the Senior Resident Superior Court Judge, and the public. The mediator shall not disclose any other information about the mediation. The mediator shall not make any recommendations or public statement of findings or conclusions.~~

~~The local board of education and the board of county commissioners shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes.~~

~~(c) Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The judge shall find, or if the issue is submitted to the jury, the jury shall find the facts as to the following in order to maintain a system of free public schools as defined by State law and State Board of Education policy: (i) the amount of money legally necessary from all sources and (ii) the amount of money legally necessary from the board of county commissioners. In making the finding, the judge or the jury shall consider the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.~~

~~All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit,~~

~~and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.~~

~~(d) An appeal may be taken to the appellate division of the General Court of Justice, and notice of appeal shall be given in writing within 10 days after entry of the judgment. All papers and records relating to the case shall be considered a part of the record on appeal. The conclusion of the school or fiscal year shall not be deemed to resolve the question in controversy between the parties while an appeal is still pending. Any final judgment shall be legally binding on the parties at the conclusion of the appellate process. The payment of any final judgment by the county in favor of the local school administrative unit shall not be considered, or used in any manner, to deny or reduce appropriations to the local school administrative unit by the county in fiscal years subsequent to the one at issue to offset such payment of a final judgment.~~

~~(e) If, in an action filed under this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.~~

~~The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent (3/4 of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed.~~"

SECTION 2. G.S. 115C-432(a) reads as rewritten:

"(a) After the board of county commissioners has made its appropriations to the local school administrative unit, or after the ~~appeal~~ procedure set out in G.S. 115C-431 has been concluded, the board of education shall adopt a budget resolution making appropriations for the budget year in such sums as the board may deem sufficient and proper. The budget resolution shall conform to the uniform budget format established by the State Board of Education."

SECTION 3. This act is effective when it becomes law and applies beginning with budget ordinances adopted on or after that date.

XIX

HOUSE BILL 726:
School Bds Can't Sue County

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Reps. Conrad, Hunter, Jordan, Collins	**Prepared by:**	Drupti Chauhan
Analysis of:	First Edition		

SUMMARY: ***House Bill 726 would repeal the statutory authority for a local board of education to file a legal action challenging the sufficiency of funds appropriated by the board of county commissioners.***

CURRENT LAW: G.S. 115C-431 sets out the procedure for resolutions of disputes between local boards of education and boards of county commissioners regarding the amount of money appropriated to the local current expense fund and capital outlay fund for the public schools. The statute requires a joint meeting of both boards and then provides for mediation with working groups from both sides. If the dispute cannot be resolved by mediation, then the local board of education may file an action in superior court with either side having the right to have issues of fact tried by the jury. The judge or jury must find facts as to the following to maintain a system of free public schools as defined by State law and State Board of Education policy: (i) the amount legally necessary from all sources and (ii) the amount of money legally necessary from the board of county commissioners. If the local board of education prevails, the court may order the levying of property taxes that are necessary to fulfill the judgment when added to other available revenues. Appeals may be taken to the State's appellate courts.

BILL ANALYSIS: House Bill 726 would repeal the authority for the local board of education to bring a legal action against the board of county commissioners that challenged the sufficiency of funds appropriated for the local current expense fund and capital outlay fund for the public schools. If no agreement is reached at the joint meeting of the two boards, then the decision of the county commissioners would be final and the local board of education would be prohibited from bring suit against the board of county commissioners and there would be no mediation process.

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to budget ordinances adopted on or after that date.

O. Walker Reagan
Director

H726-SMRQ-28 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

House Committee on Judiciary II
Wednesday, April 29, 2015 at 1:00 PM
Room 425 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on April 29, 2015 in Room 425 of the Legislative Office Building. Representatives Blust, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:02 PM. The Chairman recognized the Sergeants-at-Arms and Pages.

The following bills were considered:

HB 597 Mediated Settlement Agreements. (Representatives Bishop, Stam, Glazier, L. Hall)

Representative Glazier made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Bishop to present the bill. Representative Glazier made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 554 Protect Public from Dangerous Wild Animals. (Representatives McGrady, Hurley, Hardister, Saine)

Representative McGrady made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative McGrady to present the bill. Discussion followed. Representative McGrady offered an amendment, and it was adopted. Dr. Mary Ann McBride, Assistant State Veterinarian, NC Department of Agriculture and Consumer Services, Raleigh, NC, spoke in opposition to the bill. Ms. Pam Folk, Carolina Tiger Rescue, Pittsboro, NC, spoke in support of the bill. Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report.

HB 696 Debts to Judgment Debtors/Pay to Sheriff. (Representative Ford)

Representative Ford was recognized to present the bill. There was committee discussion, after which Representative Stam made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report as amended.

HB 804 Kelsey Smith Act. (Representatives Hurley, Glazier, Schaffer, Lambeth)

Representative Hurley was recognized to present the bill. Representative Glazier made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 799 Zoning/Changes to Hist. Preserv. Procedures. (Representative Brody, Ager)

Representative McGrady made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairman Blust recognized Representative Brody to present the bill. Mr. George McClellan, Council Member, Town of Oak Ridge, NC, was recognized to speak on the bill. Action on the bill was suspended because of time restraints.

The meeting adjourned at 1:52 PM.

Respectfully submitted,

Representative John M. Blust, Chairman
Presiding

Gennie L. Thurlow, Committee Clerk

Corrected #4: HB 804 Added.

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 II** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: **1:00 PM**
LOCATION: **425 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

Please note -- this meeting will be held in 425 LOB.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
HB 804	Kelsey Smith Act.	Representative Hurley Representative Glazier Representative Schaffer Representative Lambeth
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:09 PM on Wednesday, April 29, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

Corrected #3: HB 246 Removed.

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 II** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: **1:00 PM**
LOCATION: **425 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

Please note -- this meeting will be held in 425 LOB.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 9:25 AM on Wednesday, April 29, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

Corrected #2: HB 802 Removed.

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 II** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: **1:00 PM**
LOCATION: **425 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

Please note -- this meeting will be held in 425 LOB.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 246	Add Member/Crim. Just. Standards Comm.	Representative Horn Representative Faircloth Representative McNeill
HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:34 AM on Wednesday, April 29, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

Corrected #1: HB 246 Added.

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 II** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: **1:00 PM**
LOCATION: **425 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

Please note -- this meeting will be held in 425 LOB.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 246	Add Member/Crim. Just. Standards Comm.	Representative Horn Representative Faircloth Representative McNeill
HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
HB 802	Ignition Interlock/Expand Scope.	Representative Jackson Representative Jordan Representative Faircloth
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:57 PM on Tuesday, April 28, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (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 II** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: **1:00 PM**
LOCATION: **425 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

Please note -- this meeting will be held in 425 LOB.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
HB 802	Ignition Interlock/Expand Scope.	Representative Jackson Representative Jordan Representative Faircloth
HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:40 PM on Tuesday, April 28, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Wednesday, April 29, 2015, 1:00 PM
425 Legislative Office Building

AGENDA

Welcome and Opening Remarks
Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
PCS	HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
PCS	HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
	HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
	HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
PCS	HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
	HB 804	Kelsey Smith Act.	Representative Hurley Representative Glazier Representative Schaffer Representative Lambeth
	HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Presentations

Other Business

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary II

DATE: 4-29-2015 Room: 425

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: David Leighton
4. Name:
5. Name:

Senate Sgt-At Arms:

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

Wednesday, April 29 JUDICIARY II	Room 425	Time 1:00 pm

Name	County	Sponsor
Cassidy Mosley	Iredell	John A. Fraley
Julia Wakeman	Mecklenburg	John A. Fraley

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **554** Protect Public from Dangerous Wild Animals.

Draft Number:	H554-PCS40451-RN-26
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	McGrady

HB **597** Mediated Settlement Agreements.

Draft Number:	H597-PCS30373-TV-15
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Bishop

TOTAL REPORTED: 2



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

HB **696** Debts to Judgment Debtors/Pay to Sheriff.

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

HB **804** Kelsey Smith Act.

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

TOTAL REPORTED: 2

CMR320-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 597
PROPOSED COMMITTEE SUBSTITUTE H597-PCS30373-TV-15

Short Title: Mediated Settlement Agreements. (Public)

Sponsors:

Referred to:

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS REQUIRING MEDIATED SETTLEMENT AGREEMENTS TO BE SIGNED BY THE PARTIES AGAINST WHOM ENFORCEMENT IS SOUGHT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;
(2) In proceedings to enforce or rescind a settlement of the action;
(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.3B(i) reads as rewritten:

"(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter."

SECTION 3. G.S. 7A-38.3D(l) reads as rewritten:

"(l) Written Agreements. – Any agreement reached in mediation shall be reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought. A non-attorney mediator may assist parties in reducing the agreement to writing."

SECTION 4. G.S. 7A-38.4A(j) reads as rewritten:

"(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is sought and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 5. G.S. 8-110(a) reads as rewritten:

"(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless it has been reduced to writing and signed by the ~~parties.~~parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation."

SECTION 6. This act becomes effective July 1, 2015, and applies to agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 597
PROPOSED COMMITTEE SUBSTITUTE H597-CSTV-15 [v.4]

4/27/2015 7:59:12 PM

Short Title: Mediated Settlement Agreements. (Public)

Sponsors:

Referred to:

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS REQUIRING MEDIATED SETTLEMENT AGREEMENTS TO BE SIGNED BY THE PARTIES AGAINST WHOM ENFORCEMENT IS SOUGHT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;
(2) In proceedings to enforce or rescind a settlement of the action;
(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.3B(i) reads as rewritten:

"(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the parties against whom enforcement is sought.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter."

SECTION 3. G.S. 7A-38.3D(l) reads as rewritten:

"(l) Written Agreements. – Any agreement reached in mediation shall be reduced to writing and signed by the parties against whom enforcement is sought. A non-attorney mediator may assist parties in reducing the agreement to writing."

SECTION 4. G.S. 7A-38.4A(j) reads as rewritten:

"(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is sought and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 5. G.S. 8-110(a) reads as rewritten:

"(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless it has been reduced to writing and signed by the parties against whom enforcement is sought. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation."

SECTION 6. This act becomes effective July 1, 2015, and applies to agreements entered into on or after that date.

HOUSE BILL 597:
Mediated Settlement Agreements

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 27, 2015
Introduced by:	Reps. Bishop, Stam, Glazier, L. Hall	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	PCS to First Edition H597-CSTV-15		

SUMMARY: ***The PCS to House Bill 597 amends the provisions requiring mediated settlement agreements to be signed by the parties against whom enforcement is sought.***

CURRENT LAW:

G.S. 7A-38.1, G.S. 7A-38.3B, G.S. 7A-38.3D, and G.S. 7A-38.4A govern mediated settlement conferences in superior court civil actions, mediations in matters within the jurisdiction of the clerk of superior court and the district criminal courts, and settlement procedures in district court actions. G.S. 8-110 makes statements made during mediations inadmissible in any proceeding in the action or other actions on the same claim.

BILL ANALYSIS: The PCS to House Bill 597 amends each of the current laws to provide mediated settlement agreements must be signed by the parties "against whom enforcement is sought."

EFFECTIVE DATE: This act becomes effective July 1, 2015, and applies to agreements entered into on or after that date.

O. Walker Reagan
Director

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 597

Short Title:	Mediated Settlement Agreements.	(Public)
Sponsors:	Representatives Bishop, Stam, and Glazier (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 9, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS REQUIRING MEDIATED SETTLEMENT AGREEMENTS TO BE IN WRITING AND SIGNED BY THE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;
(2) In proceedings to enforce or rescind a settlement of the action;
(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless ~~it~~ the settlement agreement or some memorandum or note of the agreement has been reduced to writing and signed by the ~~parties.~~ party to be charged. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.3B(i) reads as rewritten:

"(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if ~~it~~ the settlement agreement or some memorandum or note of the agreement has been reduced to writing and signed by the ~~parties.~~ party to be charged.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter."

SECTION 3. G.S. 7A-38.3D(l) reads as rewritten:

"(l) Written Agreements. – Any agreement reached in mediation or some memorandum or note of that agreement shall be reduced to writing and signed by the ~~parties.~~ party to be charged. A non-attorney mediator may assist parties in reducing the agreement to writing."

SECTION 4. G.S. 7A-38.4A(j) reads as rewritten:

"(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless ~~it~~ the settlement agreement or some memorandum or note of the agreement (i) has been reduced to writing and signed by the ~~parties~~ party to be charged and (ii) in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 5. G.S. 8-110(a) reads as rewritten:

"(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless ~~it~~ the settlement agreement or some memorandum or note of the agreement has been reduced to writing and signed by the ~~parties.~~ party to be charged. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation."

SECTION 6. This act becomes effective July 1, 2015, and applies to agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 554
PROPOSED COMMITTEE SUBSTITUTE H554-PCS40451-RN-26

Short Title: Protect Public from Dangerous Wild Animals. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT CERTAIN DANGEROUS WILD ANIMALS POSE TO THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 19A of the General Statutes is amended by adding a new Article to read:

"Article 7.
"Dangerous Wild Animals.

"**§ 19A-71. Definitions.**

The following definitions apply in this Article:

(1) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and State and the shelter and welfare of animals.

(2) "Circus" means an exhibitor holding a valid Class "C" license issued under the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) that does not have any permanent animal facilities in this State and that regularly conducts performances featuring live animals and multiple trained human entertainers, including clowns and acrobats.

(3) "Dangerous wild animal" means any live individual animal of the following scientific classifications belonging to Class Mammalia:

a. Order Carnivora:

1. Family Canidae: gray wolves (*Canis lupus*).

2. Family Felidae: all species of felids, excluding domestic cats (*Felis catus*), and including hybrids of lions (*Panthera leo*), tigers (*Panthera tigris*), leopards (*Panthera pardus*), clouded leopards (*Neofelis nebulosa, Neofelis diardi*), snow leopards (*Panthera uncia*), jaguars (*Panthera onca*), cheetahs (*Acinonyx jubatus*), and mountain lions (*Puma concolor*).

3. Family Hyaenidae: all species of hyena and aardwolf.

4. Family Ursidae: all species of bears.

b. Order Primates: all species, excluding humans.

(4) "Law enforcement officer" means an animal control officer, an animal cruelty investigator as provided for in Article 4 of this Chapter, a State or local law enforcement officer, or a public prosecutor.

(5) "Person" means any individual, partnership, corporation, organization, or any other legal entity and any officer, member, shareholder, director, employee, agent, or representative of one of those legal entities.

(6) "Wildlife Sanctuary" means a charitable organization that is exempt from taxation under section 501(c)(3), Internal Revenue Code of 1986, that is described by section 170(b)(1)(A)(vi), Internal Revenue Code of 1986, and that:

a. Operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced animals are provided care for the lifetime of the animal.

b. Does not conduct commercial activity with respect to dangerous wild animals, including, but not limited to, (i) the sale, trade, auction, or lease of dangerous wild animals or their parts or (ii) the use of dangerous wild animals in any manner in a for-profit business or operation.

c. Does not use dangerous wild animals for entertainment purposes or in a traveling exhibit.

d. Does not breed any dangerous wild animals.

"**§ 19A-72. Prohibited Activities.**

(a) Notwithstanding any other provision of law, unless exempt under this Article, it is unlawful for any person to possess, sell, transfer, or breed a dangerous wild animal.

(b) Notwithstanding any other provision of law, it is unlawful for any person to allow any member of the public to come into direct physical contact with a dangerous wild animal, regardless of the age of the animal. Members of the public do not include full-time employees or supervised interns or volunteers.

"**§ 19A-73. Exemptions.**

The prohibitions in G.S. 19A-72(a) shall not apply to:

(1) Institutions accredited or certified by the Association of Zoos and Aquariums (AZA).

(2) Research facilities, as defined in the federal Animal Welfare Act (7 U.S.C. § 2132(e)) and in corresponding federal regulations (9 C.F.R. 1.1, et al).

(3) Wildlife sanctuaries, as defined in G.S. 19A-71(6).

(4) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, temporarily housing a dangerous wild animal at the written request of law enforcement officers acting under the authority of this Article.

(5) Veterinary hospitals, veterinary clinics, veterinary practices, veterinarians, and persons employed by such entities, for the purpose of providing veterinary care or veterinary services to the dangerous wild animal.

(6) Law enforcement officers for purposes of enforcement.

(7) Circuses, as defined in G.S. 19A-71(2).

(8) A person temporarily transporting a legally owned dangerous wild animal through the State if the transit time is not more than 24 hours, the dangerous wild animal is not exhibited, and the dangerous wild animal is maintained at all times in a species-appropriate cage or travel container.

(9) Institutions accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International.

(10) Institutions accredited or certified by the Zoological Association of America.

(11) Institutions holding a valid license issued by the U.S. Department of Agriculture (USDA) pursuant to the federal Animal Welfare Act.

(12) A motion picture or television production company employing or contracting with a dealer or exhibitor licensed under section 2133 of the federal Animal Welfare Act (7 U.S.C. § 2133) or with a carrier, intermediate handler, or unlicensed exhibitor registered under section 2136 of the federal Animal Welfare Act (7 U.S.C. § 2136) for the transportation, purchase, exhibition, or use of dangerous animals in its motion picture or television production.

"**§ 19A-74. Prior possession.**

The prohibitions in G.S. 19A-72(a) shall not apply to persons who lawfully possessed a dangerous wild animal prior to June 1, 2015, provided that the person:

(1) Shall maintain veterinary records, acquisition papers, or other documents or records that establish that the person lawfully possessed the animal prior to June 1, 2015.

(2) May not acquire additional dangerous wild animals after June 1, 2015, whether by purchase, donation, relinquishment, or breeding; however, this subdivision does not prohibit such a person from possessing the offspring of a lawfully possessed dangerous wild animal if written medical records demonstrate that the animal was pregnant on June 1, 2015.

(3) Shall not have been convicted of an offense involving the abuse or neglect of any animal pursuant to any State, local, or federal law.

(4) Shall not have had a license or permit regarding the care, possession, exhibition, breeding, or sale of animals revoked or suspended by any State, local, or federal agency.

(5) Shall develop and be prepared to implement escape, succession, and disaster plans and maintain a current animal inventory, to be made available to law enforcement officers upon request.

(6) Shall allow a law enforcement officer to enter the premises where the dangerous wild animal is kept at any reasonable time to ensure compliance with this Chapter.

(7) Shall register with, and pay a registration fee to, the local animal control authority by September 1, 2015, and annually thereafter, indicating the number of animals of each dangerous wild animal species in his or her possession, and showing proof of liability insurance in an amount of not less than two hundred fifty thousand dollars ($250,000) for each occurrence of property damage, bodily injury, or death caused by any dangerous wild animal possessed by the person.

(8) Shall provide written notification to the animal control authority in the city or county where the person resides of the death of a dangerous wild animal possessed under this section. The notice shall include the common name, sex, and age of the animal, the date the animal was acquired, and any unique identification marks to properly identify the animal.

(9) At least 72 hours prior to sale or transfer of an existing dangerous wild animal, shall notify in writing the local animal control authority, identifying the recipient of the animal. At all times, possession, sale, transfer, and transport of the dangerous wild animal shall conform with all applicable State, local, and federal laws.

(10) Shall have continuously posted and displayed at each possible entrance onto the premises where a dangerous wild animal is housed a conspicuous sign, clearly legible, and easily readable by the public, warning that a dangerous wild animal is on the premises.

"**§ 19A-75. Transport and containment.**

(a) Any person transporting a dangerous wild animal shall keep the animal at all times in a species-appropriate cage or travel container and shall comply with federal transport requirements (9 C.F.R. Part 3).

(b) Any person possessing a dangerous wild animal shall keep the animal in a permanent enclosure that is designed to be escape-proof and has an operable lock. It is unlawful for any person to allow members of the public within 15 feet of a dangerous wild animal unless there is a permanent barrier in place that prevents the risk of direct physical contact between a member of the public and the animal.

(c) It is unlawful for any person to knowingly release a dangerous wild animal into the wild.

"**§ 19A-76. Enforcement.**

(a) The provisions of this Article shall be enforced by any State law enforcement officer, or by any other law enforcement officer in whose jurisdiction a violation occurs, or by any animal control authority for the jurisdiction in which a violation occurs. Nothing in this Article shall be construed to prohibit a city or county from adopting or enforcing any ordinance or other law that places further restrictions or additional requirements on the possession, sale, transfer, or breeding of dangerous wild animals.

(b) Animals may be seized pursuant to this Article as follows:

(1) Law enforcement officers shall, after obtaining a warrant from any judge or magistrate upon probable cause, seize or impound any dangerous wild animal possessed, sold, transferred, bred, or exhibited in violation of this Article. If the dangerous wild animal poses a direct threat to public safety or is suffering from apparent animal neglect or cruelty, that animal shall be immediately placed in the custody and control of an institution accredited by the Association of Zoos and Aquariums, a wildlife sanctuary, or a temporary holding facility, as described in G.S. 19A-73(4). If there is no immediate threat to public safety or animal welfare, law enforcement officers shall impound the dangerous wild animal in place.

(2) Upon seizing or impounding a dangerous wild animal, a law enforcement officer shall petition the district court for the district in which the dangerous wild animal was seized or impounded for a hearing to determine whether the dangerous wild animal was in fact possessed, sold, transferred, bred, or exhibited in violation of this Article. The hearing shall be held not more than 14 days from the date of the seizure or impoundment and the law enforcement officer shall provide written notice of the hearing at least five days prior to the hearing to the person from whom the dangerous wild animal was seized or impounded.

(3) Upon judicial determination of a violation of any provision of this Article, the seized or impounded dangerous wild animal shall be deemed forfeited and the court shall order the violator to pay all reasonable expenses incurred in caring and providing for the dangerous wild animal, from the time the dangerous wild animal is seized until the time that dangerous wild animal is forfeited, to the AZA institution, wildlife sanctuary, or temporary holding facility in possession of the dangerous wild animal. The court may also prohibit the possession or ownership of dangerous wild animals, or other nonnative wild animals, by the person found to have violated this Article.

(4) A forfeited dangerous wild animal shall be transferred to an institution accredited by the Association of Zoos and Aquariums or to a wildlife sanctuary that is willing and able to take custody of the forfeited dangerous wild animal. Nothing in this Article shall be construed to prevent law enforcement officers from humanely euthanizing a dangerous wild animal in

compliance with State and federal law if, after reasonable efforts, no AZA institution or wildlife sanctuary is willing and able to provide long-term care for the dangerous wild animal.

(5) Nothing in this Article shall be construed to prevent the voluntary, permanent relinquishment of any dangerous wild animal by its owner to a person legally able to possess the dangerous wild animal and willing and able to take possession. Voluntary relinquishment shall have no effect on any criminal charges for violations of this Article.

(c) Any dangerous wild animal found to be not properly confined, whether on the property of the owner or running at large, may be humanely destroyed by law enforcement officers in order to protect public safety. The owner of a dangerous wild animal will be liable for costs accrued to law enforcement officers in humanely destroying or otherwise securing that animal.

"**§ 19A-77. Penalties.**

(a) Each violation of this Article shall constitute a Class 2 misdemeanor and a person who violates this Article is liable for a civil penalty of not more than five thousand dollars ($5,000). Each animal possessed, sold, transferred, or bred in violation of this Article constitutes a separate offense.

(b) Any dangerous wild animal owner or custodian whose act or omission in the care, control, or containment of that animal that results in the animal running loose or causing property damage shall constitute a Class A1 misdemeanor. If that act or omission resulting in a dangerous wild animal running loose results in serious bodily injury to any person, the owner of the animal shall be strictly liable and the offense is punishable as a Class I felony.

(c) Any person who lives in the county in which a dangerous wild animal is kept may bring a civil action against an owner or custodian of the dangerous wild animal to enjoin a violation of this Article."

SECTION 2. If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part.

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 554

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

H554-ARN-17 [v.1]

Amends Title [NO]
H554-CSRN-26[v.5]

Date _____,2015

Representative McGrady

moves to amend the bill on page 2, lines 50-51, by inserting the following between those lines:

"(12) A motion picture or television production company employing or contracting with a dealer or exhibitor licensed under Section 2133 of the federal Animal Welfare Act (7 U.S.C. 2133) or with a carrier, intermediate handler, or unlicensed exhibitor registered under Section 2136 of the federal Animal Welfare Act (7 U.S.C. 2136) for the transportation, purchase, exhibition, or use of dangerous animals in its motion picture or television production.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 554
PROPOSED COMMITTEE SUBSTITUTE H554-CSRN-26 [v.5]
4/28/2015 8:23:46 PM

Short Title: Protect Public from Dangerous Wild Animals. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT CERTAIN DANGEROUS WILD ANIMALS POSE TO THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 19A of the General Statutes is amended by adding a new Article to read:

"Article 7.
"Dangerous Wild Animals.

"**§ 19A-71. Definitions.**

The following definitions apply in this Article:

(1) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and State and the shelter and welfare of animals.

(2) "Circus" means an exhibitor holding a valid Class "C" license issued under the federal Animal Welfare Act (7 U.S.C. Section 2131 et seq.) that does not have any permanent animal facilities in this State and that regularly conducts performances featuring live animals and multiple trained human entertainers, including clowns and acrobats.

(3) "Dangerous wild animal" means any live individual animal of the following scientific classifications belonging to Class Mammalia:

a. Order Carnivora:

1. Family Canidae: gray wolves (*Canis lupus*).
2. Family Felidae: all species of felids, excluding domestic cats (*Felis catus*), and including hybrids of lions (*Panthera leo*), tigers (*Panthera tigris*), leopards (*Panthera pardus*), clouded leopards (*Neofelis nebulosa, Neofelis diardi*), snow leopards (*Panthera uncia*), jaguars (*Panthera onca*), cheetahs (*Acinonyx jubatus*), and mountain lions (*Puma concolor*).
3. Family Hyaenidae: all species of hyena and aardwolf.
4. Family Ursidae: all species of bears.

b. Order Primates: all species, excluding humans.

(4) "Law enforcement officer" means an animal control officer, an animal cruelty investigator as provided for in Article 4 of this Chapter, a State or local law enforcement officer, or a public prosecutor.

(5) "Person" means any individual, partnership, corporation, organization, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative of one of those legal entities.

(6) "Wildlife Sanctuary" means a charitable organization that is exempt from taxation under section 501(c)(3), Internal Revenue Code of 1986, that is described by section 170(b)(1)(A)(vi), Internal Revenue Code of 1986, and that:

a. Operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced animals are provided care for the lifetime of the animal.

b. Does not conduct commercial activity with respect to dangerous wild animals, including, but not limited to, (i) the sale, trade, auction, or lease of dangerous wild animals or their parts or (ii) the use of dangerous wild animals in any manner in a for-profit business or operation.

c. Does not use dangerous wild animals for entertainment purposes or in a traveling exhibit.

d. Does not breed any dangerous wild animals.

"**§ 19A-72. Prohibited Activities.**

(a) Notwithstanding any other provision of law, unless exempt under this Article, it is unlawful for any person to possess, sell, transfer, or breed a dangerous wild animal.

(b) Notwithstanding any other provision of law, it is unlawful for any person to allow any member of the public to come into direct physical contact with a dangerous wild animal, regardless of the age of the animal. Members of the public do not include full-time employees or supervised interns or volunteers.

"**§ 19A-73. Exemptions.**

The prohibitions in G.S. 19A-72(a) shall not apply to:

(1) Institutions accredited or certified by the Association of Zoos and Aquariums (AZA).

(2) Research facilities, as defined in the federal Animal Welfare Act (7 U.S.C. § 2132(e)) and in corresponding federal regulations (9 C.F.R. 1.1, et al).

(3) Wildlife sanctuaries, as defined in G.S. 19A-71(6).

(4) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, temporarily housing a dangerous wild animal at the written request of law enforcement officers acting under the authority of this Article.

(5) Veterinary hospitals, veterinary clinics, veterinary practices, veterinarians, and persons employed by such entities, for the purpose of providing veterinary care or veterinary services to the dangerous wild animal.

(6) Law enforcement officers for purposes of enforcement.

(7) Circuses, as defined in G.S. 19A-71(2).

(8) A person temporarily transporting a legally owned dangerous wild animal through the State if the transit time is not more than 24 hours, the dangerous wild animal is not exhibited, and the dangerous wild animal is maintained at all times in a species-appropriate cage or travel container.

(9) Institutions accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International.

(10) Institutions accredited or certified by the Zoological Association of America.

(11) Institutions holding a valid license issued by the U.S. Department of Agriculture (USDA) pursuant to the federal Animal Welfare Act.

"**§ 19A-74. Prior possession.**

The prohibitions in G.S. 19A-72(a) shall not apply to persons who lawfully possessed a dangerous wild animal prior to June 1, 2015, provided that the person:

(1) Shall maintain veterinary records, acquisition papers, or other documents or records that establish that the person lawfully possessed the animal prior to June 1, 2015.

(2) May not acquire additional dangerous wild animals after June 1, 2015, whether by purchase, donation, relinquishment, or breeding; however, this subdivision does not prohibit such a person from possessing the offspring of a lawfully-possessed dangerous wild animal if written medical records demonstrate that the animal was pregnant on June 1, 2015.

(3) Shall not have been convicted of an offense involving the abuse or neglect of any animal pursuant to any State, local, or federal law.

(4) Shall not have had a license or permit regarding the care, possession, exhibition, breeding, or sale of animals revoked or suspended by any State, local, or federal agency.

(5) Shall develop and be prepared to implement escape, succession, and disaster plans and maintain a current animal inventory, to be made available to law enforcement officers upon request.

(6) Shall allow a law enforcement officer to enter the premises where the dangerous wild animal is kept at any reasonable time to ensure compliance with this Chapter.

(7) Shall register with, and pay a registration fee to, the local animal control authority by September 1, 2015, and annually thereafter, indicating the number of animals of each dangerous wild animal species in his or her possession, and showing proof of liability insurance in an amount of not less than two hundred fifty thousand dollars ($250,000) for each occurrence of property damage, bodily injury, or death caused by any dangerous wild animal possessed by the person.

(8) Shall provide written notification to the animal control authority in the city or county where the person resides of the death of a dangerous wild animal possessed under this section. The notice shall include the common name, sex, and age of the animal, the date the animal was acquired, and any unique identification marks to properly identify the animal.

(9) At least 72 hours prior to sale or transfer of an existing dangerous wild animal, shall notify in writing the local animal control authority, identifying the recipient of the animal. At all times, possession, sale, transfer, and transport of the dangerous wild animal shall conform with all applicable State, local, and federal laws.

(10) Shall have continuously posted and displayed at each possible entrance onto the premises where a dangerous wild animal is housed a conspicuous sign, clearly legible, and easily readable by the public, warning that a dangerous wild animal is on the premises.

"**§ 19A-75. Transport and containment.**

(a) Any person transporting a dangerous wild animal shall keep the animal at all times in a species-appropriate cage or travel container and shall comply with federal transport requirements (9 C.F.R. Part 3).

(b) Any person possessing a dangerous wild animal shall keep the animal in a permanent enclosure that is designed to be escape-proof and has an operable lock. It is unlawful for any person to allow members of the public within 15 feet of a dangerous wild animal unless there is a permanent barrier in place that prevents the risk of direct physical contact between a member of the public and the animal.

(c) It is unlawful for any person to knowingly release a dangerous wild animal into the wild.

"**§ 19A-76. Enforcement.**

(a) The provisions of this Article shall be enforced by any State law enforcement officer, or by any other law enforcement officer in whose jurisdiction a violation occurs, or by any animal control authority for the jurisdiction in which a violation occurs. Nothing in this Article shall be construed to prohibit a city or county from adopting or enforcing any ordinance or other law that places further restrictions or additional requirements on the possession, sale, transfer, or breeding of dangerous wild animals.

(b) Animals may be seized pursuant to this Article as follows:

(1) Law-enforcement officers shall, after obtaining a warrant from any judge or magistrate upon probable cause, seize or impound any dangerous wild animal possessed, sold, transferred, bred, or exhibited in violation of this Article. If the dangerous wild animal poses a direct threat to public safety or is suffering from apparent animal neglect or cruelty, that animal shall be immediately placed in the custody and control of an institution accredited by the Association of Zoos and Aquariums, a wildlife sanctuary, or a temporary holding facility, as described in G.S. 19A-73(4). If there is no immediate threat to public safety or animal welfare, law enforcement officers shall impound the dangerous wild animal in place.

(2) Upon seizing or impounding a dangerous wild animal, a law enforcement officer shall petition the district court for the district in which the dangerous wild animal was seized or impounded for a hearing to determine whether the dangerous wild animal was in fact possessed, sold, transferred, bred, or exhibited in violation of this Article. The hearing shall be held not more than 14 days from the date of the seizure or impoundment and the law enforcement officer shall provide written notice of the hearing at least five days prior to the hearing to the person from whom the dangerous wild animal was seized or impounded.

(3) Upon judicial determination of a violation of any provision of this Article, the seized or impounded dangerous wild animal shall be deemed forfeited and the court shall order the violator to pay all reasonable expenses incurred in caring and providing for the dangerous wild animal, from the time the dangerous wild animal is seized until the time that dangerous wild animal is forfeited, to the AZA institution, wildlife sanctuary, or temporary holding facility in possession of the dangerous wild animal. The court may also prohibit the possession or ownership of dangerous wild animals, or other nonnative wild animals, by the person found to have violated this Article.

(4) A forfeited dangerous wild animal shall be transferred to an institution accredited by the Association of Zoos and Aquariums or to a wildlife sanctuary that is willing and able to take custody of the forfeited dangerous wild animal. Nothing in this Article shall be construed to prevent law enforcement officers from humanely euthanizing a dangerous wild animal in compliance with State and federal law if, after reasonable efforts, no AZA institution or wildlife sanctuary is willing and able to provide long-term care for the dangerous wild animal.

(5) Nothing in this Article shall be construed to prevent the voluntary, permanent relinquishment of any dangerous wild animal by its owner to a person legally able to possess the dangerous wild animal and willing and able to take possession. Voluntary relinquishment shall have no effect on any criminal charges for violations of this Article.

(c) Any dangerous wild animal found to be not properly confined, whether on the property of the owner or running at large, may be humanely destroyed by law enforcement officers in order to protect public safety. The owner of a dangerous wild animal will be liable for costs accrued to law enforcement officers in humanely destroying or otherwise securing that animal.

"**§ 19A-77. Penalties.**

(a) Each violation of this Article shall constitute a Class 2 misdemeanor and a person who violates this Article is liable for a civil penalty of not more than five thousand dollars ($5,000). Each animal possessed, sold, transferred, or bred in violation of this Article constitutes a separate offense.

(b) Any dangerous wild animal owner or custodian whose act or omission in the care, control, or containment of that animal that results in the animal running loose or causing property damage shall constitute a Class A1 misdemeanor. If that act or omission resulting in a dangerous wild animal running loose results in serious bodily injury to any person, the owner of the animal shall be strictly liable and the offense is punishable as a Class I felony.

(c) Any person who lives in the county in which a dangerous wild animal is kept may bring a civil action against an owner or custodian of the dangerous wild animal to enjoin a violation of this Article."

SECTION 2. If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part.

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 554:
Protect Public from Dangerous Wild Animals

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 29, 2015
Introduced by:	Reps. McGrady, Hurley, Hardister, Saine	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H554-CSRN-26		Committee Counsel

SUMMARY: ***House Bill 554 creates a new Article making it unlawful to possess, sell, transfer, or breed a dangerous wild animal.*** ***The Proposed Committee Substitute (PCS) (1) removes red wolves from the definition of dangerous wild animals, (2) provides that employees are not "members of the public" in the provision prohibiting members of the public from coming into contact dangerous wild animals, (3) adds subdivisions (9)-(11) in the exemptions section, and (4) removes a provision from the liability insurance requirement which would have required a deductible of not more than $250.***

BILL ANALYSIS:

Section 1 creates a new Article 7 in Chapter 19A of the General Statutes that addresses the following:

- **Definitions**- G.S. 19A-71 creates definitions, including a definition for "dangerous wild animal."
- **Prohibited Activities**- G.S. 19A-72(a) provides that it is unlawful for any person to possess, sell, transfer or breed a dangerous wild animal. G.S. 19-72(b) makes it unlawful for any person to allow a member of the public to come into direct physical contact with a dangerous wild animal, regardless of the age of the animal. Members of the public do not include full-time employees or supervised interns or volunteers.
- **Exemptions**- G.S. 19A-73 provides that the prohibitions on possessing, selling, transferring, or breeding a dangerous wild animal do not apply to:

  1. Institutions accredited or certified by the Association of Zoos and Aquariums
  2. Research facilities defined in the federal Animal Welfare Act and federal regulations.
  3. Wildlife sanctuaries.
  4. Nonprofit animal protection organizations, such as humane societies and shelters, temporarily housing a dangerous wild animal at the written request of law enforcement officers.
  5. Veterinary hospitals, veterinary clinics, veterinary practices, and veterinarians, who provide veterinary care to the dangerous wild animal.
  6. Law enforcement officers for purposes of enforcement.
  7. Circuses.
  8. A person temporarily transporting a legally owned dangerous wild animal through the State if the transit time is not more than 24 hours, the dangerous wild animal is not exhibited, and the dangerous wild animal is in a species appropriate cage or travel container at all times.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

9. Institutions accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International.

10. Institutions accredited or certified by the Zoological Association of America.

11. Institutions holding a valid license issued by the U.S. Department of Agriculture (USDA) pursuant to the federal Animal Welfare Act.

- **Prior Possession-** The prohibitions on possessing, selling, transferring, or breeding a dangerous wild animal do not apply to a person who possessed the animal prior to June 1, 2015, but the person:

  1. Must maintain documents or records that establish that the person lawfully possessed the animal prior to June 1, 2015.

  2. May not acquire additional dangerous wild animals after June 1, 2015. This does not prohibit a person from possessing the offspring of a lawfully possessed dangerous wild animal if written medical records show that the animal was pregnant on June 1, 2015.

  3. Must not have been convicted of an offense related to abuse or neglect of any animal.

  4. Must not have had a license or permit regarding the care, possession, exhibition, breeding, or sale of animals revoked or suspended.

  5. Must develop and be prepared to implement escape, succession, and disaster plans and maintain a current animal inventory, to be made available to law enforcement officers upon request.

  6. Must allow a law enforcement officer to enter the premises where the dangerous wild animal is kept at any reasonable time to ensure compliance.

  7. Must register with, and pay a registration fee to, the local animal control authority by September 1, 2015, and annually thereafter, indicating the number of animals of each dangerous wild animal species in his or her possession, and showing proof of liability insurance of not less than $250,000 for each occurrence of property damage, bodily injury, or death caused by any dangerous wild animal possessed by the person.

  8. Must provide written notification to the animal control authority in the city or county where the person resides of the death of a dangerous wild animal.

  9. At least 72 hours before the sale or transfer of an existing dangerous wild animal, must notify the local animal control authority of identity of the recipient of the animal.

  10. Must have continuously posted and displayed at each possible entrance onto the premises where a dangerous wild animal is housed a conspicuous sign, that is easily readable by the public, warning that a dangerous wild animal is on the premises.

- **Transport and Containment-** A person transporting a dangerous wild animal must keep the animal at all times in a species appropriate cage or travel container and must comply with federal transport requirements. Any person possessing a dangerous wild animal must keep the animal in a permanent enclosure that is designed to be escape proof and has an operable lock. The following are unlawful:

  1. To allow members of the public within 15 feet of a dangerous wild animal unless there is a permanent barrier in place that prevents the risk of direct physical contact between a member of the public and the animal.

2. For a person to knowingly release a dangerous wild animal into the wild.

- **Enforcement-** These provisions are enforced by State law enforcement officers or by any animal control authority with jurisdiction. This Article does not prohibit counties and cities from adopting ordinances that places further restrictions.

  Animals may be seized as follows:

  1. Law enforcement officers must, after getting a warrant from any judge or magistrate upon probable cause, seize or impound any dangerous wild animal when there is a violation of this Article. If the dangerous wild animal poses a direct threat to public safety or is suffering from apparent animal neglect or cruelty, that animal shall be immediately placed in the custody and control of an institution accredited by the Association of Zoos and Aquariums, a wildlife sanctuary, or a temporary holding facility. If there is no immediate threat to public safety or animal welfare, law enforcement officers must impound the dangerous wild animal in place.

  2. Upon seizing or impounding a dangerous wild animal, a law enforcement officer must petition the district court for the district for a hearing to determine whether the dangerous wild animal was in fact possessed, sold, transferred, bred, or exhibited in violation of this Article. The hearing must be held not more than 14 days from the date of the seizure or impoundment and the law enforcement officer must provide written notice of the hearing at least five days prior to the hearing to the person from whom the dangerous wild animal was seized or impounded.

  3. A seized or impounded dangerous wild animal shall be deemed forfeited and the court shall order the violator to pay all reasonable expenses incurred in caring and providing for the dangerous wild animal, from the time the dangerous wild animal is seized until the time that dangerous wild animal is forfeited The court may also prohibit the possession or ownership of dangerous wild animals by the violator.

  4. A forfeited dangerous wild animal must be transferred to an institution accredited by the Association of Zoos and Aquariums or to a wildlife sanctuary that is willing and able to take custody of the forfeited dangerous wild animal. Nothing in this Article prevents law enforcement officers from humanely euthanizing a dangerous wild animal if, no AZA institution or wildlife sanctuary is willing and able to care for the dangerous wild animal.

  5. The Article does not prevent the voluntary, permanent relinquishment of any dangerous wild animal by its owner to a person legally able to possess the dangerous wild animal and willing and able to take possession.

Any dangerous wild animal found to be not properly confined may be humanely destroyed by law enforcement officers in order to protect public safety. The owner of a dangerous wild animal will be liable for costs to law enforcement officers in humanely destroying or otherwise securing that animal.

- **Penalties-**

  1. Each violation of the Article is a Class 2 misdemeanor. A person who violates this Article is liable for a civil penalty of not more than $5,000. Each animal possessed, sold, transferred, or bred in violation of this Article constitutes a separate offense.

  2. Any dangerous wild animal owner or custodian whose act or omission in the care, control, or containment of that animal that results in the animal running loose or causing

property damage shall constitute a Class A1 misdemeanor. If that act or omission resulting in a dangerous wild animal running loose results in serious bodily injury to any person, the owner of the animal shall be strictly liable and the offense is punishable as a Class I felony.

3. Any person who lives in the county in which a dangerous wild animal is kept may bring a civil action against an owner or custodian of the dangerous wild animal to enjoin a violation.

Section 2 provides that if any part of the Article is found to be unconstitutional or unenforceable, this does not affect the constitutionality of any other part of the Article.

EFFECTIVE DATE: The act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 554

Short Title:	Protect Public from Dangerous Wild Animals.	(Public)
Sponsors:	Representatives McGrady, Hurley, Hardister, and Saine (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 6, 2015

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT CERTAIN DANGEROUS WILD ANIMALS POSE TO THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 19A of the General Statutes is amended by adding a new Article to read:

"Article 7.

"Dangerous Wild Animals.

"**§ 19A-71. Definitions.**

The following definitions apply in this Article:

(1) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and State and the shelter and welfare of animals.

(2) "Circus" means an exhibitor holding a valid Class "C" license issued under the federal Animal Welfare Act (7 U.S.C. Section 2131 et seq.) that does not have any permanent animal facilities in this State and that regularly conducts performances featuring live animals and multiple trained human entertainers, including clowns and acrobats.

(3) "Dangerous wild animal" means any live individual animal of the following scientific classifications belonging to Class Mammalia:

a. Order Carnivora:

1. Family Canidae: red wolves (*Canis rufus*) and gray wolves (*Canis lupus*).

2. Family Felidae: all species of felids, excluding domestic cats (*Felis catus*), and including hybrids of lions (*Panthera leo*), tigers (*Panthera tigris*), leopards (*Panthera pardus*), clouded leopards (*Neofelis nebulosa, Neofelis diardi*), snow leopards (*Panthera uncia*), jaguars (*Panthera onca*), cheetahs (*Acinonyx jubatus*), and mountain lions (*Puma concolor*).

3. Family Hyaenidae: all species of hyena and aardwolf.

4. Family Ursidae: all species of bears.

b. Order Primates: all species, excluding humans.

(4) "Law enforcement officer" means an animal control officer, an animal cruelty investigator as provided for in Article 4 of this Chapter, a State or local law enforcement officer, or a public prosecutor.

(5) "Person" means any individual, partnership, corporation, organization, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative of one of those legal entities.

(6) "Wildlife Sanctuary" means a charitable organization that is exempt from taxation under section 501(c)(3), Internal Revenue Code of 1986, that is described by section 170(b)(1)(A)(vi), Internal Revenue Code of 1986, and that:

a. Operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced animals are provided care for the lifetime of the animal.

b. Does not conduct any commercial activity with respect to dangerous wild animals, including, but not limited to, (i) the sale, trade, auction, or lease of dangerous wild animals or their parts or (ii) the use of dangerous wild animals in any manner in a for-profit business or operation.

c. Does not use dangerous wild animals for entertainment purposes or in a traveling exhibit.

d. Does not breed any dangerous wild animals.

"**§ 19A-72. Prohibited Activities.**

(a) Notwithstanding any other provision of law, unless exempt under this Article, it is unlawful for any person to possess, sell, transfer, or breed a dangerous wild animal.

(b) Notwithstanding any other provision of law, it is unlawful for any person to allow any member of the public to come into direct physical contact with a dangerous wild animal, regardless of the age of the animal.

"**§ 19A-73. Exemptions.**

The prohibitions in G.S. 19A-72(a) shall not apply to:

(1) Institutions accredited or certified by the Association of Zoos and Aquariums (AZA).

(2) Research facilities, as defined in the federal Animal Welfare Act (7 U.S.C. § 2132(e)).

(3) Wildlife sanctuaries, as defined in G.S. 19A-71(6).

(4) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, temporarily housing a dangerous wild animal at the written request of law enforcement officers acting under the authority of this Article.

(5) Veterinary hospitals, veterinary clinics, veterinary practices, veterinarians, and persons employed by such entities, for the purpose of providing veterinary care or veterinary services to the dangerous wild animal.

(6) Law enforcement officers for purposes of enforcement.

(7) Circuses, as defined in G.S. 19A-71(2).

(8) A person temporarily transporting a legally owned dangerous wild animal through the State if the transit time is not more than 24 hours, the dangerous wild animal is not exhibited, and the dangerous wild animal is maintained at all times in a species-appropriate cage or travel container.

"**§ 19A-74. Prior possession.**

The prohibitions in G.S. 19A-72(a) shall not apply to persons who lawfully possessed a dangerous wild animal prior to June 1, 2015, provided that the person:

(1) Shall maintain veterinary records, acquisition papers, or other documents or records that establish that the person lawfully possessed the animal prior to June 1, 2015.

(2) May not acquire additional dangerous wild animals after June 1, 2015, whether by purchase, donation, relinquishment, or breeding; however, this subdivision does not prohibit such a person from possessing the offspring of a lawfully-possessed dangerous wild animal if written medical records demonstrate that the animal was pregnant on June 1, 2015.

(3) Shall not have been convicted of an offense involving the abuse or neglect of any animal pursuant to any State, local, or federal law.

(4) Shall not have had a license or permit regarding the care, possession, exhibition, breeding, or sale of animals revoked or suspended by any State, local, or federal agency.

(5) Shall develop and be prepared to implement escape, succession, and disaster plans and maintain a current animal inventory, to be made available to law enforcement officers upon request.

(6) Shall allow a law enforcement officer to enter the premises where the dangerous wild animal is kept at any reasonable time to ensure compliance with this Chapter.

(7) Shall register with, and pay a registration fee to, the local animal control authority by September 1, 2015, and annually thereafter, indicating the number of animals of each dangerous wild animal species in his or her possession, and showing proof of liability insurance in an amount of not less than two hundred fifty thousand dollars ($250,000), with a deductible of not more than two hundred fifty dollars ($250.00), for each occurrence of property damage, bodily injury, or death caused by any dangerous wild animal possessed by the person.

(8) Shall provide written notification to the animal control authority in the city or county where the person resides of the death of a dangerous wild animal possessed under this section. The notice shall include the common name, sex, and age of the animal, the date the animal was acquired, and any unique identification marks to properly identify the animal.

(9) At least 72 hours prior to sale or transfer of an existing dangerous wild animal, shall notify in writing the local animal control authority, identifying the recipient of the animal. At all times, possession, sale, transfer, and transport of the dangerous wild animal shall conform with all applicable State, local, and federal laws.

(10) Shall have continuously posted and displayed at each possible entrance onto the premises where a dangerous wild animal is housed a conspicuous sign, clearly legible, and easily readable by the public, warning that a dangerous wild animal is on the premises.

"**§ 19A-75. Transport and containment.**

(a) Any person transporting a dangerous wild animal shall keep the animal at all times in a species-appropriate cage or travel container and shall comply with federal transport requirements (9 C.F.R. Part 3).

(b) Any person possessing a dangerous wild animal shall keep the animal in a permanent enclosure that is designed to be escape-proof and has an operable lock. It is unlawful for any person to allow members of the public within 15 feet of a dangerous wild animal unless there is a permanent barrier in place that prevents the risk of direct physical contact between a member of the public and the animal.

(c) It is unlawful for any person to knowingly release a dangerous wild animal into the wild.

"**§ 19A-76. Enforcement.**

(a) The provisions of this Article shall be enforced by any State law enforcement officer, or by any other law enforcement officer in whose jurisdiction a violation occurs, or by any animal control authority for the jurisdiction in which a violation occurs. Nothing in this Article shall be construed to prohibit a city or county from adopting or enforcing any ordinance or other law that places further restrictions or additional requirements on the possession, sale, transfer, or breeding of dangerous wild animals.

(b) Animals may be seized pursuant to this Article as follows:

(1) Law-enforcement officers shall, after obtaining a warrant from any judge or magistrate upon probable cause, seize or impound any dangerous wild animal possessed, sold, transferred, bred, or exhibited in violation of this Article. If the dangerous wild animal poses a direct threat to public safety or is suffering from apparent animal neglect or cruelty, that animal shall be immediately placed in the custody and control of an institution accredited by the Association of Zoos and Aquariums, a wildlife sanctuary, or a temporary holding facility, as described in G.S. 19A-73(4). If there is no immediate threat to public safety or animal welfare, law enforcement officers shall impound the dangerous wild animal in place.

(2) Upon seizing or impounding a dangerous wild animal, a law enforcement officer shall petition the district court for the district in which the dangerous wild animal was seized or impounded for a hearing to determine whether the dangerous wild animal was in fact possessed, sold, transferred, bred, or exhibited in violation of this Article. The hearing shall be held not more than 14 days from the date of the seizure or impoundment and the law enforcement officer shall provide written notice of the hearing at least five days prior to the hearing to the person from whom the dangerous wild animal was seized or impounded.

(3) Upon judicial determination of a violation of any provision of this Article, the seized or impounded dangerous wild animal shall be deemed forfeited and the court shall order the violator to pay all reasonable expenses incurred in caring and providing for the dangerous wild animal, from the time the dangerous wild animal is seized until the time that dangerous wild animal is forfeited, to the AZA institution, wildlife sanctuary, or temporary holding facility in possession of the dangerous wild animal. The court may also prohibit the possession or ownership of dangerous wild animals, or other nonnative wild animals, by the person found to have violated this Article.

(4) A forfeited dangerous wild animal shall be transferred to an institution accredited by the Association of Zoos and Aquariums or to a wildlife sanctuary that is willing and able to take custody of the forfeited dangerous wild animal. Nothing in this Article shall be construed to prevent law enforcement officers from humanely euthanizing a dangerous wild animal in compliance with State and federal law if, after reasonable efforts, no AZA institution or wildlife sanctuary is willing and able to provide long-term care for the dangerous wild animal.

(5) Nothing in this Article shall be construed to prevent the voluntary, permanent relinquishment of any dangerous wild animal by its owner to a person legally able to possess the dangerous wild animal and willing and able to take possession. Voluntary relinquishment shall have no effect on any criminal charges for violations of this Article.

(c) Any dangerous wild animal found to be not properly confined, whether on the property of the owner or running at large, may be humanely destroyed by law enforcement officers in order to protect public safety. The owner of a dangerous wild animal will be liable for costs accrued to law enforcement officers in humanely destroying or otherwise securing that animal.

"**§ 19A-77. Penalties.**

(a) Each violation of this Article shall constitute a Class 2 misdemeanor and a person who violates this Article is liable for a civil penalty of not more than five thousand dollars ($5,000). Each animal possessed, sold, transferred, or bred in violation of this Article constitutes a separate offense.

(b) Any dangerous wild animal owner or custodian whose act or omission in the care, control, or containment of that animal that results in the animal running loose or causing property damage shall constitute a Class A1 misdemeanor. If that act or omission resulting in a dangerous wild animal running loose results in serious bodily injury to any person, the owner of the animal shall be strictly liable and the offense is punishable as a Class I felony.

(c) Any person who lives in the county in which a dangerous wild animal is kept may bring a civil action against an owner or custodian of the dangerous wild animal to enjoin a violation of this Article."

SECTION 2. If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part.

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

HOUSE BILL 696

Short Title:	Debts to Judgment Debtors/Pay to Sheriff.	(Public)
Sponsors:	Representative Ford (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary II.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SOME OR ALL OF CERTAIN PAYMENTS TO JUDGMENT DEBTORS AGAINST WHOSE PROPERTY AN EXECUTION HAS BEEN ISSUED TO BE MADE TO THE SHERIFF RATHER THAN TO THE JUDGMENT DEBTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-359 reads as rewritten:

"**§ 1-359. Debtors of judgment debtor ~~may~~ shall satisfy execution.**

After the issuing of an execution against ~~property,~~property and the presentation of a copy of that execution by the sheriff, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, ~~may pay~~who make a payment on that debt, shall make as much of that payment as is necessary to satisfy the execution to the sheriff ~~the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the~~rather than to the judgment debtor. The sheriff's receipt is a sufficient discharge ~~for the amount paid.~~of the debtor's obligation to the judgment debtor for the amount paid. Failure to make payment to the sheriff shall not be a violation of this section where the person making payment did not have knowledge of the execution and no demand for payment of the execution was made by the sheriff. Payment of the amount owed to the judgment debtor by the person indebted to the judgment debtor after receiving a demand for payment from the sheriff under the execution shall subject the person indebted to a penalty in the amount of either the full amount due on the judgment and execution or the amount paid on the debt to the judgment debtor, whichever is less. This penalty shall be applied to the satisfaction of the judgment and execution under which the demand for payment was made."

SECTION 2. This act becomes effective October 1, 2015.

HOUSE BILL 696:
Debts to Judgment Debtors/Pay to Sheriff

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Rep. Ford	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 696 requires some or all of certain payments to judgment debtors against whose property an execution has been issued to be made to the sheriff rather than the judgment debtor.***

CURRENT LAW: Under current law, after issuing an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay the amount of their debt to the sheriff or as much as is needed to satisfy the execution. The sheriff's receipt is a sufficient discharge for the amount paid.

BILL ANALYSIS: House Bill 696 would provide that after the issuing of an execution against property and the presentation of a copy of that execution by the sheriff, all persons indebted to the judgment debtor, or to any one of several debtors, who make a payment on that debt, must make as much of that payment as is necessary to satisfy the execution to the sheriff, rather than to the judgment debtor. Failure to make payment to the sheriff is not a violation if the person did not have knowledge of the execution, and the sheriff did not make a demand for payment.

Payment of the amount owed to the judgment debtor by the person indebted, after receiving a demand for payment from the sheriff, subjects the person to a penalty in the amount of (1) the full amount due on the judgment and execution or (2) the amount paid on the debt to the judgment debtor, whichever is less. The penalty is applied to the satisfaction of the judgment and execution.

EFFECTIVE DATE: October 1, 2015.

O. Walker Reagan
Director

* H 6 9 6 - S M R N - 3 7 E 1 - V 3 *

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 804

Short Title:	Kelsey Smith Act.	(Public)
Sponsors:	Representatives Hurley, Glazier, Schaffer, and Lambeth (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary IV.	

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR WARRANTLESS ACCESS BY LAW ENFORCEMENT TO TELECOMMUNICATIONS DEVICE LOCATION INFORMATION UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the Kelsey Smith Act.

SECTION 2. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 16C.

"Provision of Wireless Call Location Information to Law Enforcement.

"**§ 15A-300.10. Provision of call location information by wireless service provider to law enforcement.**

(a) The following definitions apply in this section:

(1) Call location data. – Global positioning system, triangulation, and per-call measurement data indicating the location of a telecommunications device. Call location data does not include the contents of any communication made using a telecommunications device.

(2) Imminent. – With respect to a risk of death or serious physical harm, means that the length of time necessary to comply with otherwise applicable provisions of law pertaining to obtaining authorization for electronic surveillance would, in the professional judgment of the law enforcement agency based upon generally accepted surveillance and investigation protocols, significantly reduce the chance of preventing death or serious physical harm.

(3) Public safety answering point. – Defined in G.S. 62A-40.

(4) Wireless service provider. – A commercial mobile radio service provider, as defined in G.S. 62A-40, including providers of subscription-based, in-vehicle security service.

(b) Upon request of a law enforcement agency or a public safety answering point on behalf of a law enforcement agency, a wireless service provider shall provide call location information concerning the telecommunications device of a user to the requesting law enforcement agency or public safety answering point. A law enforcement agency or public safety answering point may request information under this section only in an emergency situation that involves an imminent risk of death or serious physical harm.

(c) A wireless service provider may establish procedures for disclosure of call location information.

(d) No cause of action shall lie in any court against a wireless service provider, its officers, directors, employees, agents or other specified persons for providing mobile communications tracking information to a law enforcement agency or public safety answering point as required by this act.

(e) The State Bureau of Investigation shall maintain a database containing emergency contact information for all wireless telecommunications carriers registered to do business in the State, and shall make the information readily available upon request to all public safety answering points located in the State."

SECTION 3.(a) Article 12 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-265. Warrantless use of pen register or trap and trace device.**

"(a) Notwithstanding any other provision of this Chapter, a law enforcement officer may have installed and use a pen register or trap and trace device if the law enforcement officer makes the following determinations:

(1) An emergency situation exists that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained; and

(2) There are grounds upon which an order could be entered under this Chapter to authorize such installation and use.

(b) The law enforcement officer must seek an order approving the installation or use in accordance with G.S. 15A-263 within 48 hours after the installation has occurred, or begins to occur, under subsection (a) of this section.

(c) In the absence of an authorizing order under G.S. 15A-263, the use a pen register or trap and trace device shall immediately terminate when the information sought is obtained, when the application for the order is denied or when 48 hours have lapsed since the installation of the pen register or trap and trace device, whichever first occurs.

(d) The knowing installation or use by any law enforcement officer of a pen register or trap and trace device pursuant to subsection (a) of this section without application for the authorizing order within 48 hours of the installation shall constitute a violation of this Chapter.

(e) A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance."

SECTION 3.(b) G.S. 15A-261(b) is amended by adding a new subdivision to read:

"(b) Exception. – The prohibition of subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

(1) Relating to the operation, maintenance, or testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of ~~service; or~~service.

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of ~~service; or~~service.

(3) With the consent of the user of that service.

(4) Under emergency circumstances as set forth in G.S. 15A-265."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 799
Committee Substitute Favorable 4/23/15
PROPOSED COMMITTEE SUBSTITUTE H799-CSST-39 [v.1]

4/26/2015 7:39:55 PM

Short Title: Zoning/Changes to Hist. Preserv. Procedures. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION AND TO CREATE A PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-400.7 reads as rewritten:

"**§ 160A-400.7. Historic Preservation Commission.**

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks ~~respectively,~~ respectively or (ii) a planning board established pursuant to this ~~Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article.~~ Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 2. G.S. 160A-400.8 reads as rewritten:

"**§ 160A-400.8. Powers of the Historic Preservation Commission.**

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

(1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

(2) Recommend to the municipal governing board areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

(4) Restore, preserve and operate historic properties;

(5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;

(6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;

(7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;

(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for ~~examination~~ preparation of a renovation report or other report to aid in review of a certificate of appropriateness application, examination, or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;

(10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and

(11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate."

SECTION 3. G.S. 160A-400.9 reads as rewritten:

"**§ 160A-400.9. Certificate of appropriateness required.**

...

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the completed application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. If a completed application is not acted upon within the 180-day period, the commission shall issue the certificate of appropriateness unless both the applicant and the commission agree to an extension prior to the expiration of the 180 days. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. A member of the Board of Adjustment shall not vote on a matter under appeal pursuant to this subsection if that member is also a member of the commission or its equivalent. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(e1) Notwithstanding subsection (e) of this section, in lieu of an appeal to superior court, the party appealing the decision of the Board of Adjustment may submit the dispute to binding arbitration. The appealing party shall provide written notice to the Board of Adjustment within 30 days of the decision. Unless a different method of arbitration is agreed upon by the parties, a single arbitrator shall be chosen by the parties and the appealing party may choose to consolidate all disputed issues into a single claim. The cost of the arbitration proceeding shall be borne equally by the parties. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise. The arbitrator shall consider, at a minimum, the entire record of proceedings with the commission and the Board of Adjustment, the degree to which the decision deviates from the rules of procedure and principles and guidelines of the commission pursuant to G.S. 160A-400.6, and the good faith of the parties. In any subsequent action to enforce the arbitrator's decision the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

(f) All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided however they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the commission shall be final and binding upon both the State and the preservation commission."

SECTION 4. Part 3C of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-400.16. Renovation report by Historic Preservation Commission.**

(a) For the purposes of this section, the term "renovation report" is defined as an informational report issued by a historic preservation commission or its designee that includes, at a minimum, all of the following:

(1) An identification and listing of all exterior features as defined in G.S. 160A-400.9 for contributing buildings and structures located on a particular parcel situated within a historic district or (ii) designated as a historic landmark.

(2) A reference to all applicable sections of locally adopted principles and guidelines not inconsistent with this Part and relevant to alteration or restoration of the exterior features identified and listed pursuant to subdivision (1) of this subsection.

(3) A listing of materials or substitute materials appropriate for use in alteration or restoration of the exterior features identified and listed pursuant to subdivision (1) of this subsection. The Commission shall allow the use of materials and substitute materials approved by the State Historic Preservation Office.

A renovation report shall not include stand-alone new construction, demolition, or the moving of a structure on the subject parcel.

(b) An owner, or a potential purchaser with the owner's consent, may request a renovation report from the commission. The commission may, but is not required to, prepare the renovation report. In preparing the renovation report, the commission shall examine the parcel or structure in collaboration with the requesting party, may consult with the owner or applicant in the preparation of the renovation report, and shall issue a final renovation report within 60 days of request. The commission may contract with a third party to prepare the renovation report and may establish and charge a reasonable fee to the party requesting the renovation report not to exceed the actual cost of preparing the renovation report.

(c) A renovation report issued by the commission pursuant to this section shall be valid for a period of one year after issuance and is fully transferrable. A completed renovation report shall be considered by the commission and its administrative staff during review for a certificate of appropriateness, including for minor works, issued pursuant to this Part for the parcel or structure for which the renovation report was prepared."

SECTION 5. This act becomes effective October 1, 2015, and applies to applications for certificates of appropriateness submitted on or after that date.

HOUSE BILL 799
Committee Substitute Favorable 4/23/15

Short Title: Zoning/Changes to Hist. Preserv. Procedures. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION AND TO CREATE A PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-400.7 reads as rewritten:

"**§ 160A-400.7. Historic Preservation Commission.**

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks ~~respectively,~~ respectively or (ii) a planning board established pursuant to this ~~Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article.~~ Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 2. G.S. 160A-400.8 reads as rewritten:

"**§ 160A-400.8. Powers of the Historic Preservation Commission.**

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

(1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
(2) Recommend to the municipal governing board areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";
(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;
(4) Restore, preserve and operate historic properties;
(5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;
(6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;
(7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;
(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for ~~examination~~ preparation of a renovation report or other report to aid in review of a certificate of appropriateness application, examination, or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;
(9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;
(10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and
(11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate."

SECTION 3. G.S. 160A-400.9 reads as rewritten:

"**§ 160A-400.9. Certificate of appropriateness required.**

...

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the completed application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. If a completed application is not acted upon within the 180-day period, the commission shall issue the certificate of appropriateness. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. A member of the Board of Adjustment shall not vote on a

matter under appeal pursuant to this subsection if that member is also a member of the commission or its equivalent. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(e1) Notwithstanding subsection (e) of this section, in lieu of an appeal to superior court, the party appealing the decision of the Board of Adjustment may submit the dispute to binding arbitration. The appealing party shall provide written notice to the Board of Adjustment within 30 days of the decision. Unless a different method of arbitration is agreed upon by the parties, a single arbitrator shall be chosen by the parties and the appealing party may choose to consolidate all disputed issues into a single claim. The cost of the arbitration proceeding shall be borne equally by the parties. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise. The arbitrator shall consider, at a minimum, the entire record of proceedings with the commission and the Board of Adjustment, the degree to which the decision deviates from the rules of procedure and principles and guidelines of the commission pursuant to G.S. 160A-400.6, and the good faith of the parties. In any subsequent action to enforce the arbitrator's decision the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

(f) All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided however they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the commission shall be final and binding upon both the State and the preservation commission."

SECTION 4. Part 3C of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-400.16. Renovation report by Historic Preservation Commission.**

(a) For the purposes of this section, the term "renovation report" is defined as an informational report issued by a historic preservation commission or its designee that includes, at a minimum, all of the following:

(1) An identification and listing of all exterior features as defined in G.S. 160A-400.9 for particular buildings or structures (i) located on a particular parcel situated within a historic district or (ii) designated as a historic landmark.

(2) A reference to all applicable sections of locally adopted principles and guidelines not inconsistent with this Part and relevant to alteration or restoration of the exterior features identified and listed pursuant to subdivision (1) of this subsection.

(3) A listing of materials or substitute materials appropriate for use in alteration or restoration of the exterior features identified and listed pursuant to subdivision (1) of this subsection.

A renovation report shall not include stand-alone new construction, demolition, or the moving of a structure on the subject parcel.

(b) An owner, or a potential purchaser with the owner's consent, may request a renovation report from the commission. In preparing the report, the commission shall examine the parcel or structure in collaboration with the requesting party and shall prepare and issue the report within 60 days of request. The commission may contract with a third party to prepare the

report and may establish and charge a reasonable fee to the party requesting the report not to exceed the actual cost of preparing the renovation report.

(c) A renovation report issued by the commission pursuant to this section shall be valid for a period of one year after issuance and is fully transferrable. A completed renovation report shall be considered by the commission and its administrative staff during review for a certificate of appropriateness, including for minor works, issued pursuant to this Part for the parcel or structure for which the renovation report was prepared."

SECTION 5. This act becomes effective October 1, 2015, and applies to applications for certificates of appropriateness submitted on or after that date.

HOUSE BILL 799:
Zoning/Changes to Hist. Preserv. Procedures

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 26, 2015
Introduced by:	Reps. Brody, Ager	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to Second Edition H799-CSST-39		Committee Counsel

SUMMARY: ***The proposed committee substitute would establish an arbitration process for appeals of local historic preservation commissions, establish a renovation report to be prepared at the request of property owners or potential buyers, and make other changes to the procedures of local historic preservation commissions.***

CURRENT LAW: Part 3C of Article 19 of Chapter 160A authorizes counties and cities to safeguard the heritage of the city or county by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory and to promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city or county and the State as a whole. G.S. 160A-400.1. Historic commissions may be established for those purposes.

Establishment. – A historic commission established by a county or city must have at least three members, with terms of no more than four years. Members must reside within the zoning jurisdiction of the local government, which includes the extraterritorial jurisdiction for cities. A majority of members must have "demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields." When needed, the commission may appoint advisory bodies and committees.

Alternatively, the governing board may choose a different structure for the commission. A local government may establish separate preservation commissions for districts and landmarks, may designate the planning commission or community appearance commission as the preservation commission, or may establish a joint commission with a city (or cities) and county. When the planning commission or community appearance commission serves as the preservation commission, it must still include at least three members with the demonstrated experience in related fields.

The governing board may authorize a historic commission to carry out any of the following activities within the local government's zoning jurisdiction:

- Inventory historic and significant properties.
- Recommend historic designations (and revocations) for districts and landmarks.
- Negotiate for, acquire and sell property to promote preservation.
- Restore and operate historic properties.
- Conduct educational programs.
- Cooperate and contract with State, federal, and local governments.
- Recommend preservation elements of the local comprehensive plan.
- Review and act on certificates of appropriateness.

Certificates of Appropriateness.— After a historic district or landmark is established, a landowner may not alter the exterior portions of historic properties without obtaining a certificate of appropriateness (COA) from the preservation commission. COA's are required for any erection, alteration, restoration, move, or demolition of an exterior feature of a structure; but do not regulate use.

Structures include buildings, masonry walls, fences, light fixtures, steps and pavement, and other appurtenant features. Above ground utilities and outdoor advertising signs require a COA as well. Exterior features are defined to include, among other things, architectural style, size and scale of buildings, and types and styles of doors and windows. The local governing board, in its discretion, may define exterior features also to include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Generally, COA's are not required for any of the following:

- Changes to the interior features of a building
- Ordinary maintenance or repair that does not change the material or appearance
- Changes required for public safety and certified by the building inspector.

Before a preservation commission may issue or deny any COA, the commission must adopt both (i) principles and guidelines for construction and alterations and (ii) rules of procedure. A preservation commission may not deny a certificate except to prevent a project "which would be incongruous with the special character of the landmark or district." G.S. 160A-400.9(a).

The commission must act upon applications for COA's within a reasonable time, not more than 180 days from the date of the application. A COA for relocation or demolition of a historic property may be delayed up to 365 days—depending on the circumstances—for the commission to negotiate for preservation of the building or site.

BILL ANALYSIS:

Section 1. Would delete the authority for a county or city to opt for a community appearance board to function as the historic commission.

Section 2. Would specify that the historic preservation commission's authority to enter private lands with the consent of the owner or occupant, while solely in the performance of official duties and only at reasonable times, is limited to the preparation of renovation reports or other reports to aid in the review of a COA, examination or survey.

Section 3. Would do all of the following:

- Specify that the historic preservation commission failed to act upon a completed application for a COA within 180 days, the COA must be issued. The parties may agree to an extension of time prior to the expiration of the 180 days.
- Prohibit a member of the Board of Adjustment from voting on an appealed matter from the historic preservation commission, if that Board of Adjustment member also sits on the historic preservation commission.
- Establishes an option for binding arbitration in lieu of appealing to the Superior Court.

Section 4. Would create a new duty for the historic preservation commission, allowing the commission, or a third party at the direction of the commission, to prepare a renovation report upon the request of any owner or potential buyer of a contributing property located in a historic district or a property designated as a landmark. The renovation report would identify all of the exterior features of the structure, reference the applicable principles and guidelines of the commission, and provide a list of appropriate materials for alteration or restoration of those exterior features. The renovation report would be valid for one year, transferrable, and must be considered by the commission during a review for a COA.

EFFECTIVE DATE: October 1, 2015, and applies to applications for certificates of appropriateness submitted on or after that date.

Adam Lovelady with the UNC School of Government substantially contributed to this summary.

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 4-29-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Tregembo	Tregembo Animal Park 5811 Carolina Beach Rd Wilmington NC
Andrea Chase	Conservators' Center Burlington, NC
DAN BREEDING	WILD ONES ANIMAL CONC. INC
Taylor Hattori	Conservators Center 676 E Hughes Mill Rd, Burlington NC
Annie Mena	Conservators Center 676 E Hughes Mill Rd. Burlington NC
Kori Johnson	Conservators Center 676 E Hughes Mill Rd Burlington NC
Whortney Rehfuss	Zootastic Park Oasis Wildlife Amity, Trotman NC
Alan Smith	Zoological Assn of America, Punta Gorda, FL
MaryAnn MCBride	Licensed WRC Rehabilitator
CARL WILLIAMS	NC DHHS
Cassia Geralmiatos	Conservators Center Burlington NC
Megan McGrath	Conservators Center Burlington, NC
Mindy Stiner	Conservators Center, Burlington NC (Caswell Co.)

Julia Wagner	Conservators Center, NC
Harry Hiatt	Conservators Center
Michelle McKay	Zoofari Educational Encounters
Becklee Niemchak	Wildlife Encounters
Sam Blanton	Rep. McGrady Research

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 4-29-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	NCBA
Jake Rudolph	Conservators' Center
JAKE PARKER	NCFB
LeeAnne Thornton	Conservators' Ctr
EMILY JAFFE	CONSERVATORS CENTER
BRUCE OAKLEY	Town of Oak Ridge
George McClellan	Town of Oak Ridge
Kim Albourn	TTOS
Pam Trulk	Carolina Tiger Rescue, Pittsboro, NC
Mandy Matson	Conservators Center, Burlington
J.T. Boone	Conservators Center

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 4-29-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jarret Burr	NCDPS
Andy Ball	Town of Boone
Steve Metcalf	Town of Boone
Tim Moore	Speaker
Rick Taylor	Taylor Law Firm
Pat Byrne	Conf of DAs
Eddie Caldwell	NC Sheriffs' Assn.

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 4-29-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Boone	Conservators Center
Dave Hattori	Conservators' Center
Cristi Hetzelfinger	Conservators Center
Linda Davis	Conservators Center
Philip Isley	BMCD

House Committee on Judiciary II
Wednesday, April 29, 2015 at 6:45 PM
Room 1027 of the Legislative Building

MINUTES

The House Committee on Judiciary II met at 6:45 PM on April 29, 2015 in Room 1027 of the Legislative Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Dianne Russell (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 6:47 PM. He introduced the Sergeants at Arms (Attachment II). The following bills were considered:

The proposed committee substitute for House Bill 649 is provided (Attachment III)
HOUSE BILL 649: A BILL TO BE ENTITLED AN ACT TO AMEND THE STATUTES RELATING TO THE PROCEDURES IN SHAREHOLDER DERIVATIVE SUITS.

Chairman Jordan recognized Representative Ross to speak on the bill.

The chair recognized Nathan Batts, of the NC Bankers Association, to speak on the bill.

After a short discussion, the chair recognized Representative Stam who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

House Bill 570 and summary are provided (Attachment IV and Attachment V)
HOUSE BILL 570: A BILL TO BE ENTITLED AN ACT TO DIRECT LAW ENFORCEMENT AND THE COURTS TO IMPROVE JUDICIAL EFFICIENCY THROUGH THE USE OF THE ELECTRONIC REPOSITORY COMMONLY KNOWN AS NCAWARE TO RESOLVE OUTSTANDING WARRANTS WHILE A DEFENDANT IS IN CUSTODY.

Chairman Jordan moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Graham to speak on the bill.

The proposed committee substitute for House Bill 570 require law enforcement, upon confinement, and the courts, prior to entry of an order, to determine if there are any outstanding warrants against the defendant; and direct the Department of Public Safety's Division of Adult Correction (DOC) to develop a policy for identifying any outstanding criminal warrants at intake and before release to resolve an inmate's outstanding warrants while in custody.

After a short discussion, the chair recognized Representative Reives who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 735 and summary are provided (Attachment VI and Attachment VII)
HOUSE BILL 735: A BILL TO BE ENTITLED AN ACT TO DIRECT THE DIVISION OF ADULT CORRECTION OF THE DEPARTMENT OF PUBLIC SAFETY TO DEVELOP A PROCESS WHEREBY AN INMATE WHOSE DRIVING PRIVILEGES HAVE BEEN SUSPENDED OR REVOKED FOR A CONVICTION OF DRIVING WHILE IMPAIRED OR DRIVING UNDER THE INFLUENCE MAY COMPLETE THE REQUIREMENTS NECESSARY FOR REINSTATEMENT OF THE INMATE'S DRIVING PRIVILEGES PRIOR TO THE INMATE'S RELEASE.

Chairman Jordan moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Graham to speak on the bill.

After a short discussion, the chair recognized Representative Stam who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 626 and summary are provided (Attachment VIII and Attachment IX)
HOUSE BILL 626: A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE WILLFUL AND WANTON INJURY TO PERSONAL PROPERTY OR REAL PROPERTY.

Chairman Jordan moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Reives to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 626 would increase the criminal penalty for the willful and wanton injury to personal property or real property.

After a short discussion, the chair recognized Representative Glazier who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

The proposed committee substitute for House Bill 875 is provided (Attachment X)
HOUSE BILL 875: A BILL TO BE ENTITLED AN ACT TO REQUIRE CONSENT OF THE COUNTY BOARD OF COMMISSIONERS IN ASHE AND WATAUGA COUNTY FOR PROPERTY

LOCATED IN THOSE COUNTIES BEFORE ANY MUNICIPALITY, SPECIAL DISTRICT, OR OTHER UNIT OF LOCAL GOVERNMENT ACQUIRES BY CONDEMNATION ANY REAL PROPERTY LOCATED IN THE SAME COUNTY AND OUTSIDE THE MUNICIPALITY, SPECIAL DISTRICT, OR OTHER UNIT OF LOCAL GOVERNMENT.

Chairman Blust moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Jordan to speak on the bill.

After a short discussion, the chair recognized Representative Stam who moved to give a favorable report to the proposed committee substitute, unfavorable to the original bill. The motion passed on a unanimous voice vote.

House Bill 419 is provided (Attachment XI)
HOUSE BILL 419: A BILL TO BE ENTITLED AN ACT TO PROTECT MUNICIPAL LAW ENFORCEMENT OFFICERS WHO REPORT IMPROPER OR UNLAWFUL GOVERNMENT ACTIVITY FROM RETALIATION.

Chairman Jordan recognized Representatives Conrad and Avila, primary sponsors, to speak on the bill.

The chair recognized Eddie Caldwell, of the NC Sheriffs' Association, to speak on the bill.

The chair recognized Connie Wilson, of the Employers Coalition of NC, to speak on the bill.

The chair recognized Representative Stam, who moved to amend the bill. (Attachment XII). The motion passed without dissent.

The chair recognized Representative Glazier, who moved to amend the bill. (Attachment XIII). The motion passed without dissent.

After a short discussion, the chair recognized Representative Stam who moved to give a favorable report to the bill. The motion failed 4-6.

There being no further business, Chairman Jordan adjourned the meeting at 7:53 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

Corrected #1: Meeting in Room 1027 at 6:50 pm

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 II** will meet as follows:

DAY & DATE: Thursday, April 30, 2015
TIME: **During First Recess**
LOCATION: **ROOM 1027**
COMMENTS: **Chairman Jordan will preside.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 419	Protect Officers From Retaliation.	Representative Conrad Representative Avila Representative Dollar Representative Cotham
HB 626	Amend Prop Damage Offenses.	Representative Reives
HB 570	Facilitate Successful Reentry.	Representative C. Graham Representative Pierce Representative Baskerville Representative Glazier
HB 875	Restrict Municipal Eminent Domain.	Representative Jordan Representative McGrady Representative Hunter
HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
HB 735	Reinstatement of Driving Privileges.	Representative C. Graham Representative Pierce

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:50 PM on Wednesday, April 29, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Dianne Russell (Committee Assistant)

House Committee on Judiciary II
Wednesday, April 29, 2015, 1:00 PM
425 Legislative Office Building

AGENDA

Welcome and Opening Remarks
Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
PCS	HB 554	Protect Public from Dangerous Wild Animals.	Representative McGrady Representative Hurley Representative Hardister Representative Saine
PCS	HB 597	Mediated Settlement Agreements.	Representative Bishop Representative Stam Representative Glazier Representative L. Hall
	HB 649	Amend Corp. Gov/Shareholder Derivative Suits.	Representative Ross
	HB 696	Debts to Judgment Debtors/Pay to Sheriff.	Representative Ford
PCS	HB 799	Zoning/Changes to Hist. Preserv. Procedures.	Representative Brody Representative Ager
	HB 804	Kelsey Smith Act.	Representative Hurley Representative Glazier Representative Schaffer Representative Lambeth
	HB 849	Create Debtor Exemption for Firearms.	Representative Salmon Representative B. Turner Representative Hardister

Presentations

Other Business

Adjournment

4:45pm RM 1027

ATTENDANCE

House Committee on Judiciary II

DATES	4/29/15														
Rep. Jonathan C. Jordan – Chair	✓														
Rep. John M. Blust– Chair	✓														
Rep. John Faircloth – Vice Chair	✓														
Rep. Rick Glazier – Vice Chair	✓														
Rep. Pat Hurley – Vice Chair	✓														
Rep. Chuck McGrady – Vice Chair	✓														
Rep. Henry Michaux Jr. – Vice Chair	✓														
Rep. Paul Stam – Vice Chair	✓														
Rep. Dana Bumgardner	✓														
Rep. Debra Conrad	✓														
Rep. Joe Queen	✓														
Rep. Robert Reives, II	✓														
Rep. Stephen Ross	✓														
Rep. Jason Saine															
Rep. Brad Salmon															

I

VISITOR REGISTRATION SHEET

Judiciary II — 4/29/2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	NCBA
Connie Wilson	ECNC
Eddie Caldwell	NC Sheriffs' Assn.

VISITOR REGISTRATION SHEET

Judiciary II — 4/29/2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANDY WALSH	SA
Rick Techini	WM
Susan Vu	Duke Energy
Jeff Boyall	NCSPC
Todd Barlow	NC Advocates for Justice
Sarah Preston	ACLU-NC
Doug Miskell	PSG
Stu Metcalf	The Bo Eg Group
Erin Wynia	NCLM
MIKE CARPENTER	NCHBA
STEVEN WEBB	NCHBA

II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary H

DATE: 4/29/2015 Room: 1027

House Sgt-At Arms:

1. Name: Carleton Adams
2. Name: Martha Gadson
3. Name: Warren Hawkins
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

House Committee on Judiciary II
Wednesday, April 29, 2015 at 6:45 PM
Room 1027 of the Legislative Building

Sergeant of Arms

1. **Carleton Adams**
2. **Martha Gadison**
3. **Warren Hawkins**

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 649
Committee Substitute Favorable 4/30/15

Short Title: Amend Corp. Gov/Shareholder Derivative Suits. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES RELATING TO THE PROCEDURES IN SHAREHOLDER DERIVATIVE SUITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-7-40.1 reads as rewritten:

"**§ 55-7-40.1. Definitions.**

In this Part:

(1) ~~"Derivative proceeding" means a~~ Complaint. – A civil complaint filed in a derivative proceeding.

(1a) Derivative proceeding. – A civil suit in the right of a domestic corporation or, to the extent provided in G.S. 55-7-47, in the right of a foreign corporation.

(2) ~~"Shareholder" has~~ Shareholder. – Has the same meaning as in G.S. 55-1-40 and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf."

SECTION 2. G.S. 55-7-42 reads as rewritten:

"**§ 55-7-42. ~~Demand.~~Demand; rejection of demand.**

(a) No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made ~~unless,~~unless one of the following applies:

a. ~~prior~~ Prior to the expiration of the 90 days, the shareholder was notified that the corporation rejected the ~~demand, or unless~~ demand.

b. The court determines that imminent irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

(b) The failure of the corporation to respond to a demand shall not be deemed to be a decision or acknowledgement that the derivative proceeding is in the best interest of the corporation or should proceed, and such a failure does not compromise or affect any of the rights of the corporation under this Part or other applicable law.

(c) In the event that the corporation rejects a demand, the corporation shall promptly provide the shareholder written notice of the rejection. The notice must include a summary of the reasons for the rejection of the demand and the identity of the directors of the corporation who approved the rejection of the demand."

SECTION 3. G.S. 55-7-45(a) reads as rewritten:

"(a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected. Notice may be provided in any method approved by the court, including, for a public corporation, by publication of a press release through a news release service with national distribution."

SECTION 4. G.S. 55-7-47 reads as rewritten:

"**§ 55-7-47. Applicability to foreign corporations.**

In any derivative proceeding in the right of a foreign corporation, the matters covered by this Part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for the matters governed by G.S. 55-7-43, 55-7-45, and 55-7-46. The repose period in G.S. 55-7-48(2) applies to a foreign corporation if its principal office is located in North Carolina."

SECTION 5. This act becomes effective October 1, 2015, and applies to demands made and complaints filed on or after that date.

IV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 570
Committee Substitute Favorable 4/27/15

Short Title: Facilitate Successful Reentry. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO DIRECT LAW ENFORCEMENT AND THE COURTS TO IMPROVE JUDICIAL EFFICIENCY THROUGH THE USE OF THE ELECTRONIC REPOSITORY COMMONLY KNOWN AS NCAWARE TO RESOLVE OUTSTANDING WARRANTS WHILE A DEFENDANT IS IN CUSTODY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-301.1 is amended by adding two new subsections to read:

"(o) At the time an individual is taken into custody, the custodial law enforcement agency shall attempt to identify all outstanding warrants against that individual and notify the appropriate law enforcement agencies of the location of the individual.

(p) Prior to the entry of any order of the court in a criminal case, the court shall attempt to identify all outstanding warrants against that individual and notify the appropriate law enforcement agencies of the location of the individual."

SECTION 2. Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-10.5. Facilitation of reentry.**

In order to facilitate successful reentry and improve judicial efficiency, the Division of Adult Correction of the Department of Public Safety shall work with law enforcement, the district attorneys' offices, and the courts to develop a process by which, both at intake and before release, effort is made, for each inmate in custody, to identify all outstanding warrants on the inmate. The plan should seek to resolve inmates' outstanding warrants while in custody, whenever feasible. In the course of resolving an outstanding warrant while in custody, an inmate shall be notified of the outstanding warrant and his or her right to counsel if such a right exists."

SECTION 3. This act becomes effective October 1, 2015.

HOUSE BILL 570:
Facilitate Successful Reentry

2015-2016 General Assembly

Committee:	House Judiciary I, if favorable, Judiciary II	**Date:**	April 26, 2015
Introduced by:	Reps. C. Graham, Pierce, Baskerville, Glazier	**Prepared by:**	R. Erika Churchill and Jennifer Bedford, Committee Counsel
Analysis of:	PCS to First Edition H570-CSST-37		

SUMMARY: ***The proposed committee substitute for House Bill 570 require law enforcement, upon confinement, and the courts, prior to entry of an order, to determine if there are any outstanding warrants against the defendant; and direct the Department of Public Safety's Division of Adult Correction (DOC) to develop a policy for identifying any outstanding criminal warrants at intake and before release 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. The Department of Adult Correction (DOC) does not currently have access.

BILL ANALYSIS:

Section 1. The pcs would require law enforcement, at the time an individual is taken into custody, to attempt to identify all outstanding warrants against that individual and notify the appropriate law enforcement agencies of the location of the individual. Additionally, prior to the entry of any order of the court in a criminal case, the court is to attempt to identify all outstanding warrants against that individual and notify the appropriate law enforcement agencies of the location of the individual

Section 2. The pcs would directs the Division of Adult Correction to work with law enforcement, the district attorneys' offices, and the courts to develop a process by which, both at intake and before release, effort is made, for each inmate in custody, to identify all outstanding warrants on the inmate. The plan should seek to resolve inmates' outstanding warrants while in custody, whenever feasible.

The pcs would require that the inmate be notified of any outstanding warrant against the inmate and his or her right to counsel, if such a right exists.

EFFECTIVE DATE: October 1, 2015.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

V1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H **3**

HOUSE BILL 735

Committee Substitute Favorable 4/28/15
Committee Substitute #2 Favorable 4/30/15

Short Title: Reinstatement of Driving Privileges. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF ADULT CORRECTION OF THE DEPARTMENT OF PUBLIC SAFETY TO DEVELOP A PROCESS WHEREBY AN INMATE WHOSE DRIVING PRIVILEGES HAVE BEEN SUSPENDED OR REVOKED FOR A CONVICTION OF DRIVING WHILE IMPAIRED OR DRIVING UNDER THE INFLUENCE MAY COMPLETE THE REQUIREMENTS NECESSARY FOR REINSTATEMENT OF THE INMATE'S DRIVING PRIVILEGES PRIOR TO THE INMATE'S RELEASE.

The General Assembly of North Carolina enacts:

SECTION 1. Development of Process. – The Division of Adult Correction of the Department of Public Safety, in collaboration with the North Carolina Sheriffs' Association, Statewide Misdemeanant Confinement Program, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a process whereby an inmate whose driving privileges have been suspended or revoked for a conviction of driving while impaired or driving under the influence may complete the requirements necessary for reinstatement of the inmate's driving privileges prior to the inmate's release, including any substance abuse assessments and substance abuse education and treatment. The Division of Adult Correction may require an inmate participating in the process established under this section to submit to a drug test if the Division of Adult Correction reasonably suspects the inmate is engaged in the illegal use of controlled substances. An inmate who tests positive for a controlled substance as a result of a drug test under this section is ineligible to continue to participate in the process established under this section. Nothing in this section shall be construed as requiring the Division of Motor Vehicles to reinstate an inmate's driving privileges prior to or upon the inmate's release.

SECTION 2. Report and Deadline. – On or before October 1, 2015, the Division of Adult Correction shall submit a report to the Joint Legislative Oversight Committee on Justice and Public Safety on the status of the development of the process required by this act. The Division of Adult Correction shall implement the process required by this act by no later than January 1, 2016.

SECTION 3. Effective Date. – This act is effective when it becomes law.

VII

HOUSE BILL 735:
Reinstatement of Driving Privileges

2015-2016 General Assembly

Committee:	House Transportation, if favorable, Judiciary II	**Date:**	April 28, 2015
Introduced by:	Reps. C. Graham, Pierce	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition H735-CSSU-21		

SUMMARY: ***The Proposed Committee Substitute for House Bill 735 would direct the Division of Adult Corrections to develop a process to allow an inmate whose driving privilege has been suspended for conviction of an impaired driving offense to complete requirements necessary for reinstatement of the inmate's driving privilege prior to release. The Division would be required to report on development of the process by October 1, 2015, and would be required to implement the process by January 1, 2016.***

CURRENT LAW: When a person's driving privilege is suspended or revoked for an impaired driving offense, the person may not have the driving privilege reinstated until he or she has completed certain requirements, including receiving a substance abuse assessment by an authorized provider and completing an education or treatment program. Once the assessment and program are completed, the provider sends a form to the Division of Motor Vehicles documenting that the program has been completed. The revocation period is extended until the Division receives the certificate of completion.

BILL ANALYSIS: The PCS for House Bill 735 would direct the Division of Adult Corrections, in collaboration with the Sheriffs' Association, Statewide Misdemeanant Confinement Program, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to develop a process for an inmate with a suspended driving privilege due to an impaired driving conviction to complete requirements necessary to have his or her driving privilege reinstated before the inmate's release. The inmate would be able to complete the required substance abuse assessment and recommended education or treatment and have program completion documents sent to the Division of Motor Vehicles prior to his or her release.

The Division of Adult Corrections would be required to report on the development of the process to the Joint Legislative Oversight Committee on Justice and Public Safety by October 1, 2015. The process would have to be implemented by January 1, 2016.

EFFECTIVE DATE: The act would be effective when it becomes law.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

VIII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 626
Committee Substitute Favorable 4/30/15

Short Title: Amend Prop. Damage Offenses. (Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE WILLFUL AND WANTON INJURY TO PERSONAL PROPERTY OR REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-160 reads as rewritten:

"**§ 14-160. Willful and wanton injury to personal property; punishments.**

(a) If any person shall wantonly and willfully injure the personal property of another he shall be guilty of a Class 2 misdemeanor.

(b) Notwithstanding the provisions of subsection ~~(a),~~ (a) of this section, if any person shall wantonly and willfully injure the personal property of another, causing ~~damage in an amount in excess of two hundred dollars ($200.00), he shall be guilty of a Class 1 misdemeanor.~~damage, the person shall be guilty of an offense punishable as follows:

(1) If the damage is more than two hundred dollars ($200.00), but is five thousand dollars ($5,000) or less, the person shall be guilty of a Class 1 misdemeanor.

(2) If the damage is more than five thousand dollars ($5,000), but is fifty thousand dollars ($50,000) or less, the person shall be guilty of a Class A1 misdemeanor.

(3) If the damage is more than fifty thousand dollars ($50,000), the person shall be guilty of a Class I felony.

(c) This section applies to injuries to personal property without regard to whether the property is destroyed or not."

SECTION 2. G.S. 14-127 reads as rewritten:

"**§ 14-127. Willful and wanton injury to real property.**

If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, ~~he shall be guilty of a Class 1 misdemeanor.~~the person shall be guilty of an offense punishable as follows:

(1) If the damage is two hundred dollars ($200.00) or less, the person shall be guilty of a Class 2 misdemeanor.

(2) If the damage is more than two hundred dollars ($200.00), but is five thousand dollars ($5,000) or less, the person shall be guilty of a Class 1 misdemeanor.

(3) If the damage is more than five thousand dollars ($5,000), but is fifty thousand dollars ($50,000) or less, the person shall be guilty of a Class A1 misdemeanor.

(4) If the damage is more than fifty thousand dollars ($50,000), the person shall be guilty of a Class I felony."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 626:
Amend Prop Damage Offenses

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 23, 2015
Introduced by:	Rep. Reives	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H626-CSSA-30		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 626 would increase the criminal penalty for the willful and wanton injury to personal property or real property.***

BILL ANALYSIS:

Section 1 of the PCS would increase the penalty for wantonly and willfully injuring the personal property of another as follows:

- For damage more than $200, but $5,000 or less – Class 1 misdemeanor
- For damage more than $5,000, but $50,000 or less – Class A1 misdemeanor
- For damage more than $50,000 – Class I felony

Section 2 of the PCS would increase the penalty for willfully and wantonly damaging, injuring, or destroying real property as follows:

- For damage $200 or less – Class 2 misdemeanor
- For damage more than $200, but $5,000 or less – Class 1 misdemeanor
- For damage more than $5,000, but $50,000 or less – Class A1 misdemeanor
- For damage more than $50,000 – Class I felony

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

X

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 2

HOUSE BILL 875
Committee Substitute Favorable 4/30/15

Short Title: Restrict Municipal Eminent Domain. (Local)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CONSENT OF THE COUNTY BOARD OF COMMISSIONERS IN ASHE AND WATAUGA COUNTY FOR PROPERTY LOCATED IN THOSE COUNTIES BEFORE ANY MUNICIPALITY, SPECIAL DISTRICT, OR OTHER UNIT OF LOCAL GOVERNMENT ACQUIRES BY CONDEMNATION ANY REAL PROPERTY LOCATED IN THE SAME COUNTY AND OUTSIDE THE MUNICIPALITY, SPECIAL DISTRICT, OR OTHER UNIT OF LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-14.5. Consent of board of commissioners necessary before land outside a unit of local government, but within the county where that unit of local government is located, may be condemned by that unit of local government.**

(a) Notwithstanding the provisions of Chapter 40A of the General Statutes or any other general law or local act conferring the power of eminent domain, before final judgment may be entered in any action of condemnation initiated by a city or town, special district, or other unit of local government, whereby the condemnor seeks to acquire property located in the county where the condemnor is located, but outside the corporate limits of the condemnor, the condemnor shall furnish proof that the county board of commissioners of the county where the land is located has consented by resolution, by majority vote of all members of the Board, to the taking.

(b) In addition to the procedure specified in subsection (a) of this section, the following shall indicate proof that the county board of commissioners of the county where the city or town, special district, or other unit of local government is initiating an action of condemnation has consented to the taking, as required by subsection (a) of this section, with no further approval of the county board of county commissioners required:

(1) The real property subject to the condemnation action is located in a designated urban growth area or zone of the condemning entity that was approved by a prior action of the county board of commissioners.

(2) The real property subject to the condemnation is located in an extraterritorial jurisdiction area, as defined in G.S. 160A-360, of the condemning entity that was approved by a prior action of the county board of county commissioners.

(c) This section does not apply as to any condemnation of real property by a city or town, special district, or other unit of local government where the property to be condemned is

within the corporate limits of that city or town, special district, or other unit of local government."

SECTION 2. This act applies only to Ashe and Watauga counties. This act is effective when it becomes law and applies to condemnations on or after that date.

XI

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H 1

HOUSE BILL 419

Short Title:	Protect Officers From Retaliation.	(Public)
Sponsors:	Representatives Conrad, Avila, Dollar, and Cotham (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.	

April 1, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT MUNICIPAL LAW ENFORCEMENT OFFICERS WHO REPORT IMPROPER OR UNLAWFUL GOVERNMENT ACTIVITY FROM RETALIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-290. Protection from retaliation for municipal law enforcement officers.**

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

(1) Employing agency. – A city or unified city-county government police agency.

(2) Municipal law enforcement officer. – A full-time paid employee of an employing agency who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(b) Statement of Policy. – It is the policy of this State that municipal law enforcement officers shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority evidence of activity constituting any of the following:

(1) A violation of State or federal law, rule, or regulation.

(2) Fraud.

(3) Misappropriation of State and local government resources.

(4) Substantial and specific danger to the public health and safety.

(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

Further, it is the policy of this State that municipal law enforcement officers be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative or judicial panels.

(c) Protection from Retaliation. –

(1) No employing agency shall discharge, threaten, or otherwise discriminate against a municipal law enforcement officer regarding the officer's compensation, terms, conditions, location, or privileges of employment because the officer or a person acting on behalf of the officer reports or is about to report verbally or in writing any activity described in subsection (b) of this section unless the officer knows or has reason to believe that the report is inaccurate.

(2) No municipal law enforcement officer shall retaliate against another municipal law enforcement officer because the officer or a person acting on behalf of the officer reports or is about to report verbally or in writing any activity described in subsection (b) of this section.

(3) No employing agency shall discharge, threaten, or otherwise discriminate against a municipal law enforcement officer regarding the officer's compensation, terms, conditions, location, or privileges of employment because the officer has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule, or regulation or poses a substantial and specific danger to the public health and safety.

(4) No municipal law enforcement officer shall retaliate against another municipal law enforcement officer because the officer has refused to carry out a directive which may constitute a violation of State or federal law, rule, or regulation or pose a substantial and specific danger to the public health and safety.

(d) Civil Actions for Injunctive Relief or Other Remedies. – For claims arising under this section only, a municipal law enforcement officer injured by a violation of this section may maintain an action in superior court for damages, an injunction, or other remedies provided in this section against the person or employing agency who committed the violation within one year after the occurrence of the alleged violation of this section. Any claim arising under Article 21 of Chapter 95 of the General Statutes may be maintained pursuant to the provisions of that Article only and may be redressed only by the remedies and relief available under that Article.

(e) Remedies. – A court, in rendering a judgment in an action brought pursuant to this section, may order an injunction, damages, reinstatement of the municipal law enforcement officer, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorneys' fees, or any combination of these. If an application for a permanent injunction is granted, the officer shall be awarded costs and reasonable attorneys' fees. If, in an action for damages, the court finds that the officer was injured by a willful violation of this section, the court shall award as damages three times the amount of actual damages plus costs and reasonable attorneys' fees against the person or employing agency found to be in violation of this section.

(f) Notice of Employee Protections and Obligations. – It shall be the duty of the employing agency of the municipal law enforcement officer to post notice in accordance with G.S. 95-9 or use other appropriate means to keep municipal law enforcement officers informed of their protections and obligations under this section."

SECTION 2. This act becomes effective October 1, 2015, and applies to acts incurring liability on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT XII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 419 DATE 4-30-15

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Stam

moves to amend the bill on page 1, line 18

( ) WHICH CHANGES THE TITLE

by deleting "verbally or" ; and

on page 2, line 3, by deleting "verbally or";

~~and on page 2, lines 27-32, by rewriting those lines to read:~~

~~"costs, reasonable attorney's fees, or any combination of these.~~

and on page 2, lines 32-33, by ~~rewriting those~~ inserting to follow between those lines:

"(e1) The court may allow the ~~prevailing~~ party to receive attorney's fees."

"costs and reasonable";

and on page 2, line 28, by deleting "shall be") and substitute "may be"; and on page 2, line 30, by deleting "shall" and substituting "may".

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

XIII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 419 DATE 4/29/15

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

COMMITTEE SUBSTITUTE _____

Rep.) Glazier
)
Sen.)

moves to amend the bill on page 1, line 24

( ) WHICH CHANGES THE TITLE

by deleting the entire line; and

moves to amend the bill on pag 2, line 3

by deleting the words "or is about to report verbally or"; and

moves to amend the bill on page 2, lines 28-32

by ~~deleting~~ rewriting the lines to read:

"injunction is granted, the officer shall be awarded costs and reasonable attorneys' fees."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Committee on Judiciary II
Wednesday, May 6, 2015 at 12:30 PM
Room 425 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 12:30 PM on May 6, 2015 in Room 425 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Reives, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 12:34 PM. The Chairman recognized the Sergeants-at-Arms.

The following bills were considered:

SB 185 Clarify Credit for Time Served. (Senators Daniel, McKissick, Randleman)

Senator Daniel was recognized to present the bill. Representative Stam made the motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

SB 445 Burt's Law. (Senators Krawiec, Newton, Wells)

Senator Krawiec was recognized to present the bill. Committee discussion followed. An amendment was offered by Representative Glazier, and it was adopted. Mr. Steven Walker, General Counsel and Policy Director, Office of the Lieutenant Governor, and Ms. Karen McLeod, President and Chief Executive Officer, Benchmarks, spoke on the bill. Representative McGrady made the motion for a favorable report for the House Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the House Proposed Committee Substitute received a favorable report as amended.

The meeting adjourned at 12:53 PM.

Respectfully submitted,

John M. Blust
Representative John M. Blust, Chairman
Presiding

Jennie L. Thurlow
Jennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Wednesday, May 6, 2015
TIME: **12:30 PM**
LOCATION: **425 LOB**
COMMENTS: **Representative Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 185	Clarify Credit for Time Served.	Senator Daniel Senator McKissick Senator Randleman
SB 445	Burt's Law.	Senator Krawiec Senator Newton Senator Wells

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:26 PM on Tuesday, May 05, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

House Committee on Judiciary II
Wednesday, May 6, 2015, 12:30 PM
425 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 185	Clarify Credit for Time Served.	Senator Daniel Senator McKissick Senator Randleman
SB 445	Burt's Law.	Senator Krawiec Senator Newton Senator Wells

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

SB **185** Clarify Credit for Time Served.

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

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB **445** **(CS#1)** Burts Law.

Draft Number:	S445-PCS45365-TV-17
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Stam

TOTAL REPORTED: 2

SENATE BILL 185

Short Title:	Clarify Credit for Time Served.	(Public)
Sponsors:	Senators Daniel, McKissick, and Randleman (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate.	

March 5, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CREDIT FOR TIME SERVED AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-196.1 reads as rewritten:

"**§ 15-196.1. Credits allowed.**

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the ~~sentence.~~ sentence or the incident from which the charge arose. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that ~~is credited on the term of a previously imposed sentence to which a defendant is subject.~~a defendant has spent in custody as a result of a pending charge while serving a sentence imposed for another offense."

SECTION 2. This act becomes effective December 1, 2015.

SENATE BILL 185:
Clarify Credit for Time Served

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	May 6, 2015
Introduced by:	Sens. Daniel, McKissick, Randleman	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 185 would clarify credit for time served as recommended by the North Carolina Sentencing and Policy Advisory Commission.***

BILL ANALYSIS: Senate Bill 185 would amend G.S. 15-196.1 to clarify that (i) a defendant should receive credit for any time served related to the incident resulting in the charge and (ii) credit for time served does not include any time that a defendant has spent in custody as a result of a pending charge while serving a sentence imposed for another offense.

EFFECTIVE DATE: This act becomes effective December 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 3

SENATE BILL 445
Judiciary II Committee Substitute Adopted 4/16/15
Third Edition Engrossed 4/20/15

Short Title: Burt's Law. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PROTECTIONS FOR CLIENTS OF FACILITIES WHOSE PRIMARY PURPOSE IS TO PROVIDE SERVICES FOR THE CARE, TREATMENT, HABILITATION, OR REHABILITATION OF INDIVIDUALS WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITIES, OR SUBSTANCE ABUSE DISORDERS BY INCREASING PUNISHMENTS FOR CLIENT ABUSE, EXPLOITATION, OR NEGLECT; BY IMPOSING A REPORTING REQUIREMENT ON EMPLOYEES AND VOLUNTEERS WHO WITNESS A SEXUAL OFFENSE OR OFFENSE AGAINST MORALITY PERPETRATED AGAINST A CLIENT; AND BY MAKING FAILURE TO REPORT THESE VIOLATIONS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-26(5) reads as rewritten:

"(5) Adopt rules applicable to facilities licensed under this ~~Article:~~Article that do the following:

a. Establishing personnel requirements of staff employed in ~~facilities;~~facilities.

b. Establishing qualifications of facility administrators or ~~directors;~~directors.

c. Establishing requirements for death reporting including confidentiality provisions related to death ~~reporting;~~reporting.

d. Establishing requirements for patient ~~advocates; and~~advocates.

e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety.

f. Establishing standardized procedures for facilities in training and record keeping of the measures taken to inform employees and volunteers of the duties imposed by G.S. 122C-66."

SECTION 2. G.S. 122C-66 reads as rewritten:

"**§ 122C-66. Protection from abuse and exploitation; reporting.**

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client ~~or borrows or takes personal property from a client~~ is guilty of a ~~Class 1~~ Class A1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of

G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(a1) An employee of or a volunteer at a facility who borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of or a volunteer at a facility who witnesses or has knowledge of a violation of ~~subsection (a)~~ subsection (a), subsection (a1), or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a ~~Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).~~Class 1 misdemeanor.

(b1) The employee of or a volunteer at a facility who witnesses a client become a victim of a violation of Article 7A or Article 26 of Chapter 14 of the General Statutes shall report the allegations within 24 hours after witnessing the violation to one of the following: (i) the department of social services in the county where the facility serves the client; (ii) the district attorney in the district where the facility serves the client; or (iii) the appropriate local law enforcement agency in the city or county where the facility serves the client. A violation of this section is a Class A1 misdemeanor. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report.

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without ~~his~~ the reporting individual's consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which ~~a~~ the reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(f) ~~The~~ Except for reports made pursuant to subsection (b1) of this section, the facility shall investigate or provide for the investigation of all reports made under the provisions of this section.

(g) The county department of social services and the district attorney to whom a report is made under subsection (b1) of this section shall investigate or provide for the investigation of each such report."

SECTION 3. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

SENATE BILL 445:
Burt's Law

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	May 6, 2015
Introduced by:	Sens. Krawiec, Newton, Wells	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***Senate Bill 445 would enhance protections for clients of facilities whose primary purpose is to provide services for the care, treatment, habilitation, and rehabilitation of individuals with mental illness, developmental disabilities, or substance abuse disorders.***

Further, this bill increases punishments for client abuse, exploitation, or neglect; imposes a reporting requirement on employees and volunteers who witness a sexual offense or offense against morality perpetrated against a client; and makes the failure to report these violations a Class A1 or Class 1 misdemeanor.

The bill also adds a requirement that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (the Commission) establish standardized procedures to train and keep records of the measures used to comply with the employee and volunteer reporting requirements in G.S. 122C-66.

CURRENT LAW: G.S. 122C-26 provides the Commission with powers and duties to issue declaratory rulings, to make rules to meet the provisions and purposes of the Article and to govern licensure and accreditation of residential treatment facilities.

G.S. 122C-66 provides protection from abuse and exploitation, as well as reporting requirements for individuals in facilities that provide care, treatment, habilitation, or rehabilitation of mentally ill, developmentally disabled, or substance abuser clients.

BILL ANALYSIS:

Section 1 of the bill would amend G.S. 122C-26(5) to require the Commission establish standardized procedures for facilities in training and record keeping of the measures taken to inform employees and volunteers of the duties to report abuse of a client they witness or have knowledge of to the appropriate person or agency.

Section 2 of the bill would amend G.S. 122C-66 to make the following changes to the current statute:

- Increases the penalty from a Class 1 misdemeanor to a Class A1 misdemeanor for any employee or volunteer who knowingly causes pain or injury to a client. This provision does not apply to an employee or volunteer who uses reasonable force to protect himself or others from a violent client.
- Adds a provision that makes it a Class 1 misdemeanor for any employee or volunteer to borrow or take personal property from a client. This provision does not apply to an employee or volunteer who uses reasonable force to protect himself or others from a violent client.

- Increases the penalty from a Class 3 misdemeanor to a Class 1 misdemeanor for any employee or volunteer who witnesses and does not report another employee or volunteer who knowingly causes pain or injury to a client or takes personal property from a client.
- Adds a provision that requires an employee or volunteer who witnesses a sex crime or offense against morality perpetrated against a client to report the alleged crime within 24 hours to the department of social services in the county where the facility serves the client or the district attorney in the district where the facility serves the client or the appropriate local law enforcement agency in the city or county where the facility serves the client. Failure to report this alleged crime would be a Class A1 misdemeanor. No employee making a report may be threatened or harassed by any other employee or volunteer because of the report.
- Adds a provision that the county department of social services and district attorney who receives a report of an alleged sex crime or offense against morality shall investigate or provide for the investigation of each such report.

EFFECTIVE DATE: This act would become effective December 1, 2015 and would apply to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 445 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

moves to amend the bill on page 2, line 39

( ) WHICH CHANGES THE TITLE

by deleting "This" and inserting "Section 2 of this"

and on page 2, line 40 by adding the following sentence to the end of that line:

"The remainder of this act is effective when it becomes law."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 445
Judiciary II Committee Substitute Adopted 4/16/15
Third Edition Engrossed 4/20/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S445-PCS45365-TV-17

Short Title: Burt's Law. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PROTECTIONS FOR CLIENTS OF FACILITIES WHOSE PRIMARY PURPOSE IS TO PROVIDE SERVICES FOR THE CARE, TREATMENT, HABILITATION, OR REHABILITATION OF INDIVIDUALS WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITIES, OR SUBSTANCE ABUSE DISORDERS BY INCREASING PUNISHMENTS FOR CLIENT ABUSE, EXPLOITATION, OR NEGLECT; BY IMPOSING A REPORTING REQUIREMENT ON EMPLOYEES AND VOLUNTEERS WHO WITNESS A SEXUAL OFFENSE OR OFFENSE AGAINST MORALITY PERPETRATED AGAINST A CLIENT; AND BY MAKING FAILURE TO REPORT THESE VIOLATIONS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-26(5) reads as rewritten:

"(5) Adopt rules applicable to facilities licensed under this ~~Article:~~Article that do the following:

a. Establishing personnel requirements of staff employed in ~~facilities;~~facilities.

b. Establishing qualifications of facility administrators or ~~directors;~~directors.

c. Establishing requirements for death reporting including confidentiality provisions related to death ~~reporting;~~reporting.

d. Establishing requirements for patient ~~advocates; and~~advocates.

e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety.

f. Establishing standardized procedures for facilities in training and record keeping of the measures taken to inform employees and volunteers of the duties imposed by G.S. 122C-66."

SECTION 2. G.S. 122C-66 reads as rewritten:

"**§ 122C-66. Protection from abuse and exploitation; reporting.**

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client ~~or borrows or takes personal property from a client~~ is guilty of a ~~Class 1~~ Class A1 misdemeanor.

Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(a1) An employee of or a volunteer at a facility who borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of or a volunteer at a facility who witnesses or has knowledge of a violation of ~~subsection (a)~~ subsection (a), subsection (a1), or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a ~~Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).~~Class 1 misdemeanor.

(b1) The employee of or a volunteer at a facility who witnesses a client become a victim of a violation of Article 7A or Article 26 of Chapter 14 of the General Statutes shall report the allegations within 24 hours after witnessing the violation to one of the following: (i) the department of social services in the county where the facility serves the client; (ii) the district attorney in the district where the facility serves the client; or (iii) the appropriate local law enforcement agency in the city or county where the facility serves the client. A violation of this section is a Class A1 misdemeanor. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report.

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without ~~his~~ the reporting individual's consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which ~~a~~ the reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(f) ~~The~~ Except for reports made pursuant to subsection (b1) of this section, the facility shall investigate or provide for the investigation of all reports made under the provisions of this section.

(g) The county department of social services and the district attorney to whom a report is made under subsection (b1) of this section shall investigate or provide for the investigation of each such report."

SECTION 3. Section 2 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.

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary II

DATE: 5-6-2015 Room: 425

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: David Leighton
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 5-6-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Mentz	Gov. Leg. Affairs
Reg Dare	Conf of DAs
Tom Mann	AOC
Anneliese Dalph	IDC
Ken Cuerdon	NCBA
Amanda Horaker	TSS
John Madler	Sentencing Commission

VISITOR REGISTRATION SHEET

House Committee on Judiciary II 5-6-2015

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sen Joyce Krawiec	NC Senate
Steven Walker	Lt. Governor
	MWC
LAO Barbcat	CJPC
Penny Hurdle	Sen Tom
Rebecca Murdock	NC Sentencing Commission

House Committee on Judiciary II
Tuesday, May 12, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on May 12, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, Michaux, Queen, Reives, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:04 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

Senate Bill 123 and a summary are provided (Attachment III and Attachment IV)
SENATE BILL 123: A BILL TO BE ENTITLED AN ACT TO AMEND THE UNIFORM FRAUDULENT TRANSFER ACT TO ADOPT THE AMENDMENTS APPROVED BY THE UNIFORM LAW COMMISSION IN 2014 AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Chairman Jordan recognized Representative Blust to speak on the bill.

This bill amends the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, which establishes the circumstances under which a transfer of property or incurrence of obligation by a debtor is voidable as to a creditor and sets forth the remedies of a creditor with respect to the transfer or obligation. The bill is based on the amendments to the Uniform Fraudulent Transfer Act that were approved in 2014 by the National Conference of Commissioners on Uniform State Laws to address several narrowly-defined issues.

The chair recognized Floyd Lewis, Reviser of Statutes, to speak on the bill.

After a short discussion, the chair recognized Representative Michaux who moved to give a favorable report to the bill. The motion passed on a unanimous voice vote.

Senate Bill 661 and summary are provided (Attachment V and Attachment VI)
SENATE BILL 661: A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT WHEN LOCAL LAW ENFORCEMENT AGENCIES OBTAIN DNA ANALYSES FROM ENTITIES OTHER THAN THE STATE CRIME LABORATORY THAT THOSE ENTITIES MEET THE STANDARDS APPLICABLE TO VENDOR LABORATORIES AS SET FORTH IN FEDERAL BUREAU OF INVESTIGATION STANDARDS RELATED TO THE COMBINED DNA INDEX

SYSTEM (CODIS); TO REQUIRE THE STATE CRIME LABORATORY TO MAKE AVAILABLE A LIST OF ENTITIES THAT SATISFY THAT REQUIREMENT; AND TO PROHIBIT LOCAL LAW ENFORCEMENT AGENCIES FROM USING CERTAIN DNA DATABASES.

Chairman Jordan recognized Senator Newton to speak on the bill.

Senate Bill 661 would provide that when local law enforcement agencies obtain DNA analyses from entities other than the State Crime Laboratory, those entities must meet the standards that apply to vendor laboratories as set forth in Federal Bureau of Investigation Standards related to the Combined DNA Index System (CODIS).

The chair recognized Bruce Thompson, of LabCorp, to speak on the bill.

The chair recognized John Byrd, of the State Crime Lab, to speak on the bill.

After a short discussion, and with the agreement of the bill sponsor, the chair moved to displace the bill until the following meeting. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 1:53 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

Corrected #1: SB661 Added

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 II** will meet as follows:

DAY & DATE: Tuesday, May 12, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative Jonathan C. Jordan will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 123	Uniform Fraudulent Transfer Act.	Senator Hartsell
SB 661	Private Labs Must Comply with CODIS.	Senator Newton

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:39 PM on Monday, May 11, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

House Committee on Judiciary II
Tuesday, May 12, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 123	Uniform Fraudulent Transfer Act.	Senator Hartsell
SB 661	Private Labs Must Comply with CODIS.	Senator Newton

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

SB **123** **(CS#1)** Uniform Fraudulent Transfer Act.

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

TOTAL REPORTED: 1

CMR349-V-1

ATTENDANCE

House Committee on Judiciary II

DATES	May 12, 2015														
Rep. Jonathan C. Jordan – Chair	X														
Rep. John M. Blust– Chair	X														
Rep. John Faircloth – Vice Chair	X														
Rep. Rick Glazier – Vice Chair	X														
Rep. Pat Hurley – Vice Chair	X														
Rep. Chuck McGrady – Vice Chair															
Rep. Henry Michaux Jr. – Vice Chair	X														
Rep. Paul Stam – Vice Chair	X														
Rep. Dana Bumgardner	X														
Rep. Debra Conrad	X														
Rep. Joe Queen	X														
Rep. Robert Reives, II	X														
Rep. Stephen Ross	X														
Rep. Jason Saine															
Rep. Brad Salmon	X														

I

VISITOR REGISTRATION SHEET

House Judiciary II

5-12-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
Sam Blanton	Rep. McGrady RA
Tom Mann	NC AOC
Zachary Richardson	Rep. Glazier
Tonya Horton	TSS
ASANDRA SKINNER	NCACC
Jamar Clark	UNC Dept Govt.
Philip Isley	

VISITOR REGISTRATION SHEET

House Judiciary II

5-12-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jamie Lassiter	Rep. Stam
	SOG
	Conf of DAs
	DOT
	NC State Crime Lab / DOJ
Amanda Thompson	NC State Crime Lab/DOJ
Todd Boggett	Police Chiefs Assn
Tina Crouch	NCBA
Billy Brewer	NCBA
Sam Morris	Bar - Leg. Affairs
P. Bryan Hall	Council Statutes Commission
Floyd Lewis	ESC

II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 5-12-15 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

House Committee on Judiciary II
Tuesday, May 12, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Joe Crook**

Tuesday, May 12	Room	Time
JUDICIARY II	421	1:00 pm

Name	County	Sponsor
Peyton Ratchford	Gaston	John A. Torbett
Katie Malone	Wake	Chris Malone
Zachary Roupe	Pitt	Paul Stam
Nathan Sasser	Alamance	Stephen M. Ross

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 123*
Judiciary II Committee Substitute Adopted 3/17/15

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM FRAUDULENT TRANSFER ACT TO ADOPT THE AMENDMENTS APPROVED BY THE UNIFORM LAW COMMISSION IN 2014 AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE UNIFORM FRAUDULENT TRANSFER ACT

SECTION 1. Article 3A of Chapter 39 of the General Statutes reads as rewritten:

"Article 3A.

"Uniform ~~Fraudulent Transfer~~ Voidable Transactions Act.

"**§ 39-23.1. Definitions.**

~~As used in this Article:~~In this Article, the following definitions apply:

(1) ~~"Affiliate" means:~~Affiliate. – Any of the following:

a. A person ~~who~~ that directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person ~~who~~ that holds the ~~securities.~~securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
2. Solely to secure a debt, if the person has not in fact exercised the power to ~~vote;~~vote.

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person ~~who~~ that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person ~~who~~ that holds the ~~securities.~~securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
2. Solely to secure a debt, if the person has not in fact exercised the power to ~~vote;~~vote.

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the ~~debtor; or~~debtor.

d. A person ~~who~~ that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) ~~"Asset" means property~~ Asset. – Property of a debtor, but the term does not ~~include:~~include any of the following:

a. Property to the extent it is encumbered by a valid ~~lien;~~lien.

b. Property to the extent it is generally exempt under nonbankruptcy ~~law; or~~law.

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) ~~"Claim" means~~ Claim. – Except as used in "claim for relief," a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) ~~"Creditor" means a~~ Creditor. – A person ~~who~~ that has a claim.

(5) ~~"Debt" means liability~~ Debt. – Liability on a claim.

(6) ~~"Debtor" means a~~ Debtor. – A person ~~who~~ that is liable on a claim.

(6a) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(7) ~~"Insider" includes:~~Insider. – Includes any of the following:

a. If the debtor is an ~~individual.~~individual:

1. A relative of the debtor or of a general partner of the debtor;
2. A partnership in which the debtor is a general partner;
3. A general partner in a partnership in which the debtor is a general partner; or
4. A corporation of which the debtor is a director, officer, or person in ~~control;~~control.

b. If the debtor is a ~~corporation.~~corporation:

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the ~~debtor;~~debtor.

c. If the debtor is a ~~partnership,~~partnership:

1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the ~~debtor:~~debtor.

d. An affiliate, or an insider of an affiliate as if the affiliate were the ~~debtor; and~~debtor.

e. A managing agent of the debtor.

(8) ~~"Lien" means a~~ Lien. – A charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(8a) Organization. – A person other than an individual.

(9) ~~"Person" means an~~ Person. – An individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership.

(10a) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) ~~"Relative" means an~~ Relative. – An individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(11a) Sign. – With present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(12) ~~"Transfer" means every~~ Transfer. – Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(13) ~~"Valid lien" means a~~ Valid lien. – A lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"**§ 39-23.2. Insolvency.**

(a) A debtor is insolvent ~~if~~ if, at a fair valuation, the sum of the debtor's debts is greater than ~~all~~ the sum of the debtor's ~~assets at a fair valuation.~~assets.

(b) A debtor ~~who~~ that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

~~(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.~~

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"**§ 39-23.3. Value.**

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"**§ 39-23.4. ~~Transfers fraudulent as to present and future creditors.~~Transfer or obligation voidable as to present or future creditor.**

(a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred;

(11) The debtor transferred the essential assets of the business to a lienor ~~who~~ that transferred the assets to an insider of the debtor;

(12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and

(13) The debtor transferred the assets in the course of legitimate estate or tax planning.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"**§ 39-23.5. ~~Transfers fraudulent as to present creditors.~~Transfer or obligation voidable as to present creditor.**

(a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to G.S. 39-23.2(b), a creditor making a claim for relief under subsection (a) or subsection (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

(1) A transfer is made:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against ~~whom~~ which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a ~~writing,~~ record, when the ~~writing executed~~ record signed by the obligor is delivered to or for the benefit of the obligee.

"§ 39-23.7. Remedies of ~~creditors.~~creditor.

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;~~if available under applicable law; and

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil ~~procedure,~~procedure:

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"**§ 39-23.8. Defenses, liability, and protection of ~~transferee.~~transferee or obligee.**

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person ~~who~~ that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under G.S. 39-23.7(a)(1), the following rules apply:

(1) Except as otherwise provided in this section, ~~to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1),~~ the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

~~(1)~~a. The first transferee of the asset or the person for whose benefit the transfer was made; or

~~(2)~~b. ~~Any subsequent transferee other than a~~ An immediate or mediate transferee of the first transferee, other than:

1. A good-faith transferee ~~who~~ that took for ~~value or from any subsequent transferee.~~value; or
2. An immediate or mediate good-faith transferee of a person described in sub-sub-subdivision 1. of this sub-subdivision.

(2) Recovery pursuant to G.S. 39-23.7(a)(1) or G.S. 39-23.7(b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in sub-subdivision a. or b. of subdivision (1) of this subsection.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain ~~any~~ an interest in the asset transferred;

(2) Enforcement of ~~any~~ an obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial ~~Code.~~Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was ~~made unless~~ made, except to the extent the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in subdivisions (3) and (4) of this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of sub-sub-subdivision (b)(1)b.1. or 2. of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

"**§ 39-23.9. Extinguishment of ~~cause of action.~~claim for relief.**

A ~~cause of action~~ claim for relief with respect to a ~~fraudulent or~~ voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), ~~within~~ not later than four years after the transfer was made or the obligation was incurred or, if later, ~~within~~ not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), ~~within~~ not later than four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), ~~within~~ not later than one year after the transfer was ~~made or the obligation was incurred.~~made.

"**§ 39-23.9A. Governing law.**

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this Article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

"**§ 39-23.9B. Application to series organization.**

(a) In this section, the following definitions apply:

(1) Protected series. – An arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization. – An organization that, pursuant to the law under which it is organized, has all the following characteristics:

a. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

b. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only,

and not against the property of or associated with the organization or other protected series of the organization.

c. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of this Article, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

"**§ 39-23.10. Supplementary provisions.**

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"**§ 39-23.11. Uniformity of application and construction.**

This ~~act~~ Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"**§ 39-23.11A. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

"**§ 39-23.12. Short title.**

This ~~Article~~ Article, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform ~~Fraudulent Transfer~~ Voidable Transactions Act."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 2. G.S. 50-13.4(f) reads as rewritten:

"(f) Remedies for enforcement of support of minor children shall be available as ~~herein provided.~~follows:

(1) The court may require the person ordered to make payments for the support of a minor child to secure the ~~same~~ payments by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) of this section as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

...

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in ~~action~~ actions for child support as in other cases.

(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to ~~fraudulent conveyances.~~voidable transactions.

...."

SECTION 3. G.S. 50-16.7(h) reads as rewritten:

"(h) A dependent spouse for whose benefit an order for the payment of alimony or postseparation support has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to ~~fraudulent conveyances.~~voidable transactions."

PART III. EFFECTIVE DATE, APPLICABILITY PROVISIONS, AND AUTHORIZATION FOR THE PRINTING OF OFFICIAL AND DRAFTERS' COMMENTS

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Voidable Transactions Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2015, and applies to a transfer made or obligation incurred on or after that date. For purposes of this section, a transfer is made and an obligation is incurred at the time provided in G.S. 39-23.6, as amended by this act.

IV

GENERAL STATUTES COMMISSION
300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: House Committee on Judiciary II
From: General Statutes Commission
Re: SB 123 (Uniform Fraudulent Transfer Act)
Date: May 11, 2015

General Comments

This bill amends the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, which establishes the circumstances under which a transfer of property or incurrence of obligation by a debtor is voidable as to a creditor and sets forth the remedies of a creditor with respect to the transfer or obligation. The bill is based on the amendments to the Uniform Fraudulent Transfer Act that were approved in 2014 by the National Conference of Commissioners on Uniform State Laws to address several narrowly-defined issues. In general, the amendments:

- Change the name of the Uniform Fraudulent Transfer Act (the "Act") to the "Uniform Voidable Transactions Act."
- Make stylistic changes that are not intended to change the meaning of the Act, such as consistently using the word "voidable" instead of "fraudulent" to denote a transfer or obligation for which the Act provides a remedy.
- Define the new terms "electronic," "organization," "record," and "sign." § 39-23.1.
- Delete the special definition of "insolvency" applicable to partnerships, thereby subjecting partnerships to the general definition of "insolvency" in the Act. § 39-23.2.
- Add uniform provisions allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act. §§ 39-23.2(b), 39-23.4(c), 39-23.5(c), and 39-23.8(g) and (h).
- Replace references in the Act to a "writing" with "record" in order to accommodate modern technology. § 39-23.6(5).
- Refine several provisions relating to defenses available to a transferee or obligee. § 39-23.8.
- Add a choice of law provision for claims governed by the Act. § 39-23.9A.
- Respond to the emergence of the "series organization" as a significant form of business organization by providing that each "protected series" of a "series organization" is to be treated as a person for purposes of the Act. § 39-23.9B.
- Add a standard provision found in uniform acts that addresses the Act's relationship to the Electronic Signatures in Global and National Commerce Act (also known as "E-Sign"). § 39-23.11A.
- Make related conforming and technical amendments to other sections of the General Statutes.

Both the Business Law and Bankruptcy Law Sections of the North Carolina Bar Association have approved the amendments and support their passage.

Specific Comments

Section 1 retitles the Uniform Fraudulent Transfer Act (the "Act") as the "Uniform Voidable Transactions Act" because fraud never has been a necessary element of a claim under the Act and the Act has always applied to the incurrence of an obligation as well as the transfer of property. Section 1 also amends various sections of the Act and adds three new sections to the Act.

§ 39-23.1 is amended to make stylistic and conforming changes to the definitions, to add definitions of "electronic," "organization," "record," and "sign," and to expand the definition of "transfer" to add "license" as a mode of disposing of or parting with assets.

§ 39-23.2, which defines "insolvency" for purposes of the Act, is amended to:

- Clarify that the general definition of "insolvency" in subsection (a) requires a "fair valuation" of the debtor's debts as well as the debtor's assets.
- Clarify that the nonpayment of debts as the result of a bona fide dispute is not counted under subsection (b), which establishes a rebuttable presumption of insolvency from the fact of general nonpayment of debts as they become due.
- Provide that the presumption under subsection (b) imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.
- Delete the special definition of "insolvency" for partnerships in subsection (c), thereby subjecting partnerships to the general definition of "insolvency" in subsection (a). Subsection (c), which counts the assets of a general partner as assets of the partnership for purposes of determining the partnership's insolvency, is deleted because (i) it is no longer the case that all general partners are liable for all debts of the partnership under some modern partnership statutes and (ii) there is not a good reason to credit a partnership with the net worth of its general partners when a non-partnership entity whose debts are guaranteed by contract receives no credit for the net worth of its guarantor.

§ 39-23.4, which defines the transfers and obligations that are voidable as to present or future creditors, is amended to make conforming and technical changes and to add subsection (c) stating that a creditor making a claim for relief under the section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§ 39-23.5, which defines the transfers and obligations that are voidable as to present creditors, is amended to make conforming and technical amendments and to add subsection (c) stating that a creditor making a claim for relief under the section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§ 39-23.6, which states when a transfer is made or an obligation is incurred for purposes of the Act, is amended to make a technical change and to change "writing" to "record" and "writing executed" to "record signed" to accommodate modern technology.

§ 39-23.7, which provides a nonexclusive list of remedies available to a creditor in an action for relief against a transfer or obligation under the Act, is amended to make technical changes and to substitute "if available under applicable law" for "in accordance with the

procedure prescribed by Article 35 of Chapter 1 of the General Statutes." This change avoids the need to include a cross-reference to the specific statutes applicable to attachment and other provisional remedies because of the possibility of creating a litigation issue in the event that the cross-reference does not correctly identify the statutes applicable to provisional remedies that are in force when litigation ensues and the likelihood that the cross-reference may not be updated if the proper reference later changes.

§ 39-23.8, which provides defenses to an avoidance action and prescribes the measure of liability of a transferee or obligee under the Act, is amended to make formatting, stylistic, and clarifying changes and the following additional changes:

- Subsection (a) provides a defense to the transferee of a transfer made or the obligee of an obligation incurred by a debtor with intent to hinder, delay or defraud any creditor of the debtor if the transferee or obligee "took in good faith" and "for a reasonably equivalent value." The subsection is amended to provide that the reasonably equivalent value must be given to the debtor in order for the transferee or obligee to qualify for the complete defense.
- Subsection (b) provides a defense to a subsequent transferee (i.e., a transferee other than the first transferee) that took in good faith and for value and to a subsequent good-faith transferee from such a person, but in each case only to an action on a money judgment. Subsection (b) is amended to make it consistent with §§ 550(a) and (b) of the Bankruptcy Code by providing that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for money judgment.
- Subdivision (e)(2) provides a defense for a constructively voidable transfer (i.e., a transfer that is voidable for reasons other than intent by the debtor to hinder, delay or defraud any creditor of the debtor) if the transfer resulted from the enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code (Secured Transactions). Subdivision (e)(2) is amended to exclude from that defense a "strict foreclosure," (i.e., an acceptance by the secured party of collateral in whole or partial satisfaction of the obligation it secures, without a public sale or judicial foreclosure.) The protection of a strict foreclosure from a voidable transfer challenge is not appropriate if the secured party accepts collateral having a value in excess of the secured obligation and afterwards the debtor is insolvent, the debtor is unable to pay the debtor's debts as they become due, or the debtor is left with unreasonably small capital.
- New subsections (g) and (h) address the burden and standard of proof with respect to proving defenses under this section. In general, the person who invokes the defense carries the burden of establishing the defense by a preponderance of the evidence.

§ 39-23.9, which provides periods of limitation for bringing an action with respect to a voidable transfer or obligation, is amended to make the following stylistic changes:

- The phrase "fraudulent or" is deleted as being unnecessary and the term "cause of action" is change to "claim for relief" because the latter term is used in several new provisions in the Act and in modern uniform acts.
- In subdivisions (1), (2), and (3), "within" is changed to "not later than" because the latter wording is preferred in modern uniform acts.
- In subdivision (3), the phrase "or the obligation was incurred" is deleted because § 39-23.5(b), the insider preference provision, by its terms applies only to a transfer of property; it does not apply to the incurrence of an obligation.

New § 39-23.9A addresses potential choice of law disputes by providing a clear choice of law provision for transactions governed by the Act. Under this section, a claim for relief in the nature of a claim for relief under the Act is governed by the law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. A debtor who is an individual is located at the individual's principal residence, and a debtor that is an organization is located at its place of business or, if it has more than one place of business, at its chief executive office.

New § 39-23.9B addresses "series organizations," which have emerged as a form of business organization, by providing that the Act applies to the "protected series" of a series organization. In general, subsection (a) defines a series organization as an organization that, under the authority of its state governing law, has created one or more protected series that owns assets separately from the assets of the organization or any other protected series and incurs liability that will be enforceable only against the assets of that protected series. Under subsection (b), a series organization and each protected series of the series organization is a separate person for purposes of the Act. New § 39-23.9B does not itself authorize or prohibit the creation of protected series or series organizations.

New § 39-23.11A is a standard provision in uniform acts that responds to specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of State law under that federal statute.

§ 39-23.12 is amended to change the short title of the Article from "Uniform Fraudulent Transfer Act" to "Uniform Voidable Transactions Act" to conform to the change in the title of the Act.

Section 2 amends G.S. 50-13.4(f) to make several technical changes and to replace "fraudulent conveyances" with "voidable transactions" in the phrase "Article 3A of Chapter 31 of the General Statutes pertaining to fraudulent conveyances."

Section 3 amends G.S. 50-16(h) to replace "fraudulent conveyances" with "voidable transactions" in the phrase "Article 3A of Chapter 31 of the General Statutes pertaining to fraudulent conveyances."

Section 4 authorizes the printing of official comments and drafters comments.

Section 5 provides that the amendments become effective October 1, 2015, and apply to a transfer made or obligation incurred on or after that date.

V

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 661

Short Title:	Private Labs Must Comply with CODIS.	(Public)
Sponsors:	Senator Newton (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT WHEN LOCAL LAW ENFORCEMENT AGENCIES OBTAIN DNA ANALYSES FROM ENTITIES OTHER THAN THE STATE CRIME LABORATORY THAT THOSE ENTITIES MEET THE STANDARDS APPLICABLE TO VENDOR LABORATORIES AS SET FORTH IN FEDERAL BUREAU OF INVESTIGATION STANDARDS RELATED TO THE COMBINED DNA INDEX SYSTEM (CODIS); TO REQUIRE THE STATE CRIME LABORATORY TO MAKE AVAILABLE A LIST OF ENTITIES THAT SATISFY THAT REQUIREMENT; AND TO PROHIBIT LOCAL LAW ENFORCEMENT AGENCIES FROM USING CERTAIN DNA DATABASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.2. Obtaining DNA analyses from entities other than the State Crime Laboratory; use of local DNA databases prohibited.**

(a) Private Laboratories Shall Comply with CODIS Requirements. – A local law enforcement agency shall not obtain DNA analysis from an entity other than the Crime Laboratory unless that entity meets the standards applicable to vendor laboratories as set forth in the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing and Databasing Laboratories. The Crime Laboratory shall maintain a list of laboratories that meet those standards and shall make the list available on its Web site.

(b) Private DNA Databases Prohibited. – A local law enforcement agency shall not access or create any DNA Database other than those that participate in the CODIS system."

SECTION 2. This act becomes effective October 1, 2015.

VI

SENATE BILL 661:
Private Labs Must Comply with CODIS

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	May 12, 2015
Introduced by:	Sen. Newton	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 661 would provide that when local law enforcement agencies obtain DNA analyses from entities other than the State Crime Laboratory, those entities must meet the standards that apply to vendor laboratories as set forth in Federal Bureau of Investigation Standards related to the Combined DNA Index System (CODIS).***

BILL ANALYSIS: Senate Bill 661 would amend the Criminal Procedure Act to require local law enforcement agencies only use private laboratories that comply with CODIS requirements for DNA analysis and to require the State Crime Laboratory to maintain a list of laboratories meeting those standards and make the list available on its Web site. The bill would also provide that a local law enforcement agency must not access nor create any DNA database other than those that participate in CODIS.

Information on CODIS and its Quality Assurance Standards can be found on the FBI's Web site at: http://www.fbi.gov/about-us/lab/biometric-analysis/codis.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

**Janice Paul, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

S661-SMSA-64 E1 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

House Committee on Judiciary II
Tuesday, June 2, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 2, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Queen, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:05 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

The following bills were considered:

SB 60 No Contact Order/No Expiration. (Senator Bingham)

Chairman Blust recognized Senator Bingham to present the bill. Representative Glazier made the motion to bring the Proposed House Committee Substitute before the committee, and the motion passed. Representative Stam offered an amendment, and it was adopted. Representative Bumgardner made the motion for a favorable report for the Proposed House Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed House Committee Substitute received a favorable report as amended, with an unfavorable report as to the original bill.

SB 154 Clarifying the Good Samaritan Law. (Senator Bingham)

Senator Bingham was recognized to present the bill. An amendment was offered by Representative Glazier, and it was adopted. After a brief discussion, Representative Glazier made the motion for a favorable report for the bill as amended, with an unfavorable report as to the original bill. The motion carried, and the Proposed House Committee Substitute received a favorable report, with an unfavorable report as to the original bill.

SB 336 Estate Planning/Uniform Trust Code. (Senators Hartsell, Barringer)

Senator Hartsell was recognized to present the bill. Representative Blust made the motion to bring the Proposed House Committee Substitute before the committee, and the motion passed. An amendment was offered by Representative Glazier, and it was adopted. Mrs. Linda Johnson, North Carolina Bar Association, explained the bill; and Mrs. Kim Crouch, North Carolina Bar Association, spoke briefly on the bill. Mr. J. R. Rowell, Union County Clerk of Superior Court, and Ms. Barbara Moore, Executive Director, Conference of Clerks of Superior Court, were acknowledged. After committee discussion, Representative Stam made the motion for a favorable report for the Proposed House Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed House Committee Substitute received a favorable report as amended, with an unfavorable report as to the original bill. SB 336 was re-referred to the House Committee on Finance.

The meeting adjourned at 1:45 PM.

Respectfully submitted,

John M. Blust
Representative John M. Blust, Chairman
Presiding

Gennie L. Thurlow
Gennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, June 2, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 60	No Contact Order/No Expiration.	Senator Bingham
SB 154	Clarifying the Good Samaritan Law.	Senator Bingham
SB 336	Estate Planning/Uniform Trust Code.	Senator Hartsell
		Senator Barringer

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:51 PM on Thursday, May 28, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, June 2, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks
Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
PCS	SB 60	No Contact Order/No Expiration.	Senator Bingham
	SB 154	Clarifying the Good Samaritan Law.	Senator Bingham
PCS	SB 336	Estate Planning/Uniform Trust Code.	Senator Hartsell Senator Barringer

If favorable,
Finance

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE HOUSE COM SUB NO. 2, UNFAVORABLE HOUSE COM SUB NO. 1

SB **60** **(HCS#1)** No Contact Order/No Expiration.

Draft Number:	S60-PCS25268-TV-18
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Stam

TOTAL REPORTED: 1



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

~~SB 60 (CS#1)~~ ~~No Contact Order/No Expiration.~~

The Wrong Committee Substitute was sent to Bill Tysring.

~~Draft Number:~~	~~S60-PCS45373-TV-19.~~
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	~~Stam~~

SB **154** **(CS#1)** Clarifying the Good Samaritan Law.

Draft Number:	S154-PCS45372-SA-68
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Watford

TOTAL REPORTED: 2

CMR403-V-1

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB AND RE-REFERRED

SB **336** **(CS#1)** Estate Planning/Uniform Trust Code.

Draft Number:	S336-PCS15252-RN-33
Serial Referral:	**FINANCE**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Stam

TOTAL REPORTED: 1

CMR405-V-1

Reported HPC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 60

Judiciary II Committee Substitute Adopted 3/9/15
House Committee Substitute Favorable 6/3/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S60-PCS25268-TV-18

Short Title: No-Contact Order/No Expiration. (Public)

Sponsors:

Referred to:

February 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NON-EXPIRING, PERMANENT CIVIL NO-CONTACT ORDER MAY BE ISSUED AGAINST A SEX OFFENDER ON BEHALF OF THE CRIME VICTIM, TO ESTABLISH THE PROCEDURE FOR OBTAINING SUCH AN ORDER, TO CLARIFY ENHANCED PENALTIES FOR VIOLATIONS OF PROTECTIVE ORDERS, AND TO ALLOW EXTENSION OF ORDERS ENTERED IN STREET GANG NUISANCE ABATEMENT CASES AFTER A COURT HEARING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50D.**

"**Permanent Civil No-Contact Order Against Sex Offender On Behalf of Crime Victim.**

"**§ 50D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Permanent civil no-contact order. – A permanent injunction that prohibits any contact by a respondent with the victim of a sex offense for which the respondent is convicted.

(2) Respondent. – The person who committed the sex offense.

(3) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.

(4) Victim. – The person against whom the sex offense was committed.

"**§ 50D-2. Commencement of action; filing fees not permitted; assistance.**

(a) An action is commenced under this Chapter by filing a verified complaint for a permanent civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

(1) A person who is the victim of a sex offense that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child who is the victim of a sex offense that occurs in this State.

(3) A competent adult who resides in this State on behalf of an incompetent adult who is the victim of a sex offense that occurs in this State.

(b) No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in G.S. 1A-1, Rule 11.

(c) An action commenced under this Chapter may be filed in any county permitted under G.S. 1-82 or where the respondent was convicted of the sex offense.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50D-3. Process for action for permanent civil no-contact order.**

(a) Any action for a permanent civil no-contact order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the permanent civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a permanent civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50D-4. Hearsay exception.**

In proceedings for an order or prosecutions for violation of an order under this Chapter, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

"**§ 50D-5. Remedy.**

(a) If the court finds all of the following, the court may issue a permanent civil no-contact order:

(1) The respondent was convicted of committing a sex offense against the victim.

(2) The victim did not seek a permanent no-contact order under G.S. 15A-1340.50.

(3) Reasonable grounds exist for the victim to fear future contact with the respondent.

(4) Process was properly served on the respondent.

(5) The respondent answered the complaint and notice of hearing was given or the respondent failed to answer the complaint and is in default.

(b) The court may grant one or more of the following forms of relief in a permanent civil no-contact order under this Chapter:

(1) Order the respondent not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent not to follow the victim, including at the victim's workplace.

(3) Order the respondent not to harass the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) No permanent civil no-contact order shall be issued under this Chapter without notice to the respondent.

"**§ 50D-6. Duration.**

A permanent civil no-contact order issued pursuant to this Chapter remains effective for the lifetime of the respondent.

"**§ 50D-7. Notice of orders.**

(a) The clerk of court shall deliver, on the same day that a permanent civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) If the respondent was not present in court when the order was issued, the respondent may be served in the manner provided for service of process in civil proceedings in accordance with Rule 4(j) of the Rules of Civil Procedure. If the summons has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence. If the victim's residence is not located in a municipality or is located in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the victim's residence is located.

(d) Any order modifying or revoking any permanent civil no-contact order shall be promptly delivered to the sheriff by the clerk of court and served in a manner provided for service of process in accordance with the provisions of this section.

"**§ 50D-8. Enforcement.**

A victim may file a motion for contempt for violation of an order entered pursuant to this Chapter.

"**§ 50D-9. Rescission.**

At any time after the issuance of the order, the victim may make a motion to rescind the permanent no-contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the respondent no longer exist, the court may rescind the permanent no-contact order.

"**§ 50D-10. Violation.**

(a) A person who knowingly violates an order entered pursuant to this Chapter is guilty of a Class A1 misdemeanor.

(b) A permanent civil no-contact order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent civil no-contact order.

"**§ 50D-11. Remedies not exclusive.**

The remedies provided by this Chapter are not exclusive but are additional to other remedies provided under law."

SECTION 2. The Administrative Office of the Courts shall develop the appropriate forms to implement the processes provided under Chapter 50D of the General Statutes as enacted by this act, including amending the Rules of Recordkeeping to require the Clerk of Superior Court to retain the records of an action filed under this Chapter.

SECTION 3. G.S. 50B-4.1(d) reads as rewritten:

"(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to ~~a person who is charged with or convicted~~ convictions of a Class A or B1 felony or to ~~a person charged under~~ convictions of the offenses set forth in subsection (f) or subsection (g) of this section."

SECTION 4. G.S. 14-50.43(d) reads as rewritten:

"(d) An order entered under this section shall expire one year after ~~entry; however, the~~ entry unless extended by the court for good cause established by the plaintiff after a hearing.

The order may be modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any party if it appears to the court that one or more of the defendants is no longer engaging in criminal street gang activities."

SECTION 5. Sections 1 and 2 of this act become effective October 1, 2015. Section 3 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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 60

Judiciary II Committee Substitute Adopted 3/9/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S60-CSTV-18 [v.2]
6/1/2015 6:16:59 PM

Short Title: No Contact Order/No Expiration. (Public)

Sponsors:

Referred to:

February 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NON-EXPIRING, PERMANENT CIVIL NO-CONTACT ORDER MAY BE ISSUED AGAINST A SEX OFFENDER ON BEHALF OF THE CRIME VICTIM AND TO ESTABLISH THE PROCEDURE FOR OBTAINING SUCH AN ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50D.**

"**Permanent Civil No-Contact Order Against Sex Offender On Behalf of Crime Victim.**

"**§ 50D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Permanent civil no-contact order. – A permanent injunction that prohibits any contact by a respondent with the victim of a sex offense for which the respondent is convicted.

(2) Respondent. – The person who committed the sex offense.

(3) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.

(4) Victim. – The person against whom the sex offense was committed.

"**§ 50D-2. Commencement of action; filing fees not permitted; assistance.**

(a) An action is commenced under this Chapter by filing a verified complaint for a permanent civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

(1) A person who is the victim of a sex offense that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child who is the victim of a sex offense that occurs in this State.

(3) A competent adult who resides in this State on behalf of an incompetent adult who is the victim of a sex offense that occurs in this State.

(b) No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in G.S. 1A-1, Rule 11.

(c) An action commenced under this Chapter may be filed in any county permitted under G.S. 1-82 or where the respondent was convicted of the sex offense.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not

disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50D-3. Process for action for permanent civil no-contact order.**

(a) Any action for a permanent civil no-contact order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the permanent civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a permanent civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50D-4. Hearsay exception.**

In proceedings for an order or prosecutions for violation of an order under this Chapter, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

"**§ 50D-5. Remedy.**

(a) If the court finds all of the following, the court may issue a permanent civil no-contact order:

(1) The respondent was convicted of committing a sex offense against the victim.

(2) The victim did not seek a permanent no-contact order under G.S. 15A-1340.50.

(3) Reasonable grounds exist for the victim to fear future contact with the respondent.

(4) Process was properly served on the respondent.

(5) The respondent answered the complaint and notice of hearing was given, or the respondent failed to answer the complaint and is in default.

(b) The court may grant one or more of the following forms of relief in a permanent civil no-contact order under this Chapter:

(1) Order the respondent not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent not to follow the victim, including at the victim's workplace.

(3) Order the respondent not to harass the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) No permanent civil no-contact order shall be issued under this Chapter without notice to the respondent.

"**§ 50D-6. Duration.**

A permanent civil no-contact order issued pursuant to this Chapter remains effective for the lifetime of the respondent.

"**§ 50D-7. Notice of orders.**

(a) The clerk of court shall deliver, on the same day that a permanent civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) If the respondent was not present in court when the order was issued, the respondent may be served in the manner provided for service of process in civil proceedings in accordance with Rule 4(j) of the Rules of Civil Procedure. If the summons has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence. If the victim's residence is not located in a municipality or is located in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the victim's residence is located.

(d) Any order modifying or revoking any permanent civil no-contact order shall be promptly delivered to the sheriff by the clerk of court and served in a manner provided for service of process in accordance with the provisions of this section.

"**§ 50D-8. Enforcement.**

A victim may file a motion for contempt for violation of an order entered pursuant to this Chapter.

"**§ 50D-9. Rescission.**

At any time after the issuance of the order, the victim may make a motion to rescind the permanent no-contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the respondent no longer exist, the court may rescind the permanent no-contact order.

"**§ 50D-10. Violation.**

(a) A person who knowingly violates an order entered pursuant to this Chapter is guilty of a Class A1 misdemeanor.

(b) A permanent civil no-contact order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent civil no-contact order.

"**§ 50D-11. Remedies not exclusive.**

The remedies provided by this Chapter are not exclusive but are additional to other remedies provided under law."

SECTION 2. The Administrative Office of the Courts shall develop the appropriate forms to implement the processes provided under Chapter 50D of the General Statutes as enacted by this act, including amending the Rules of Recordkeeping to require the Clerk of Superior Court to retain the records of an action filed under this Chapter.

SECTION 3. G.S. 50B-4.1(d) reads as rewritten:

"(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to ~~a person who is charged with or convicted~~ convictions of a Class A or B1 felony or to ~~a person charged under~~ convictions of the offenses set forth in subsection (f) or subsection (g) of this section."

SECTION 4. G.S. 14-50.43(d) reads as rewritten:

"(d) An order entered under this section shall expire one year after ~~entry; however, the~~ entry unless extended by the court for good cause established by the plaintiff after a hearing. The order may be modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any party if it appears to the court that one or more of the defendants is no longer engaging in criminal street gang activities."

SECTION 5. Sections 1 and 2 of this act become effective October 1, 2015. Section 3 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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 60

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

S60-ATV-13 [v.1]

Amends Title [NO]
S60-CSTV-18

Date 6-2- ,2015

Representative Stam

moves to amend the PCS on page 1, line 4 by rewriting the line to read:
"CRIME VICTIM, TO ESTABLISH THE PROCEDURE FOR OBTAINING SUCH AN ORDER, TO CLARIFY ENHANCED PENALTIES FOR VIOLATIONS OF PROTECTIVE ORDERS, AND TO ALLOW EXTENSION OF ORDERS ENTERED IN STREET GANG NUISANCE ABATEMENT CASES AFTER A COURT HEARING."

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

SENATE BILL 60:
No Contact Order/No Expiration

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	June 1, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Tawanda Foster Committee Counsel
Analysis of:	PCS to Second Edition S60-CSTV-18		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 60 would allow a victim (or a competent adult on behalf of a minor victim or incompetent person) of a sexual offense to obtain a permanent civil no-contact order against the person convicted of committing the offense.***

CURRENT LAW: North Carolina law currently provides several procedures to grant relief to a victim of domestic violence or sexual offense against the person who committed the prohibited acts.

- Chapter 50B of the General Statutes authorizes a court to issue a protective order that offers various types of relief to a victim of domestic violence.
- Chapter 50C of the General Statutes permits a victim of non-consensual sexual conduct or stalking to obtain a temporary or a permanent civil no-contact order against the person who committed the conduct if the victim is not in a personal relationship with the person. A permanent no-contact order issued under this Chapter is effective for a specific period of time not to exceed one year, but may be extended one or more times.
- G.S. 15A-1340.50 allows a crime victim to obtain a permanent no-contact order prohibiting future contact by a convicted sex offender when the sex offender is sentenced at trial. The no-contact order is effective for the lifetime of the defendant.

SB 60 would create a new Chapter 50D of the North Carolina General Statutes to allow a sexual assault victim to obtain a permanent civil no-contact order against a registered sex offender when the victim did not request a permanent no-contact order at the time the sex offender was sentenced.

BILL ANALYSIS: The PCS to SB 60 would provide that a permanent civil no-contact order may be issued on behalf of the victim of a sex offense that requires registration under the Sex Offender and Public Protection Registration Program against the person convicted of committing the offense against the victim. Specifically, the PCS would do the following:

Section 1

- Would provide that any of the following persons may file a complaint or motion in district court to obtain the no-contact order (G.S. 50D-2(a)):
  - A victim of a sex offense that occurred in the State.
  - A competent adult who is a North Carolina resident, on behalf of a minor who resides in the State and is the victim of a sex offense that occurred in the State.
  - A competent adult who is a North Carolina resident, of behalf of an incompetent adult who resides in the State and is a victim of a sex offense that occurred in the State.

- Would establish the civil procedure for filing a complaint or motion for a no-contact order, the procedure for serving summons on the respondent, and the procedure for the issuance of the no-contact order.(G.S. 50D-2, G.S. 50D-3.)

- Would provide that information as to the prior sexual activity or reputation of the victim is inadmissible in proceedings under this Chapter unless it would be admissible under the Rules of Evidence in a criminal prosecution. (G.S. 50D-4.)

- Would provide that the Court must find all of the following before issuing a no-contact order (G.S. 50D-5(a)):
    - The respondent was convicted of committing a sex offense against the complaining victim.
    - The victim did not seek a permanent criminal no-contact order under G.S. 15A-1340.50.
    - Reasonable grounds exist for the victim to fear future contact with the respondent.
    - Process was properly served on the respondent.
    - The respondent answered the complaint and notice of hearing was given, or the respondent failed to answer the complaint and is in default.

- Would set out the various forms of relief the court may include in the no-contact order. (G.S. 50D-5(b)).

- Would provide that the duration of the no-contact order is for the lifetime of the respondent. (G.S. 50D-6.)

- Would specify the requirements for giving the respondent notice of the issuance of a no-contact order. (G.S. 50D-7.)

- Would provide that a victim who is granted a no-contact order may file a motion for contempt against the respondent for a violation of the no-contact order. (G.S. 50D-8.)

- Would provide that the victim may make a motion to rescind the permanent no-contact order and the court may rescind the order upon a finding that reasonable grounds for the victim to fear future contact with the respondent no longer exist. (G.S. 50D-9.)

- Would provide that a respondent who knowingly violates a no-contact order is guilty of a Class A1 misdemeanor, and direct law enforcement agencies to enforce the no-contact order without further order of the court. (G.S. 50D-10.)

- Would provide that the remedies provided under Chapter 50D are not exclusive. (G.S. 50D-11.)

Section 2
Would direct the Administrative Office of the Courts to develop appropriate forms or rules necessary to implement the processes established in Chapter 50D, including any rules relating to records retention.

Section 3
Would amend G.S. 50B-4.1(d) to clarify the enhanced sentencing provisions are based on the offense level of the conviction and not the original charge.

Section 4
Would amend G.S. 14-50.43(d) to provide the order under this section shall expire one year after entry unless extended by the court for good cause established by the plaintiff after a hearing.

EFFECTIVE DATE: Sections 1 and 2 of this act become effective October 1, 2015. Section 3 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.

Emily Johnson and Janice Paul, Staff Attorneys, substantially contributed to this summary.

SENATE BILL 60
Judiciary II Committee Substitute Adopted 3/9/15

Short Title: No Contact Order/No Expiration. (Public)

Sponsors:

Referred to:

February 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NON-EXPIRING, PERMANENT CIVIL NO-CONTACT ORDER MAY BE ISSUED AGAINST A SEX OFFENDER ON BEHALF OF THE CRIME VICTIM AND TO ESTABLISH THE PROCEDURE FOR OBTAINING SUCH AN ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50D.**

"**Permanent Civil No-Contact Order Against Sex Offender On Behalf of Crime Victim.**

"**§ 50D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Permanent civil no-contact order. – A permanent injunction that prohibits any contact by a respondent with the victim of a sex offense for which the respondent is convicted.

(2) Respondent. – The person who committed the sex offense.

(3) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.

(4) Victim. – The person against whom the sex offense was committed.

"**§ 50D-2. Commencement of action; filing fees not permitted; assistance.**

(a) An action is commenced under this Chapter by filing a verified complaint for a permanent civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

(1) A person who is the victim of a sex offense that occurs in this State.

(2) A competent adult who resides in this State on behalf of a minor child who is the victim of a sex offense that occurs in this State.

(3) A competent adult who resides in this State on behalf of an incompetent adult who is the victim of a sex offense that occurs in this State.

(b) No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in G.S. 1A-1, Rule 11.

(c) An action commenced under this Chapter may be filed in any county permitted under G.S. 1-82 or where the respondent was convicted of the sex offense.

(d) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50D-3. Process for action for permanent civil no-contact order.**

(a) Any action for a permanent civil no-contact order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the permanent civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a permanent civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50D-4. Hearsay exception.**

In proceedings for an order or prosecutions for violation of an order under this Chapter, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

"**§ 50D-5. Remedy.**

(a) If the court finds all of the following, the court may issue a permanent civil no-contact order:

(1) The respondent was convicted of committing a sex offense against the victim.

(2) The victim did not seek a permanent no-contact order under G.S. 15A-1340.50.

(3) Reasonable grounds exist for the victim to fear future contact with the respondent.

(4) Process was properly served on the respondent.

(5) The respondent answered the complaint and notice of hearing was given, or the respondent failed to answer the complaint and is in default.

(b) The court may grant one or more of the following forms of relief in a permanent civil no-contact order under this Chapter:

(1) Order the respondent not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent not to follow the victim, including at the victim's workplace.

(3) Order the respondent not to harass the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(c) No permanent civil no-contact order shall be issued under this Chapter without notice to the respondent.

"**§ 50D-6. Duration.**

A permanent civil no-contact order issued pursuant to this Chapter remains effective for the lifetime of the respondent.

"**§ 50D-7. Notice of orders.**

(a) The clerk of court shall deliver, on the same day that a permanent civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) If the respondent was not present in court when the order was issued, the respondent may be served in the manner provided for service of process in civil proceedings in accordance with Rule 4(j) of the Rules of Civil Procedure. If the summons has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence. If the victim's residence is not located in a municipality or is located in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the victim's residence is located.

(d) Any order modifying or revoking any permanent civil no-contact order shall be promptly delivered to the sheriff by the clerk of court and served in a manner provided for service of process in accordance with the provisions of this section.

"**§ 50D-8. Enforcement.**

A victim may file a motion for contempt for violation of an order entered pursuant to this Chapter.

"**§ 50D-9. Recission.**

At any time after the issuance of the order, the victim may make a motion to rescind the permanent no-contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the respondent no longer exist, the court may rescind the permanent no-contact order.

"**§ 50D-10. Violation.**

(a) A person who knowingly violates an order entered pursuant to this Chapter is guilty of a Class A1 misdemeanor.

(b) A permanent civil no-contact order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent civil no-contact order.

"**§ 50D-11. Remedies not exclusive.**

The remedies provided by this Chapter are not exclusive but are additional to other remedies provided under law."

SECTION 2. The Administrative Office of the Courts shall develop the appropriate forms to implement the processes provided under Chapter 50D of the General Statutes as enacted by this act, including amending the Rules of Recordkeeping to require the Clerk of Superior Court to retain the records of an action filed under this Chapter.

SECTION 3. This act becomes effective October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 154
Judiciary II Committee Substitute Adopted 4/2/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S154-PCS45372-SA-68

Short Title: Clarifying the Good Samaritan Law. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE OPERATION OF THE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG- OR ALCOHOL-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE AND AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE; TO PROVIDE ADDITIONAL REQUIREMENTS AND CONDITIONS THAT MUST BE MET BEFORE THE LIMITED IMMUNITY IS ESTABLISHED; TO PROVIDE THAT A PERSON SHALL NOT BE SUBJECT TO ARREST OR REVOCATION OF PRETRIAL RELEASE, PROBATION, PAROLE, OR POST-RELEASE IF BASED UPON AN OFFENSE FOR WHICH THE PERSON IS IMMUNE FROM PROSECUTION; TO PROVIDE THAT A LAW ENFORCEMENT OFFICER SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ARRESTING OR CHARGING A PERSON ENTITLED TO IMMUNITY FROM PROSECUTION IF THE LAW ENFORCEMENT OFFICER ACTED IN GOOD FAITH; TO PROVIDE THAT A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST UPON RECEIVING A PRESCRIPTION ISSUED IN ACCORDANCE WITH G.S. 90-106.2; AND TO PROVIDE THAT A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST IN ACCORDANCE WITH G.S. 90-106.2 IS IMMUNE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96.2 reads as rewritten:

"**§ 90-96.2. Drug-related overdose treatment; limited immunity.**

(a) As used in this section, "drug-related overdose" means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) ~~A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose.~~Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the

offenses listed in subsection (c3) of this section if all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(2) The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of the offenses listed in subsection (c3) of this section was obtained as a result of the person seeking medical assistance for the drug-related overdose.

(c) ~~A person who experiences a drug-related overdose and is in need of medical assistance shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the drug-related overdose and need for medical assistance.~~Limited Immunity for Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the person who experienced the drug-related overdose if all of the requirements and conditions listed in subdivisions (1), (2), (4), and (5) of subsection (b) of this section are satisfied.

(c1) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (b) or (c) of this section. The arrest of a person for an offense for which subsection (b) or (c) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(c2) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges.

(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

(1) A misdemeanor violation of G.S. 90-95(a)(3).

(2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine.

(3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.

(4) A violation of G.S. 90-113.22.

(d) ~~Nothing~~ Construction. – Nothing in this section shall be construed to ~~bar~~ do any of the following:

(1) Bar the admissibility of any evidence obtained in connection with the investigation and prosecution of (i) other crimes committed by a person who otherwise qualifies for limited immunity under this ~~section.~~section or (ii) any crimes committed by a person who does not qualify for limited immunity under this section.

(2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation of, or to effectuate an arrest for, any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole."

SECTION 2. G.S. 18B-302.2 reads as rewritten:

"**§ 18B-302.2. Medical treatment; limited immunity.**

(a) Limited Immunity for Samaritan. – Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if ~~law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following:~~all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(1a) ~~Acted~~ The person acted in good ~~faith,~~ faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(2) ~~Used~~ The person provided his or her own name ~~when contacting authorities.~~to the 911 system or to a law enforcement officer upon arrival.

~~(3) Remained with the individual needing medical assistance until help arrived.~~

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages was obtained as a result of the person seeking medical assistance for the alcohol-related overdose.

(b) Limited Immunity for Overdose Victim. – The immunity described in subsection (a) of this section shall extend to the person who needed medical assistance if the requirements in subdivisions (1), (1a), (4), and (5) of subsection (a) are satisfied.

(c) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (a) or (b) of this section. The arrest of a person for an offense for which subsection (a) or (b) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(d) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges."

SECTION 3. G.S. 90-106.2 reads as rewritten:

"**§ 90-106.2. Treatment of overdose with opioid antagonist; immunity.**

...

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a

written communication that provides a factual basis for a reasonable conclusion as to either of the following:

(1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.

(2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:

a. A family member, friend, or other person.

b. In the position to assist a person at risk of experiencing an opiate-related overdose.

(b1) A pharmacist may dispense an opioid antagonist to a person described in subsection (b) of this section pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

...

(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

(1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.

(2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.

~~(2)~~(3) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 4. This act becomes effective August 1, 2015, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/2/15

S. B. No. 154 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

moves to amend the bill on page 4, line 23

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"SECTION 4. This act becomes effective August 1, 2015, and applies to offenses"

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 154
Judiciary II Committee Substitute Adopted 4/2/15

Short Title: Clarifying the Good Samaritan Law. (Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE OPERATION OF THE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG- OR ALCOHOL-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE AND AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE, TO PROVIDE ADDITIONAL REQUIREMENTS AND CONDITIONS THAT MUST BE MET BEFORE THE LIMITED IMMUNITY IS ESTABLISHED, TO PROVIDE THAT A PERSON SHALL NOT BE SUBJECT TO ARREST OR REVOCATION OF PRETRIAL RELEASE, PROBATION, PAROLE OR POST-RELEASE IF BASED UPON AN OFFENSE FOR WHICH THE PERSON IS IMMUNE FROM PROSECUTION, TO PROVIDE THAT A LAW ENFORCEMENT OFFICER SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ARRESTING OR CHARGING A PERSON ENTITLED TO IMMUNITY FROM PROSECUTION IF THE LAW ENFORCEMENT OFFICER ACTED IN GOOD FAITH, TO PROVIDE THAT A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST UPON RECEIVING A PRESCRIPTION ISSUED IN ACCORDANCE WITH G.S. 90-106.2, AND TO PROVIDE THAT A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST IN ACCORDANCE WITH G.S. 90-106.2 IS IMMUNE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96.2 reads as rewritten:

"**§ 90-96.2. Drug-related overdose treatment; limited immunity.**

(a) As used in this section, "drug-related overdose" means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) ~~A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose.~~Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the

offenses listed in subsection (c3) of this section if all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(2) The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of the offenses listed in subsection (c3) of this section was obtained as a result of the person seeking medical assistance for the drug-related overdose.

(c) ~~A person who experiences a drug-related overdose and is in need of medical assistance shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the drug-related overdose and need for medical assistance.~~Limited Immunity for Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the person who experienced the drug-related overdose if all of the requirements and conditions listed in subdivisions (1), (2), (4), and (5) of subsection (b) of this section are satisfied.

(c1) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (b) or (c) of this section. The arrest of a person for an offense for which subsection (b) or (c) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(c2) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges.

(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

(1) A misdemeanor violation of G.S. 90-95(a)(3).

(2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine.

(3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.

(4) A violation of G.S. 90-113.22.

(d) ~~Nothing~~Construction. – Nothing in this section shall be construed to ~~bar~~do any of the following:

(1) Bar the admissibility of any evidence obtained in connection with the investigation and prosecution of (i) other crimes committed by a person who otherwise qualifies for limited immunity under this ~~section.~~section or (ii) any crimes committed by a person who does not qualify for limited immunity under this section.

(2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation of, or to effectuate an arrest for, any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole."

SECTION 2. G.S. 18B-302.2 reads as rewritten:

"**§ 18B-302.2. Medical treatment; limited immunity.**

(a) Limited Immunity for Samaritan. – Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if ~~law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following:~~all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(1a) ~~Acted~~The person acted in good ~~faith.~~faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(2) ~~Used~~The person provided his or her own name ~~when contacting authorities.~~to the 911 system or to a law enforcement officer upon arrival.

~~(3) Remained with the individual needing medical assistance until help arrived.~~

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages was obtained as a result of the person seeking medical assistance for the alcohol-related overdose.

(b) Limited Immunity for Overdose Victim. – The immunity described in subsection (a) of this section shall extend to the person who needed medical assistance if the requirements in subdivisions (1), (1a), (4), and (5) of subsection (a) are satisfied.

(c) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (a) or (b) of this section. The arrest of a person for an offense for which subsection (a) or (b) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(d) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges."

SECTION 3. G.S. 90-106.2 reads as rewritten:

"**§ 90-106.2. Treatment of overdose with opioid antagonist; immunity.**

...

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a

written communication that provides a factual basis for a reasonable conclusion as to either of the following:

(1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.

(2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:

a. A family member, friend, or other person.

b. In the position to assist a person at risk of experiencing an opiate-related overdose.

(b1) A pharmacist may dispense an opioid antagonist to a person described in subsection (b) of this section pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

...

(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

(1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.

(2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.

~~(2)~~(3) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 4. This act is effective when it becomes law and applies to offenses committed on or after that date.

SENATE BILL 154:
Clarifying the Good Samaritan Law

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	June 1, 2015
Introduced by:	Sen. Bingham	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 154 would do the following:

1) ***impose additional requirements that must be met before a person can receive immunity from criminal prosecution under G.S. 90-96.2 and G.S. 18B-302;***
2) ***prohibit arresting a person or revoking a person's pretrial release, probation, parole or post-release based on an offense for which that person is entitled to immunity under G.S. 90-96.2 and G.S. 18B-302;***
3) ***grant immunity from civil liability to law enforcement officers who in good faith arrest or charge persons later found to be entitled to immunity under G.S. 90-96.2 and G.S. 18B-302;***
4) ***provide that nothing in G.S. 90-96.2 bars admission of evidence of crimes by a person not entitled to immunity, limits seizure of evidence or contraband otherwise permitted by law, limits a law enforcement officer's authority to detain or take into custody a person during an arrest for or investigation of offenses other than those for which limited immunity is provided in G.S. 90-96.2, or limits a probation offer's authority to conduct drug testing on persons on pretrial release, probation, or parole; and***
5) ***amend G.S. 90-106.2 to authorize pharmacists to dispense an opiate antagonist prescribed in accordance with this section to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist that person, and to grant pharmacists immunity from civil and criminal liability for dispensing an opiate antagonist pursuant to this authority.***

CURRENT LAW: Under G.S. 90-96.2 of the Controlled Substances Act, a person acting in good faith when seeking medical assistance for an individual suffering from a drug-related overdose is immune from criminal prosecution for the following offenses if the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the drug-related overdose:

- misdemeanor possession of drug paraphernalia in violation of G.S. 90-113.22
- misdemeanor possession of a controlled substance in violation of G.S. 90-95(a)(3)
- felony possession of less than one gram of cocaine in violation of G.S. 90-95(a)(3)
- felony possession of less than one gram of heroin in violation of G.S. 90-95(a)(3)

In addition, the person suffering from a drug-related overdose and needing medical assistance is immune from criminal prosecution for these offenses if the evidence supporting prosecution was obtained as a result of the drug-related overdose and the person's need for medical assistance.

Evidence obtained in connection with an investigation of other crimes committed by a person entitled to this limited immunity remains admissible in a prosecution for those other crimes.

Under G.S. 18B-302.2, a person under the age of 21 is immune from prosecution for underage possession or consumption of alcoholic beverages if law enforcement became aware of the offense

solely because the person was seeking medical assistance for another individual and all of the following conditions are met:

- the person sought medical assistance in good faith upon the reasonable belief that he or she was the first to call for medical assistance
- the person identified himself or herself when contacting authorities
- the person remained with the person needing assistance until help arrived

Under G.S. 90-106.2 of the Controlled Substances Act, a practitioner acting in good faith and exercising reasonable care is authorized to prescribe naloxone hydrochloride, a prescription medication used to counter the effects of opiate overdose, to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person who is at risk of experiencing an opiate-related overdose. The prescribing practitioner, and any person receiving the drug from the practitioner who exercises reasonable care in administering the drug to a person under the good faith belief that the person is experiencing an opiate-related overdose, are immune from any civil or criminal liability for actions authorized under G.S. 90-106.2.

BILL ANALYSIS:

Section 1 would amend G.S. 90-96.2 to:

- require all of the following conditions to be met in order for a person to receive immunity from prosecution for the specified drug-related offenses:

  (1) the person sought medical assistance for the drug-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel;

  (2) the person acted in good faith when seeking medical assistance in the reasonable belief that he or she was the first to call for assistance;

  (3) the person identified himself or herself when contacting 911 or to a law enforcement officer upon arrival;

  (4) the person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search; and

  (5) the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the drug-related overdose

- provide immunity from prosecution for the same offenses to the person needing medical assistance if requirements (1), (2), (4) and (5) all have been met
- prohibit arresting a person or revoking a person's pretrial release, probation, parole or post-release based on an offense for which that person is immune from prosecution under this section
- provide immunity from civil liability to a law enforcement officer who, in good faith, arrests or charges a person who is subsequently found to be entitled to immunity under this section
- provide that G.S. 90-96.2:
  - does not bar the admission of evidence obtained in connection with the investigation and prosecution of any crimes committed by a person who does not qualify for limited immunity under G.S. 90-96.2;
  - does not limit the seizure of evidence or contraband otherwise permitted by law

- does not limit a law enforcement officer's authority to detain or take into custody any person as part of an investigation of or arrest for any offense other than the four offenses for which limited immunity is available under G.S. 90-96.2
- does not limit a probation officer's authority to conduct drug testing of persons on pretrial release, probation, or parole

Section 2 would amend G.S. 18B-302.2 to do the following:

- require all of the following conditions to exist in order for a person to receive immunity from prosecution for underage possession or consumption of alcohol:
  (1) the person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel;
  (2) the person acted in good faith when seeking medical assistance in the reasonable belief that he or she was the first to call for assistance;
  (3) the person identified himself or herself when contacting 911 or to a law enforcement officer upon arrival;
  (4) the person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search; and
  (5) the evidence supporting prosecution was obtained as a result of the person seeking medical assistance for the alcohol-related overdose
- provide immunity from prosecution for underage possession or consumption of alcohol to the person needing medical assistance if requirements (1), (2), (4) and (5) all have been met
- prohibit arresting a person or revoking a person's pretrial release, probation, parole or post-release based on an offense for which that person is immune from prosecution under this section
- provide immunity from civil liability to a law enforcement officer who, in good faith, arrests or charges a person who is subsequently found to be entitled to immunity under this section

Section 3 would amend G.S. 90-106.2 to authorize a pharmacist to dispense an opioid antagonist to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person at such risk, pursuant to a prescription issued by a practitioner in accordance with G.S. 90-106.2(b), and would grant the pharmacist immunity from any civil or criminal liability for doing so.

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

**Bill Patterson, Staff Attorney, contributed substantially to this summary.*

Reported HPC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 336
Judiciary I Committee Substitute Adopted 4/21/15
Third Edition Engrossed 4/27/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S336-PCS15252-RN-33

Short Title: Estate Planning/Uniform Trust Code. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING ESTATE PLANNING AND FIDUCIARIES, TO AMEND THE UNIFORM TRUST CODE, AND TO ESTABLISH A UNIFORM POWERS OF APPOINTMENT ACT.

The General Assembly of North Carolina enacts:

PART I. AMEND STANDBY GUARDIAN STATUTE TO PROVIDE FOR APPOINTMENT OF STANDBY AND SUCCESSOR GUARDIANS FOR INCOMPETENT ADULTS

SECTION 1. Subchapter IV of Chapter 35A of the General Statutes reads as rewritten:

"**SUBCHAPTER IV. STANDBY ~~GUARDIANS FOR MINOR CHILDREN.~~GUARDIANS.**

"Article 21.

"Standby Guardianship.

"**§ 35A-1370. Definitions.**

For purposes of this Article:

(1) "Alternate standby guardian" means a person identified in either a petition or designation to become the guardian of the person or, when appropriate, the general guardian of a minor ~~child,~~ child or incompetent adult, pursuant to G.S. 35A-1373 or to G.S. 35A-1374, when the person identified as the standby guardian and the designator or petitioner has identified an alternate standby guardian.

(2) "Attending physician" means the physician who has primary responsibility for the treatment and care of the parent or legal guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this section. When no physician has this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to this Article.

(3) "Debilitation" means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one's minor ~~child.~~child or to satisfy his or her duties as guardian of the person or as general guardian of an incompetent adult.

(4) "Designation" means a written document voluntarily executed by the designator pursuant to this Article.

(5) "Designator" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological or adoptive parent, the guardian of the person, or the general guardian of a minor ~~child.~~ child, or (ii) the guardian of the person or the general guardian of an incompetent adult. A designation under this Article may be made on behalf of a designator by the guardian of the person or the general guardian of the designator.

(6) "Determination of debilitation" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the debilitation of the petitioner or designator.

(7) "Determination of incapacity" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the incapacity of the petitioner or designator.

(8) "Incapacity" means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one's minor ~~child,~~ child or of an incompetent adult, and a consequent inability to make these decisions.

(8a) "Incompetent adult" means an adult or emancipated minor who is subject to a guardianship of the person or a general guardianship.

(9) "Minor child" means an unemancipated child or children under the age of 18 years.

(10) "Petitioner" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological parent, the adoptive parent, the guardian of the person, or the general guardian of a minor ~~child.~~ child, or (ii) the guardian of the person or the general guardian of an incompetent adult. A proceeding under this Article may be initiated and pursued on behalf of a petitioner by the guardian of the person, the general guardian of the petitioner, or by a person appointed by the clerk of superior court pursuant to Rule 17 of the Rules of Civil Procedure as guardian ad litem for the purpose of initiating and pursuing a proceeding under this Article on behalf of a petitioner.

(11) "Standby guardian" means a person appointed pursuant to G.S. 35A-1373 or designated pursuant to G.S. 35A-1374 to become the guardian of the person or, when appropriate, the general guardian of a minor child or incompetent adult upon the death of a petitioner or designator, upon a determination of debilitation or incapacity of a petitioner or designator, or with the consent of a petitioner or designator.

(12) "Triggering event" means an event stated in the designation executed or order entered under this Article which empowers the standby guardian, or the alternate standby guardian, if one is identified and the standby guardian is unwilling or unable to serve, to assume the duties of the office, which event may be the death of a petitioner or designator, incapacity of a petitioner or designator, debilitation of a petitioner or designator with the petitioner's or designator's consent, or the consent of the petitioner or designator, whichever occurs first.

...

"**§ 35A-1373. Appointment by petition of standby guardian; petition, notice, hearing, order.**

(a) A petitioner shall commence a proceeding under this Article for the appointment of a standby guardian (i) in the case of a minor ~~child~~ child, by filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of ~~filing.~~ filing or (ii) in the case of an incompetent adult, by filing a petition with the clerk of superior court in the county where the guardianship is docketed. A petition filed by a guardian of the person or a general guardian of the minor child who was appointed under this Chapter shall be treated as a motion in the cause in the original guardianship, but the provisions of this section shall otherwise apply.

(b) A petition for the judicial appointment of a standby guardian ~~of a minor child~~ shall:

(1) Identify the petitioner, the minor ~~child,~~ child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any;

(2) State that the authority of the standby guardian is to become effective upon the death of the petitioner, upon the incapacity of the petitioner, upon the debilitation of the petitioner with the consent of the petitioner, or upon the petitioner's signing of a written consent stating that the standby guardian's authority is in effect, whichever occurs first;

(3) State that the petitioner suffers from a progressively chronic illness or an irreversible fatal illness, and the basis for such a statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question;

(4) State whether there are any lawsuits, in this or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the petitioner in front of a notary public or another person authorized to administer oaths.

(c) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a ~~petitioner,~~ petitioner (if the petition concerns a minor child) or on such as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor ~~child. Service~~ child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(d) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(e) The petitioner's appearance at the hearing shall not be required if the petitioner is medically unable to appear, unless the clerk determines that the petitioner is able with reasonable accommodation to appear and that the interests of justice require that the petitioner be present at the hearing.

(f) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this Article for the appointment of a standby guardian have been satisfied. If the clerk finds that the petitioner suffers from a progressive chronic illness or an irreversible fatal illness, that the best interests of the minor child or incompetent adult will be promoted by the appointment of a standby guardian of the person or general guardian, and that the standby guardian and the alternate standby guardian, if any, are fit to serve as guardian of the person or general guardian of the minor ~~child,~~ child or incompetent adult, the clerk shall enter an order appointing the standby guardian named in the petition as standby guardian of the person or standby general guardian of the minor child or incompetent adult and shall issue letters of appointment to the standby guardian. The order may also appoint the alternate standby guardian named in the petition as the alternate standby guardian of the person or alternate general guardian of the minor child or incompetent adult in the event that the person named as standby guardian is unwilling or unable to serve as standby guardian and shall provide that, upon a showing of that unwillingness or inability, letters of appointment will be issued to the alternate standby guardian.

...

"**§ 35A-1374. Appointment by written designation; form.**

(a) A designator may designate a standby guardian by means of a written designation, signed by the designator in the presence of two witnesses at least 18 years of age, other than the standby guardian or alternate standby guardian, who shall also sign the writing. Another person may sign the written designation on the behalf of and at the direction of the designator if the designator is physically unable to do so, provided that the designation is signed in the presence of the designator and the two witnesses.

(b) A designation of a standby guardian shall identify the designator, the minor ~~child,~~ child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any, and shall indicate that the designator intends for the standby guardian or the alternate standby guardian to become the ~~minor child's~~ guardian of the minor child or incompetent adult in the event that the designator either:

(1) Becomes incapacitated;

(2) Becomes debilitated and consents to the commencement of the standby guardian's authority;

(3) Dies prior to the commencement of a judicial proceeding to appoint a guardian of the person or general guardian of a minor child; or

(4) Consents to the commencement of the standby guardian's authority.

(c) The authority of the standby guardian under a designation shall commence upon the same conditions as set forth in G.S. 35A-1373(i) through ~~(l).~~(l), as if the order referred to therein was a written description under this section.

(d) The standby guardian or, if the standby guardian is unable or unwilling to serve, the alternate standby guardian shall commence a proceeding under this Article to be appointed guardian of the person or general guardian of the minor child ~~by~~ or incompetent adult by, in the case of a minor child, filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of ~~filing.~~ filing or, in the case of an incompetent adult, filing a petition with the clerk of superior court in the county where the guardianship is docketed. The petition shall be filed after receipt of either:

(1) A copy of a determination of incapacity made pursuant to G.S. 35A-1375;

(2) A copy of a determination of debilitation made pursuant to G.S. 35A-1375 and a copy of the designator's written consent to such commencement;

(3) A copy of the designator's written consent to such commencement, made pursuant to G.S. 35A-1373(l); or

(4) Proof of death of the designator, such as a copy of a death certificate or a funeral home receipt.

(e) The standby guardian shall file a petition pursuant to subsection (d) of this section within 90 days of the date of the commencement of the standby guardian's authority under this section, or the standby guardian's authority shall lapse after the expiration of those 90 days, to recommence only upon filing of the petition.

(f) A petition filed pursuant to subsection (d) of this section shall:

(1) Append the written designation of such person as standby guardian; and

(2) Append a copy of either (i) the determination of incapacity of the designator; (ii) the determination of debilitation of the designator and the written consent of the designator; (iii) the designator's consent; or (iv) proof of death of the designator, such as a copy of a death certificate or a funeral home receipt; and

(3) If the petition is by a person designated as an alternate standby guardian, state that the person designated as the standby guardian is unwilling or unable to act as standby guardian, and the basis for that statement; and

(4) State whether there are any lawsuits, in this State or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the standby guardian or alternate standby guardian in front of a notary public or another person authorized to administer oaths.

(g) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a ~~designator,~~ designator (if the petition concerns a minor child), on such persons as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor ~~child. Service~~ child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(h) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(i) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this section have been satisfied. The clerk shall enter an order appointing the standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child or incompetent adult if the clerk finds that:

(1) The person was duly designated as a standby guardian or alternate standby guardian;

(2) That (i) there has been a determination of ~~incapacity;~~ incapacity of the designator; (ii) there has been a determination of debilitation and the designator has consented to the commencement of the standby guardian's authority; (iii) the designator has consented to that commencement; or (iv) the designator has died, such information coming from a document, such as a copy of a death certificate or a funeral home receipt;

(3) That the best interests of the minor child or incompetent adult will be promoted by the appointment of the person designated as standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor ~~child;~~child or incompetent adult;

(4) That the standby guardian or alternate standby guardian is fit to serve as guardian of the person or general guardian of the minor ~~child;~~ child or incompetent adult; and

(5) That, if the petition is by a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to serve as standby guardian.

(j) The designator may revoke a standby guardianship created under this section by:

(1) Notifying the standby guardian in writing of the intent to revoke the standby guardianship prior to the filing of the petition under this section; or

(2) Where the petition has already been filed, by executing a written revocation, filing it in the office of the clerk with whom the petition was filed, and promptly providing the standby guardian with a copy of the written revocation.

...

"§ 35A-1376. Restoration of capacity or ability; suspension of guardianship.

In the event that the authority of the standby guardian becomes effective upon the receipt of a determination of incapacity or debilitation and the petitioner or designator is subsequently restored to capacity or ability to care for the child, the authority of the standby guardian based on that incapacity or debilitation shall be suspended. The attending physician shall provide a copy of the determination of restored capacity or ability to the standby guardian, if the identity of the standby guardian is known to the attending physician. If an order appointing the standby guardian as guardian of the person or general guardian of the minor child or incompetent adult has been entered, the standby guardian shall, and the petitioner or designator may, file a copy of the determination of restored capacity or ability in the office of the clerk who entered the order. A determination of restored capacity or ability shall:

(1) Be made by the attending physician to a reasonable degree of medical certainty;

(2) Be in writing; and

(3) Contain the attending physician's opinion regarding the cause and nature of the parent's or legal guardian's restoration to capacity or ability.

Any order appointing the standby guardian as guardian of the person or general guardian of the minor child or incompetent adult shall remain in full force and effect, and the authority of the standby guardian shall recommence upon the standby guardian's receipt of a subsequent determination of the petitioner's or designator's incapacity, pursuant to G.S. 35A-1373(j), or upon the standby guardian's receipt of a subsequent determination of debilitation pursuant to G.S. 35A-1373(k), or upon the receipt of proof of death of the petitioner or designator, or upon the written consent of the petitioner or designator, pursuant to G.S. 35A-1373(l).

...

"§ 35A-1379. Appointment of guardian ad litem.

(a) The clerk may appoint a volunteer guardian ad litem, if available, to represent the best interests of the minor child or incompetent adult and, where appropriate, express the wishes of the minor ~~child.~~child or incompetent adult.

(b) The duties of the guardian ad litem, when appointed, shall be to make an investigation to determine the facts, the needs of the minor child or incompetent adult and the available resources within the family to meet those needs, and to protect and promote the best interests of the minor child or incompetent adult until formally relieved of the responsibility by the clerk.

(c) The court may order the guardian ad litem to conduct an investigation to determine the fitness of the intended standby guardian and alternate standby guardian, if any, to perform the duties of standby guardian.

...

"**§ 35A-1382. Termination.**

(a) Any standby guardianship created under this Article shall continue ~~until~~ until:

(1) If the ward is a minor child, the child reaches 18 years of age unless sooner terminated by order of the clerk who entered the order appointing the standby ~~guardian, by revocation pursuant to this Article, or by renunciation pursuant to this Article.~~ guardian.

(2) Revocation pursuant to this Article.

(3) Renunciation pursuant to this Article.

(b) A standby guardianship shall terminate, and the authority of the standby guardian designated pursuant to G.S. 35A-1374 or of a guardian of the person or general guardian appointed pursuant to this Article shall cease, upon the entry of an order of the district court granting custody of the minor child to any other person."

PART II. AUTHORIZE LIVING PROBATE PROCEDURE ALLOWING A PERSON TO PETITION THE PROBATE COURT FOR AN ORDER CONFIRMING THE VALIDITY OF THAT PERSON'S WILL

SECTION 2. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"Article 2B.

"Living Probate.

"**§ 28A-2B-1. Establishment before death that a will or codicil is valid.**

(a) Any individual who is a resident of North Carolina and who has executed a will or codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

(b) The petition shall be filed with the clerk of superior court and the matter shall proceed as a contested estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. At the hearing before the clerk of superior court, the petitioner shall produce the evidence necessary to establish that the will or codicil would be admitted to probate if the individual were deceased.

If an interested party contests the validity of the will or codicil, that person shall file a written challenge to the will or codicil before the hearing or make an objection to the validity of the will or codicil at the hearing. Upon the filing of a challenge or the raising of an issue contesting the validity of the will or codicil, the clerk shall transfer the cause to the superior court. The matter shall be heard as if it were a caveat proceeding, and the court shall make a determination as to the validity of the will or codicil and enter judgment accordingly.

If no interested party contests the validity of the will or codicil and if the clerk of superior court determines that the will or codicil would be admitted to probate if the individual were deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be valid.

(c) Failure to use the procedure authorized by this Article shall not have any evidentiary or procedural effect on any future probate proceedings.

"**§ 28A-2B-2. Venue.**

The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the individual whose will or codicil is the subject of the petition is domiciled.

"**§ 28A-2B-3. Contents of petition for will validity.**

(a) Petition. – A petition requesting an order declaring that an individual's will or codicil is valid shall be verified and shall contain the following information:

(1) A statement that the individual is a resident of North Carolina and specifying the county of the individual's residence.

(2) Allegations that the will was prepared and executed in accordance with North Carolina law and a statement that the will was executed with testamentary intent.

(3) A statement that the individual had testamentary capacity at the time the will was executed.

(4) A statement that the individual was free from undue influence and duress and executed the will in the exercise of the individual's free will.

(5) A statement identifying the individual, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall file the original will or codicil with the petition. If an order is entered declaring the will or codicil to be valid, the court shall affix a certificate of validity to the will or codicil.

"**§ 28A-2B-4. Declaration by court; bar to caveat.**

(a) If the court enters a judgment declaring a will or codicil to be valid, such judgment shall be binding upon all parties to the proceeding, including any persons represented in the proceeding pursuant to the provisions of G.S. 28A-2-7, and no party bound by the judgment shall have any further right to, and shall be barred from filing, a caveat to the will or codicil once that will or codicil is entered into probate following the individual's death.

(b) If the court declares a will or codicil to be valid, upon the motion of the petitioner or the court, the court may order that the will or codicil cannot be revoked and that no subsequent will or codicil will be valid unless the revocation or the subsequent will or codicil is declared valid in a proceeding under this Article. If the court enters such an order, any subsequent revocation of the will or codicil not declared valid in a proceeding under this Article shall be void and any subsequent will or codicil not declared valid in a proceeding under this Article shall be void and shall not be admitted to probate.

(c) If a will or codicil judicially declared valid is revoked or modified by a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in a proceeding under this Article in which the interested person was a party. If a will or codicil judicially declared valid is revoked by a method other than the execution of a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article in which the interested person was a party.

"**§ 28A-2B-5. Confidentiality.**

(a) Following the entry of a judgment, a party to the proceeding may move that the contents of the file be sealed and kept confidential, and upon such motion, the clerk shall seal the contents of the file from public inspection. The contents of the file shall not be released except by order of the clerk to any person other than:

(1) The petitioner named in the petition.

(2) The testator of the will.

(3) Interested persons who appeared in the proceedings, interested persons who have otherwise submitted to the jurisdiction of the court, and the attorneys and guardians of the interested persons.

(4) The attorney for the petitioner.

(5) The judge hearing or reviewing the matter.

For good cause shown, the court may order the records that are confidential under this section to be made available to a person who is not listed in this section.

"**§ 28A-2B-6. Costs and attorneys' fees.**

Costs, including reasonable attorneys' fees, incurred by a party in a proceeding under this Article shall be taxed against any party, or apportioned among the parties, in the discretion of the court, except that the court shall allow attorneys' fees for the attorneys of a party contesting the proceeding only if the court finds that the party had reasonable grounds for contesting the proceeding."

PART III. ENACT THE UNIFORM POWERS OF APPOINTMENT ACT

SECTION 3.(a) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 31D.**

"**North Carolina Uniform Powers of Appointment Act.**

"Article 1.

"General Provisions and Definitions.

"**§ 31D-1-101. Short title.**

This Chapter may be cited as the North Carolina Uniform Powers of Appointment Act.

"**§ 31D-1-102. Definitions.**

The following definitions apply in this Chapter:

(1) "Appointee" means a person to whom a power holder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

a. Expressly uses the words "any power" in exercising any power of appointment the power holder has.

b. Expressly uses the words "any property" in appointing any property over which the power holder has a power of appointment.

c. Disposes of all property subject to disposition by the power holder.

(4) "Donor" means a person who creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person that is not a permissible appointee.

(9) "Instrument" means a writing.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a power holder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a power holder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in

or another power of appointment over the appointive property. The power of appointment may be general or nongeneral and presently exercisable or not presently exercisable. The term does not include a power of attorney.

(14) "Power holder" means a person in whom a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the power holder at the relevant time. The term:

a. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard relating to an individual's health, education, and support or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, or the passage of a specified time only after one of the following:

1. The occurrence of the specified event.
2. The satisfaction of the ascertainable standard.
3. The passage of the specified time.

b. Does not include a power exercisable only at the power holder's death.

(16) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(17) "Taker in default of appointment" means a person who takes all or part of the appointive property to the extent the power holder does not effectively exercise the power of appointment.

(18) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established in a judicial proceeding.

"**§ 31D-1-103. Governing law.**

(a) The creation, revocation, or amendment of the power of appointment is governed by either of the following:

(1) The law of the jurisdiction designated in the terms of the instrument creating the power.

(2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the donor's domicile at the relevant time, then the law of the jurisdiction of the donor's domicile at the relevant time.

(b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by either of the following:

(1) The law of the jurisdiction designated in the terms of the instrument creating the power.

(2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the power holder's domicile at the relevant time, then the law of the jurisdiction of the power holder's domicile at the relevant time.

"**§ 31D-1-104. Common law and principles of equity.**

The common law and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another statute of this State.

"Article 2.

"Creation, Revocation, and Amendment of Power of Appointment.

"**§ 31D-2-201. Creation of power of appointment.**

(a) A power of appointment is created only if all of the following apply:
(1) The instrument creating the power is valid under applicable law.
(2) Except as otherwise provided in subsection (b) of this section, the instrument creating the power transfers the appointive property.
(3) The terms of the instrument creating the power manifest the donor's intent to create in a power holder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subdivision (1) of subsection (a) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities or restraint on alienation, a power of appointment may be created in an unborn or unascertained power holder.

"**§ 31D-2-202. Nontransferability.**

A power holder may not transfer a power of appointment. If a power holder dies without exercising or releasing a power, the power lapses.

"**§ 31D-2-203. Presumption of unlimited authority.**

Subject to the provisions of G.S. 31D-2-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is all of the following:
(1) Presently exercisable.
(2) Exclusionary.
(3) Except as otherwise provided in G.S. 31D-2-204, general.

"**§ 31D-2-204. Exception to presumption of unlimited authority.**

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if both of the following apply:
(1) The power is exercisable only at the power holder's death.
(2) The permissible appointees of the power are a defined and limited class that does not include the power holder's estate, the power holder's creditors, or the creditors of the power holder's estate.

"**§ 31D-2-205. Rules of classification.**

(a) In this section, the term "adverse party" means a person with a substantial beneficial interest in property who would be affected adversely by a power holder's exercise or nonexercise of a power of appointment in favor of the power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.

(b) If a power holder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

"**§ 31D-2-206. Power to revoke or amend.**

A donor may revoke or amend a power of appointment only to the extent that either of the following apply:
(1) The instrument creating the power is revocable by the donor.
(2) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

"Article 3.

"Exercise of Power of Appointment.

"**§ 31D-3-301. Requisites for exercise of power of appointment.**

A power of appointment is exercised only to the extent that the appointment is a permissible exercise of the power, and only if all of the following apply:
(1) The instrument exercising the power is valid under applicable law.
(2) The terms of the instrument exercising the power manifest the power holder's intent to exercise the power.

(3) Subject to the provisions of G.S. 31D-3-304, the terms of the instrument exercising the power satisfy the requirements of exercise, if any, imposed by the donor.

"**§ 31D-3-302. Intent to exercise; determining intent from residuary clause.**

A residuary clause that does not contain a blanket-exercisable clause or specific-exercise clause manifests the power holder's intent to exercise a power of appointment only if all of the following apply:

(1) The terms of the instrument containing the residuary clause (including any valid codicil or amendment to the instrument) do not manifest a contrary intent.

(2) The power is a general power exercisable in favor of the power holder's estate.

(3) There is no gift-in-default clause or the clause is ineffective.

(4) The power holder did not release the power.

"**§ 31D-3-303. Intent to exercise after acquired power.**

Unless the terms of an instrument exercising a power of appointment manifest a contrary intent:

(1) If the power holder is not also the donor of the power, a blanket-exercise clause in the instrument extends to a power acquired by the power holder after executing the instrument containing the clause.

(2) If the power holder is also the donor of the power, the blanket-exercise clause extends to the power acquired by the power holder after executing the instrument only if there is no gift-in-default clause or the gift-in-default clause is ineffective. The blanket-exercise clause does not extend to the power if there is a gift-in-default clause that is effective.

"**§ 31D-3-304. Substantial compliance with donor-imposed formal requirement.**

A power holder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if both of the following apply:

(1) The power holder knows of and intends to exercise the power.

(2) The power holder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

"**§ 31D-3-305. Permissible appointment.**

(a) If a power holder of a general power of appointment permits appointment to the power holder or the power holder's estate, the power holder may make any appointment, including an appointment in trust or an appointment that creates a new power of appointment that the power holder could make in disposing of the power holder's own property.

(b) If a power holder of a general power of appointment permits appointment only to the creditors of the power holder or the creditors of the power holder's estate, or both, the power holder may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power holder of a nongeneral power may:

(1) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee.

(2) Create a general power in a permissible appointee.

(d) The terms of the instrument may permit the power holder of a nongeneral power to create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.

"**§ 31D-3-306. Appointment to deceased appointee.**

An appointment to a deceased appointee is ineffective.

"**§ 31D-3-307. Impermissible appointment.**

(a) An exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent that the appointment is a fraud on the power.

"**§ 31D-3-308. Selective allocation doctrine.**

If a power holder exercises a power of appointment in a disposition that also disposes of property the power holder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the power holder's intent.

"**§ 31D-3-309. Capture doctrine; disposition of ineffectively appointed property under general power.**

To the extent a power holder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) The gift-in-default clause controls the disposition of the ineffectively appointed property.

(2) If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property passes as follows:

a. To the power holder if the power holder is a permissible appointee and living.

b. If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

c. If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-310. Disposition of unappointed property under released or unexercised general power.**

(a) To the extent that a power holder releases a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent that the clause is ineffective, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

(b) To the extent a power holder fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property passes as follows:

(1) To the power holder if the power holder is a permissible appointee and living.

(2) If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

(3) If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-311. Disposition of unappointed property under released or unexercised nongeneral power.**

To the extent that a power holder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) If there is no gift-in-default clause, or to the extent that the clause is ineffective, the unappointed property:

a. Passes to the permissible appointees, if both of the following apply:

1. The permissible appointees are defined and limited.
2. The terms of the instrument creating the power do not manifest a contrary intent.

b. If there is no taker under sub-subdivision a. of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-312. Disposition of unappointed property if partial appointment to taker in default.**

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the power holder makes a valid partial appointment to a taker in default of appointment, then the taker in default of appointment may share fully in unappointed property.

"**§ 31D-3-313. Appointment to taker in default.**

If a power holder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, then the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

"**§ 31D-3-314. Power holder's authority to revoke or amend exercise.**

If the terms of an instrument creating a power of appointment do not prohibit the power holder from revoking or amending an exercise of the power, a power holder may revoke or amend the exercise of a power only if one of the following apply:

(1) The instrument creating the exercise of the power of appointment may be revoked or amended.

(2) The power holder reserves a power of revocation or amendment in the instrument exercising the power of appointment.

"Article 4.

"Disclaimer or Release; Contract to Appoint or Not to Appoint.

"**§ 31D-4-401. Disclaimer.**

Consistent with Chapter 31B of the General Statutes:

(1) A power holder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

"**§ 31D-4-402. Authority to release.**

A power holder may release a power of appointment, in whole or in part, except to the extent that the terms of the instrument creating the power prevent the release.

"**§ 31D-4-403. Method of release.**

A power holder of a releasable power of appointment may release the power in whole or in part as follows:

(1) By substantial compliance with a method provided in the terms of the instrument creating the power.

(2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by an instrument manifesting the power holder's intent by clear and convincing evidence.

"**§ 31D-4-404. Revocation or amendment of release.**

A power holder may revoke or amend a release of a power of appointment only to the extent that one of the following applies:

(1) The instrument of release is revocable by the power holder.

(2) The power holder reserves a power of revocation or amendment in the instrument of release.

"**§ 31D-4-405. Power to contract; presently exercisable power of appointment.**

A power holder of a presently exercisable power of appointment may contract:

(1) Not to exercise the power.
(2) To exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

"**§ 31D-4-406. Power to contract; power of appointment not presently exercisable.**

A power holder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the power holder both:

(1) Is also the donor of the power.
(2) Has reserved the power in a revocable trust.

"**§ 31D-4-407. Remedy for breach of contract to appoint or not to appoint.**

The remedy for a power holder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

"Article 5.

"Rights of Power Holder's Creditors in Appointive Property.

"**§ 31D-5-501. Creditor claim; general power created by power holder.**

(a) In this section, "power of appointment created by the power holder" includes a power of appointment created in a transfer by another person to the extent the power holder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the power holder is subject to a claim of a creditor of the power holder or of the power holder's estate to the extent provided in the Uniform Fraudulent Transfer Act, Chapter 39 of the General Statutes.

(c) Subject to subsection (b) of this section, appointive property subject to a general power of appointment created by the power holder is not subject to a claim of a creditor of the power holder or the power holder's estate to the extent the power holder irrevocably appointed the property in favor of a person other than the power holder or the power holder's estate.

(d) Subject to subsections (b) and (c) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the power holder is subject to a claim of a creditor of:

(1) The power holder, to the same extent as if the power holder owned the appointive property, if the power is presently exercisable.
(2) The power holder's estate, to the extent that the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the power holder's death.

"**§ 31D-5-502. Creditor claim; general power not created by power holder.**

(a) Except as otherwise provided in subsection (b) of this section, and only when and to the extent that the power holder exercises the power, appointive property subject to a general power of appointment created by a person other than the power holder is subject to a claim of a creditor of:

(1) The power holder, to the extent the power holder's property is insufficient, if the power is presently exercisable.
(2) The power holder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to the provisions of G.S. 31D-5-504(c), a power of appointment created by a person other than the power holder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, is treated for purposes of this Article as a nongeneral power.

"**§ 31D-5-503. Power to withdraw.**

(a) For purposes of this Article, a power to withdraw property from a trust is treated as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) The lapse, release, or waiver of a power to withdraw property from a trust shall not be deemed to be an exercise of the power.

"**§ 31D-5-504. Creditor claim; nongeneral power.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the power holder or the power holder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the power holder or the power holder's estate to the extent that the power holder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes.

(c) If the initial gift in default of appointment is to the power holder or the power holder's estate, a nongeneral power of appointment is treated for purposes of this Article as a general power.

"Article 6.

"Miscellaneous Provisions.

"**§ 31D-6-601. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 31D-6-602. Relation to Electronic Signatures in Global and National Commerce Act.**

This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101(c) of 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of 15 U.S.C. § 7003(b).

"**§ 31D-6-603. Application to existing relationships.**

(a) Except as otherwise provided in this Chapter, on or after the effective date of this Chapter:

(1) This Chapter applies to a power of appointment created before, on or after the effective date of this Chapter.

(2) This Chapter applies to a judicial proceeding concerning a power of appointment commenced on or after the effective date of this Chapter.

(3) This Chapter applies to a judicial proceeding concerning a power of appointment commenced before the effective date of this Chapter unless the court finds that application of a particular provision of this Chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this Chapter does not apply and the superseded law applies.

(4) A rule of construction or presumption provided in this Chapter applies to an instrument executed before the effective date of this Chapter unless there is a clear indication of a contrary intent in the terms of the instrument or unless application of that rule of construction or presumption would impair substantial rights of a party created under North Carolina law in effect prior to the effective date of this Chapter, in which case that rule of construction or presumption does not apply and the superseded rule of construction or presumption applies.

(5) Except as otherwise provided in subdivisions (1) through (4) of this subsection, an action taken before the effective date of this Chapter is not affected by this Chapter.

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this State other than this Chapter before the effective date of this Chapter, the law continues to apply to the right."

SECTION 3.(b) G.S. 31-4 and G.S. 31-43 are repealed.

PART IV. CLARIFY THE LAW REGARDING THE AUTHORITY OF A PERSONAL REPRESENTATIVE TO SELL OR TAKE ACTION WITH RESPECT TO REAL PROPERTY OF A DECEDENT AND AMEND THE ELECTIVE SHARE STATUTES REGARDING VALUATION OF PARTIAL OR CONTINGENT INTEREST PROPERTY

SECTION 4.(a) G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. ~~The personal representative has the power to~~

(1a) To take possession, custody or control of the real property of the ~~decedent if the personal representative determines such possession, custody or control is in the best interest of the administration of the estate,~~ decedent, including the power to eject occupants of real ~~property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights.~~ property, under subsection (c) of this section or under G.S. 28A-13-3.1. If the personal representative determines that such possession, custody or control is not ~~in the best interest~~ necessary for purposes of ~~the~~ administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

...

(12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11

is ~~controlling.~~controlling unless the authority to mortgage, pledge, or otherwise encumber real property of the decedent to secure loans is granted to the personal representative under G.S. 28A-13-3.1.

...

(27) To ~~sell~~ sell, exchange, give options upon, partition, or lease real property of the estate in the manner prescribed by the provisions of G.S. 28A-13-3.1 or Article 17 of this ~~Chapter.~~Chapter, as applicable.

...

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Repealed by Session Laws 2012-18, s. 3.7, effective June 11, 2012.

(c) ~~Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) of this section to enforce those rights.~~ Unless the authority to take possession, custody, or control of real property is granted to the personal representative under G.S. 28A-13-3.1, prior to the personal representative exercising possession, custody or control over real property of the estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

...."

SECTION 4.(b) Article 13 of Chapter 28A of the General Statutes is amended by adding three new sections to read:

"**§ 28A-13-3.1. Power of personal representative to deal with real property without a court order.**

(a) A personal representative may, without court order, take possession, custody, and control of the decedent's real property and sell, exchange, give options upon, partition, lease, mortgage, or otherwise dispose of the property to the extent that the will expressly grants any of these powers to the personal representative by any of the following grants of power:

(1) Incorporation by reference of the powers in G.S. 32-27 when title to the real property is devised to the personal representative.

(2) An express power granted to the personal representative in the will when title to the real property is devised to the personal representative.

(3) An express power granted to the personal representative in the will when title to the real property is not devised to the personal representative if (i) the decedent specifically indicates an intent that the power applies to real property and (ii) the personal representative determines that exercise of the power with respect to the real property complies with an express standard set forth by the decedent in the will or, if no such standard is set forth, is in the best interest of the estate. For purposes of this section, provisions in the will stating that the power applies to the real property "whether or not title is devised to the personal representative" or "even though title is not devised to the personal representative" or other similar language is sufficient to indicate such an intent.

(b) No party dealing with the personal representative is under a duty to (i) follow the proceeds or other consideration received by the personal representative from the disposition of the real property pursuant to the exercise of a power authorized by this section or (ii) determine whether the exercise of the power complies with an express standard set forth by the decedent in the will or, if no such standard is set forth, is in the best interest of the estate.

(c) Where the personal representative has the power to sell, lease, or mortgage real property pursuant to the power described in subdivision (3) of subsection (a) of this section, the validity of sales, leases, and mortgages of the real property by the devisees as to the personal representative shall be governed by the provisions of G.S. 28A-17-12.

"**§ 28A-13-3.2. Notice of exercise of power with respect to real property not devised to personal representative.**

(a) If in accordance with G.S. 28A-13-3.1(a)(3) a personal representative intends to exercise a power with respect to real property of the decedent not devised to the personal representative, the personal representative shall give written notice of the personal representative's intent to exercise that power to the devisees of the real property. The notice shall include a description of the real property that is the subject of the notice and a summary of the power the personal representative intends to exercise. The notice shall further include a statement that the devisees of the real property have 30 days from the service date of the notice to file a petition before the clerk under G.S. 28A-2-6 contesting the authority of the personal representative under G.S. 28A-13-3.1(a)(3) to exercise the power the personal representative intends to exercise.

(b) The notice required under this section shall be served on each devisee of the real property in accordance with the provisions of Rule 4(j) and Rule 4(j1) of the North Carolina Rules of Civil Procedure at least 30 days prior to the date on which the personal representative intends to exercise the power.

(c) If no devisee files a petition within 30 days after being served with the notice required under this section, the personal representative shall be entitled to exercise the power with respect to the real property, and the devisees of the real property shall have no further right to contest or challenge the power the personal representative intends to exercise. In such event, the personal representative shall file in the office of the clerk of court in the county where the estate is being administered, as well as in the office of the clerk of court in the county where the real property is located, a copy of the notice required by this section, together with an affidavit of the personal representative or the attorney for the personal representative to the effect that a copy of the notice was served on each devisee entitled to receive notice in accordance with this section and that no devisee filed an action within the requisite time period to determine whether the personal representative had the power with respect to the real property. Such notice and affidavit shall be filed prior to the date on which the personal representative intends to exercise the power.

(d) The affidavit filed pursuant to subsection (c) of this section may be relied upon by all persons as proof of all representations in the affidavit pursuant to subsection (c) of this section in absence of actual knowledge to the contrary.

(e) Notice otherwise required under this section need not be given to a devisee who consents in writing to the exercise of the power by the personal representative and files that written consent with the clerk of superior court in the county where the estate is being administered.

(f) For purposes of this section, the term "devisee" means all persons who have a vested interest in the real property over which the personal representative intends to exercise a power under G.S. 28A-13-3.1(a)(3) and who are in being at the time the personal representative gives notice pursuant to this section.

"**§ 28A-13-3.3. Reimbursement of devisees for payment of carrying costs.**

(a) If in accordance with G.S. 28A-13-3.1(a)(3) the representative sells or exchanges the decedent's real property not devised to the personal representative a devisee shall be entitled to reimbursement from the net proceeds arising from the sale or exchange of all carrying costs incurred by the devisee before the personal representative took possession, custody, and control of the real property.

(b) As used in this section, "carrying costs" are the amounts paid by the devisee for any of the following:

(1) Insurance, ad valorem taxes, or other governmental charges or assessments on the real property.

(2) Reasonable costs incurred to secure or to make necessary repairs to the real property.

(3) Payment of principal and interest on any indebtedness incurred before the decedent's death that is secured by a lien against the real property.

In no case shall carrying costs include betterments to the real property made by the devisee.

(c) Any devisee claiming reimbursement for carrying costs under this section shall present a claim to the personal representative in writing not later than 30 days after a valid deed executed pursuant to the sale or exchange is recorded and served on the devisee in accordance with the provisions of Rule 5 of the North Carolina Rules of Civil Procedure. If the personal representative determines the claim to be valid and reasonable, the claim shall be paid to the extent there are sufficient net proceeds. As used in this subsection, net proceeds are the gross proceeds arising from the sale or exchange of the real property reduced by expenses of the sale and all amounts paid to discharge any indebtedness secured by liens against the real property; except that any indebtedness secured by a lien against the property that is assumed by the purchaser shall not be deducted in determining the net proceeds arising from the sale or exchange. If the personal representative rejects the claim, then G.S. 28A-19-15 and G.S. 28A-19-16 apply."

SECTION 4.(c) G.S. 28A-15-1(c) reads as rewritten:

"(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, exchange, give options upon, partition, lease, ~~or mortgage~~ mortgage, or otherwise dispose of any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a ~~sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17.~~ sale, exchange, option, partition, lease, mortgage, or other disposition under G.S. 28A-13-3.1. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale, lease, or

mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 4.(d) G.S. 28A-15-2 reads as rewritten:

"**§ 28A-15-2. Title and possession of property.**

(a) Personal Property. – Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right of possession of personal property of the decedent is vested in the decedent's heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, the personal representative's possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real ~~Property.~~Property: Title. – The title to real property of a decedent ~~is vested in the decedent's heirs as of the time of the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.~~vests as follows:

(1) Subject to the provisions of subdivisions (2) and (3) of this subsection, title to real property of a decedent is vested in the decedent's heirs as of the time of the decedent's death.

(2) Subject to the provisions of subdivision (3) of this subsection and the provisions of G.S. 28A-17-12 and G.S. 31-39, title to real property of a decedent devised under a valid probated will becomes vested in the devisee and relates back to the decedent's death.

(3) If a decedent's will grants the personal representative a power under G.S. 28A-13-3.1 to transfer the title to the decedent's real property by sale, exchange, or partition, the transfer of the title pursuant to the exercise of that power divests the devisees or heirs of title to the real property and vests title in the grantee of the instrument transferring title. The devisees' or heirs' title is divested, and the title becomes vested in the grantee upon delivery of the instrument transferring title to the grantee. Any transfer of title to real property pursuant to Article 17 of this Chapter also divests the devisees or heirs of the title to that real property and vests title pursuant to the procedure in Article 17 of this Chapter.

(c) Real Property: Options, Leases, or Mortgages. – An option, lease, or mortgage of the decedent's real property by the personal representative under G.S. 28A-13-3.1 or under Article 17 of this Chapter encumbers the devisee's or heir's title upon the recordation of the applicable instrument creating or evidencing the option, lease, or mortgage according to law or upon the execution of the lease if the lease is not required to be recorded by G.S. 47-18 and is not recorded.

(d) Real Property: Docketed Judgments or Other Liens Against Heir or Devisee. – The interest of any heir or devisee and any person claiming through or against any heir or devisee, including a person holding a docketed judgment or other lien against an heir or devisee, is subject to the personal representative's right to sell, exchange, give options upon, partition, lease, mortgage, or otherwise dispose of the real property of the decedent, either under G.S. 28A-13-3.1 or under Article 17 of this Chapter; however, the proceeds from any such sale or other disposition shall be available to satisfy or reduce the amount of any valid judgment outstanding against an heir or devisee to the extent that the proceeds are distributable to that heir or devisee. Any sale, exchange, option, partition, lease, mortgage, or other disposition of the real property of the decedent, either under G.S. 28A-13-3.1 or under Article 17 of this

Chapter, shall be free and clear of the interest of any person claiming through or against an heir or devisee, and any interest in the decedent's real property acquired by the recipient of a sale, exchange, option, lease, mortgage, or other disposition shall not be subject to the interest of any person claiming through or against any heir or devisee."

SECTION 4.(e) G.S. 28A-22-1 reads as rewritten:

"**§ 28A-22-1. Scheme of distribution; testate and intestate estates.**

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized. Assets remaining from the sale of real property by the personal representative retain the character of real property for purposes of distribution to the devisee or heir, or persons having liens against the devisee or heir only."

SECTION 4.(f) G.S. 28A-23-3(b) reads as rewritten:

"(b) In determining the amount of the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property is sold to pay debts or devises, the commission shall be computed only on the proceeds actually applied in the payment of debts or devises. When real property is sold for other reasons under G.S. 28-13-3.1, the proceeds of the sale shall not be considered in computing the commission."

SECTION 4.1 G.S. 30-3.3A(e) reads as rewritten:

"(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are ~~limited.~~ limited, unless upon good cause shown by one of the parties, the clerk determines that the use of such tables or rate of return is not appropriate, then the value of such interests shall be determined under subsection (f) of this section. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the

surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

~~(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~"

PART V. AMEND THE LAW PROVIDING FOR CONVEYANCE OF TENANCY BY THE ENTIRETIES TO A TRUST

SECTION 5. G.S. 39-13.7 reads as rewritten:

"**§ 39-13.7. Tenancy by the entireties trusts in real property.**

(a) Any real property held by a husband and wife as a tenancy by the entireties and conveyed ~~to their joint revocable or irrevocable trust, or to their separate revocable or irrevocable trusts, shall have the same immunity from the claims of the spouses' separate creditors as would exist if the spouses had continued to hold the property as a tenancy by the entireties, so long as (i) the spouses remain husband and wife, (ii) the real property continues to be held in the trust or trusts, and (iii) the spouses remain the beneficial owners of the real property.~~to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held by the husband and wife as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the spouses had continued to hold the property as tenants by the entireties.

(b) The immunity from the claims of separate creditors provided by subsection (a) of this section shall apply as long as all of the following apply:

(1) The husband and wife remain married.

(2) The real property continues to be held in the trust or trusts as provided in subsection (a) of this section.

(3) Both husband and wife are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the real property is conveyed in equal shares to their separate trusts.

(c) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (a) of this section immediately prior to the individual's death shall continue to have immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife continued to hold the property conveyed in trust as tenants by the entirety.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both the husband and wife may waive the immunity from the claims of separate creditors provided under this section as to any specific creditor or any specifically described property including all separate creditors of a husband and wife or all former tenancy by the entirety property conveyed to the trustee.

(e) For purposes of this section:

(1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary conversion of the real property.

(2) The reference to a "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the settlors, and the reference to "separate trusts" means revocable or irrevocable trusts of which the husband is the settlor of one trust and the wife is the settlor of the other trust.

(3) The husband and wife are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other persons are also current or future beneficiaries of the trust."

PART VI. UNIFORM TRUST CODE; AMEND THE STATUTE OF LIMITATIONS AGAINST A TRUSTEE

SECTION 6. G.S. 36C-10-1005(b) reads as rewritten:

"(b) Except as provided in subsection (a) of this section, Chapter 1 of the General Statutes governs the limitations of actions on judicial proceedings involving trusts. However, for purposes of those limitations both of the following apply:

(1) On the date that any limitation starts running as to a person with respect to a claim held by the person involving a trust, the limitation also shall start running as to all other persons the person would be entitled to represent under Article 3 of this Chapter, whether or not the person consented to serve as a representative.

(2) G.S. 1-17 of the General Statutes shall not apply to toll the running of the limitation as to the persons described in subdivision (1) of this subsection. Those persons shall be treated as if they were under no disability on the date that the limitation starts running."

PART VII. UNIFORM TRUST CODE; CLARIFY APPLICABILITY OF DEFAULT AND MANDATORY RULES GOVERNING POWER HOLDERS

SECTION 7. G.S. 36C-1-105 reads as rewritten:

"**§ 36C-1-105. Default and mandatory rules.**

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a ~~trustee,~~ trustee and a power holder under Article 8A of this Chapter, relations among ~~trustees,~~ trustees and those power holders, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust.

(2) The duty of a trustee or a power holder under Article 8A of this Chapter to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries.~~beneficiaries, except as otherwise provided in subsection (c) of this section.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter.

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008.~~G.S. 36C-10-1008, except as otherwise provided in subsection (c) of this section.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary.

(8) Periods of limitation for commencing a judicial proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32).

(c) The provisions of subdivisions (2) and (6) of subsection (b) of this section shall not apply to a power holder described in Article 8A of this Chapter with respect to powers conferred upon the power holder in a nonfiduciary capacity under G.S. 36C-8A-3(a) or under the terms of the trust."

PART VIII. UNIFORM TRUST CODE; AMEND THE LAW GOVERNING DECANTING FROM A TRADITIONAL TRUST TO A SUPPLEMENTAL NEEDS TRUST

SECTION 8. G.S. 36C-8-816.1 reads as rewritten:

"**§ 36C-8-816.1. Trustee's special power to appoint to a second trust.**

(a) For purposes of this section, the following definitions apply:

(1) Current beneficiary. – A person who is a permissible distributee of trust income or principal.

(2) Original trust. – A trust established under an irrevocable trust instrument pursuant to the terms of which a trustee has a discretionary power to distribute principal or income of the trust to or for the benefit of one or more current beneficiaries of the trust.

(3) Second trust. – A trust established under an irrevocable trust instrument, the current beneficiaries of which are one or more of the current beneficiaries of the original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument.

(b) A trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust. The second trust may have a duration that is longer than the duration of the first trust.

(c) The terms of the second trust shall be subject to all of the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the original trust.

(2) A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

(3) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original trust if that interest has come into effect with respect to the beneficiary.

(4) If any contribution to the original trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if

included in the original trust, would have prevented the original trust from qualifying for the deduction or that would have reduced the amount of the deduction.

(5) If contributions to the original trust have been excluded from the gift tax by the application of section 2503(b) and section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust.

(6) If any beneficiary of the original trust has a power of withdrawal over trust property, then either:

a. The terms of the second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or

b. Sufficient trust property must remain in the original trust to satisfy the outstanding power of withdrawal.

(7) If a trustee of an original trust exercises a power to distribute principal or income that is subject to an ascertainable standard by appointing property to a second trust, then the power to distribute income or principal in the second trust must be subject to the same ascertainable standard as in the original trust and must be exercisable in favor of the same current beneficiaries to whom such distribution could be made in the original trust.

(8) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed.

(9) The terms of the second trust shall not contain any provisions that would jeopardize (i) the qualification of a transfer as a direct skip under section 2642(c) of the Code, (ii) if the first trust owns subchapter S Corporation stock, the election to treat a corporation as a subchapter S Corporation under section 1362 of the Code, (iii) if the first trust owns an interest in property subject to the minimum distribution rules of section 401(a)(9) of the Code, a favorable distribution period by shortening the minimum distribution period, or (iv) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes. In this subdivision, "tax benefit" means a federal or State tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for the benefit from having the settlor considered the owner under sections 671 through 679 of the Code. Subject to clause (ii) above, the second trust may be a trust as to which the settlor is not considered the owner under sections 671 through 679 of the Code even if the settlor is considered the owner of the first trust, and the second trust may be a trust as to which the settlor of the first trust is considered the owner under sections 671 through 679 of the Code, even if the settlor is not considered the owner of the first trust.

(10) Notwithstanding any other provision of this section, but subject to the limitations of subdivisions (1), (2), (4), (5), and (9) of this subsection, a trustee may exercise the power to appoint principal and income under subsection (b) of this section with respect to a disabled beneficiary's interest in the original trust to a second trust that is a supplemental needs trust that does not have (i) an ascertainable standard (or has a different ascertainable standard); (ii) a fixed income, annuity, or unitrust interest in the assets of the original trust; or (iii) a right of withdrawal, if the trustee determines that it would be in the best interest of the disabled beneficiary. For purposes of this subsection, the following apply:

a. A "supplemental needs trust" means a trust that is a discretionary trust under G.S. 36C-5-504 and relative to the original trust contains either lesser or greater restrictions on the trustee's power to distribute income or principal, and which the trustee believes would, if implemented, allow the disabled beneficiary to receive greater governmental benefits than the disabled beneficiary would receive if the power to appoint principal and income had not been exercised.

b. "Governmental benefits" means medical assistance, financial aid, or services from any local, State, or federal agency or department.

c. A "disabled beneficiary" means a current beneficiary of the original trust who the trustee determines has a condition that substantially impairs the beneficiary's ability to provide for his or her own support, care, or custody whether or not the beneficiary has been adjudicated a "disabled person" by any government agency or department.

d. The second supplemental needs trust shall not be liable to pay or reimburse the State or any government or public agency for medical assistance, financial aid, or services provided to the disabled beneficiary except as provided in the second supplemental needs trust.

...."

PART IX. UNIFORM TRUST CODE; PROVIDE PERMISSIBLE BENEFICIARIES FOR CERTAIN IRREVOCABLE INTER VIVOS TRUSTS

SECTION 9. G.S. 36C-5-505(c) reads as rewritten:

"(c) Subject to the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, for purposes of this ~~section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:~~section, property contributed to the following trusts is not considered to have been contributed by the settlor and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) If the settlor is a beneficiary after the death of the settlor's spouse:

a. An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.

~~(2)~~b. An irrevocable intervivos marital trust that is treated as a qualified terminable interest ~~property~~ trust under section 2523(f) of the Internal Revenue Code.

~~(3)~~c. An irrevocable intervivos trust of which the settlor's spouse is ~~the sole~~ a beneficiary during the spouse's lifetime ~~of the settlor's spouse~~ but which does not qualify for the federal gift tax marital

~~deduction.~~deduction, and during the lifetime of the settlor's spouse (i) the settlor's spouse is the only beneficiary or (ii) the settlor's spouse and the settlor's issue are the only beneficiaries.

~~(4)~~d. Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in ~~subdivision (1), (2), or (3) of this subsection.~~sub-subdivisions a., b., c., and d. of this subdivision.

For purposes of this ~~subsection,~~ subdivision, notwithstanding the provisions of G.S. 36C-1-103(3), the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of ~~appointment, and~~ appointment.

(2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the person's spouse, regardless of whether or when that person was a settlor of an irrevocable inter vivos trust for the benefit of the person's spouse.

For purposes of this subsection, the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable intervivos trust was created, notwithstanding a subsequent dissolution of the marriage."

PART X. UNIFORM TRUST CODE; CLARIFY STANDARD OF LIABILITY OF DIRECTED COTRUSTEE

SECTION 10. G.S. 36C-7-703 reads as rewritten:

"**§ 36C-7-703. Cotrustees.**

...

~~(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the following apply:~~

~~(1) The duty and liability of the excluded trustee is as follows:~~

~~a. If the terms of a trust confer upon the cotrustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the directed cotrustee.~~

~~b. If the terms of the trust confer upon the cotrustee any other power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the cotrustee.~~

~~c. The excluded trustee has no duty to monitor the conduct of the cotrustee, provide advice to the cotrustee, or consult with or request directions from the cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the cotrustee's authority.~~

~~(2) Except as otherwise provided in sub-subdivision a. of subdivision (1) of this subsection, the cotrustee holding the power to take certain actions with~~

~~respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office and has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.~~

(f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

(g) ~~A trustee~~ Except as provided in subsection (g1) and (h) of this section, each cotrustee shall exercise reasonable care ~~in connection with matters for which the trustee is given authority under the terms of a trust~~ to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust:

(1) The excluded cotrustee is not liable, directly or indirectly, for the action taken by the cotrustee holding the exclusive power.

(2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with or request directions from that cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by that cotrustee.

(3) The cotrustee holding the exclusive power to take certain actions with respect to the trust:

a. Shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office.

b. Has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.

(h) ~~Notwithstanding subsection (g) of this section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:~~If the terms of the trust confer the power to take actions on both or all cotrustees but under the terms of the trust or this Chapter the decision of one or more of the cotrustees controls in the event of a disagreement, then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious breach of trust, a cotrustee who dissents from the action taken by one or more of the other cotrustees is not liable for the action if either of the following apply:

(1) The ~~trustee~~ dissenting cotrustee does not join in ~~an action approved by a majority of the other trustees.~~the action.

(2) The dissenting ~~trustee~~ cotrustee joins in ~~an~~ the action necessary to carry out the decision of the ~~majority of the trustees and notifies in writing the~~ other cotrustee or cotrustees and gives notice of the dissent to the other cotrustee or cotrustees at or before joining in the ~~action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the~~ action.

...."

PART XI. COMMENTS AND EFFECTIVE DATES

SECTION 11.(a) The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Commentary to the Uniform Powers of Appointment Act and of the Official Commentary to the Uniform Trust Code and all explanatory comments of the drafters of those acts, as the Revisor may deem appropriate.

SECTION 11.(b) Section 4 of this act becomes effective January 1, 2016, and applies to estates of persons dying on or after that date. Sections 6, 7, 8, 9, and 10 of this act become effective October 1, 2015, and apply to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date, unless the court finds that application of a particular provision of these sections would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2015, applies. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 336
Judiciary I Committee Substitute Adopted 4/21/15
Third Edition Engrossed 4/27/15
PROPOSED COMMITTEE SUBSTITUTE S336-CSRN-31 [v.1]
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Short Title: Estate Planning/Uniform Trust Code. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING ESTATE PLANNING AND FIDUCIARIES, TO AMEND THE UNIFORM TRUST CODE, AND TO ESTABLISH A UNIFORM POWERS OF APPOINTMENT ACT.

The General Assembly of North Carolina enacts:

PART I. AMEND STANDBY GUARDIAN STATUTE TO PROVIDE FOR APPOINTMENT OF STANDBY AND SUCCESSOR GUARDIANS FOR INCOMPETENT ADULTS

SECTION 1. Subchapter IV of Chapter 35A of the General Statutes reads as rewritten:

"**SUBCHAPTER IV. STANDBY ~~GUARDIANS FOR MINOR CHILDREN.~~GUARDIANS.**

"Article 21.

"Standby Guardianship.

"**§ 35A-1370. Definitions.**

For purposes of this Article:

(1) "Alternate standby guardian" means a person identified in either a petition or designation to become the guardian of the person or, when appropriate, the general guardian of a minor ~~child,~~ child or incompetent adult, pursuant to G.S. 35A-1373 or to G.S. 35A-1374, when the person identified as the standby guardian and the designator or petitioner has identified an alternate standby guardian.

(2) "Attending physician" means the physician who has primary responsibility for the treatment and care of the parent or legal guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this section. When no physician has this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to this Article.

(3) "Debilitation" means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one's minor ~~child.~~child or to satisfy his or her duties as guardian of the person or as general guardian of an incompetent adult.

(4) "Designation" means a written document voluntarily executed by the designator pursuant to this Article.

(5) "Designator" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological or adoptive parent, the guardian of the person, or the general guardian of a minor ~~child.~~ child, or (ii) the guardian of the person or the general guardian of an incompetent adult. A designation under this Article may be made on behalf of a designator by the guardian of the person or the general guardian of the designator.

(6) "Determination of debilitation" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the debilitation of the petitioner or designator.

(7) "Determination of incapacity" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the incapacity of the petitioner or designator.

(8) "Incapacity" means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one's minor ~~child, child~~ child or of an incompetent adult, and a consequent inability to make these decisions.

(8a) "Incompetent adult" means an adult or emancipated minor who is subject to a guardianship of the person or a general guardianship.

(9) "Minor child" means an unemancipated child or children under the age of 18 years.

(10) "Petitioner" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological parent, the adoptive parent, the guardian of the person, or the general guardian of a minor ~~child.~~ child, or (ii) the guardian of the person or the general guardian of an incompetent adult. A proceeding under this Article may be initiated and pursued on behalf of a petitioner by the guardian of the person, the general guardian of the petitioner, or by a person appointed by the clerk of superior court pursuant to Rule 17 of the Rules of Civil Procedure as guardian ad litem for the purpose of initiating and pursuing a proceeding under this Article on behalf of a petitioner.

(11) "Standby guardian" means a person appointed pursuant to G.S. 35A-1373 or designated pursuant to G.S. 35A-1374 to become the guardian of the person or, when appropriate, the general guardian of a minor child or incompetent adult upon the death of a petitioner or designator, upon a determination of debilitation or incapacity of a petitioner or designator, or with the consent of a petitioner or designator.

(12) "Triggering event" means an event stated in the designation executed or order entered under this Article which empowers the standby guardian, or the alternate standby guardian, if one is identified and the standby guardian is unwilling or unable to serve, to assume the duties of the office, which event may be the death of a petitioner or designator, incapacity of a petitioner or designator, debilitation of a petitioner or designator with the petitioner's or designator's consent, or the consent of the petitioner or designator, whichever occurs first.

...

"**§ 35A-1373. Appointment by petition of standby guardian; petition, notice, hearing, order.**

(a) A petitioner shall commence a proceeding under this Article for the appointment of a standby guardian (i) in the case of a minor ~~child~~ child, by filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of ~~filing.~~ filing or (ii) in the case of an incompetent adult, by filing a petition with the clerk of superior court in the county where the guardianship is docketed. A petition filed by a guardian of the person or a general guardian of the minor child who was appointed under this Chapter shall be treated as a motion in the cause in the original guardianship, but the provisions of this section shall otherwise apply.

(b) A petition for the judicial appointment of a standby guardian ~~of a minor child~~ shall:

(1) Identify the petitioner, the minor ~~child,~~ child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any;

(2) State that the authority of the standby guardian is to become effective upon the death of the petitioner, upon the incapacity of the petitioner, upon the debilitation of the petitioner with the consent of the petitioner, or upon the petitioner's signing of a written consent stating that the standby guardian's authority is in effect, whichever occurs first;

(3) State that the petitioner suffers from a progressively chronic illness or an irreversible fatal illness, and the basis for such a statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question;

(4) State whether there are any lawsuits, in this or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the petitioner in front of a notary public or another person authorized to administer oaths.

(c) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a ~~petitioner,~~ petitioner (if the petition concerns a minor child) or on such as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor ~~child. Service~~ child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(d) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(e) The petitioner's appearance at the hearing shall not be required if the petitioner is medically unable to appear, unless the clerk determines that the petitioner is able with reasonable accommodation to appear and that the interests of justice require that the petitioner be present at the hearing.

(f) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this Article for the appointment of a standby guardian have been satisfied. If the clerk finds that the petitioner suffers from a progressive chronic illness or an irreversible fatal illness, that the best interests of the minor child or incompetent adult will be promoted by the appointment of a standby guardian of the person or general guardian, and that the standby guardian and the alternate standby guardian, if any, are fit to serve as guardian of the person or general guardian of the minor ~~child,~~ child or incompetent adult, the clerk shall enter an order appointing the standby guardian named in the petition as standby guardian of the person or standby general guardian of the minor child or incompetent adult and shall issue letters of appointment to the standby guardian. The order may also appoint the alternate standby guardian named in the petition as the alternate standby guardian of the person or alternate general guardian of the minor child or incompetent adult in the event that the person named as standby guardian is unwilling or unable to serve as standby guardian and shall provide that, upon a showing of that unwillingness or inability, letters of appointment will be issued to the alternate standby guardian.

...

"**§ 35A-1374. Appointment by written designation; form.**

(a) A designator may designate a standby guardian by means of a written designation, signed by the designator in the presence of two witnesses at least 18 years of age, other than the standby guardian or alternate standby guardian, who shall also sign the writing. Another person may sign the written designation on the behalf of and at the direction of the designator if the designator is physically unable to do so, provided that the designation is signed in the presence of the designator and the two witnesses.

(b) A designation of a standby guardian shall identify the designator, the minor ~~child,~~ child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any, and shall indicate that the designator intends for the standby guardian or the alternate standby guardian to become the ~~minor child's~~ guardian of the minor child or incompetent adult in the event that the designator either:

(1) Becomes incapacitated;

(2) Becomes debilitated and consents to the commencement of the standby guardian's authority;

(3) Dies prior to the commencement of a judicial proceeding to appoint a guardian of the person or general guardian of a minor child; or

(4) Consents to the commencement of the standby guardian's authority.

(c) The authority of the standby guardian under a designation shall commence upon the same conditions as set forth in G.S. 35A-1373(i) through ~~(l).~~(l), as if the order referred to therein was a written description under this section.

(d) The standby guardian or, if the standby guardian is unable or unwilling to serve, the alternate standby guardian shall commence a proceeding under this Article to be appointed guardian of the person or general guardian of the minor child ~~by~~ or incompetent adult by, in the case of a minor child, filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of ~~filing.~~ filing or, in the case of an incompetent adult, filing a petition with the clerk of superior court in the county where the guardianship is docketed. The petition shall be filed after receipt of either:

(1) A copy of a determination of incapacity made pursuant to G.S. 35A-1375;

(2) A copy of a determination of debilitation made pursuant to G.S. 35A-1375 and a copy of the designator's written consent to such commencement;

(3) A copy of the designator's written consent to such commencement, made pursuant to G.S. 35A-1373(l); or

(4) Proof of death of the designator, such as a copy of a death certificate or a funeral home receipt.

(e) The standby guardian shall file a petition pursuant to subsection (d) of this section within 90 days of the date of the commencement of the standby guardian's authority under this section, or the standby guardian's authority shall lapse after the expiration of those 90 days, to recommence only upon filing of the petition.

(f) A petition filed pursuant to subsection (d) of this section shall:

(1) Append the written designation of such person as standby guardian; and

(2) Append a copy of either (i) the determination of incapacity of the designator; (ii) the determination of debilitation of the designator and the written consent of the designator; (iii) the designator's consent; or (iv) proof of death of the designator, such as a copy of a death certificate or a funeral home receipt; and

(3) If the petition is by a person designated as an alternate standby guardian, state that the person designated as the standby guardian is unwilling or unable to act as standby guardian, and the basis for that statement; and

(4) State whether there are any lawsuits, in this State or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the standby guardian or alternate standby guardian in front of a notary public or another person authorized to administer oaths.

(g) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a ~~designator,~~ designator (if the petition concerns a minor child), on such persons as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor ~~child. Service~~ child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(h) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(i) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this section have been satisfied. The clerk shall enter an order appointing the standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child or incompetent adult if the clerk finds that:

(1) The person was duly designated as a standby guardian or alternate standby guardian;

(2) That (i) there has been a determination of ~~incapacity;~~ incapacity of the designator; (ii) there has been a determination of debilitation and the designator has consented to the commencement of the standby guardian's authority; (iii) the designator has consented to that commencement; or (iv) the designator has died, such information coming from a document, such as a copy of a death certificate or a funeral home receipt;

(3) That the best interests of the minor child or incompetent adult will be promoted by the appointment of the person designated as standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor ~~child;~~child or incompetent adult;

(4) That the standby guardian or alternate standby guardian is fit to serve as guardian of the person or general guardian of the minor ~~child;~~ child or incompetent adult; and

(5) That, if the petition is by a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to serve as standby guardian.

(j) The designator may revoke a standby guardianship created under this section by:

(1) Notifying the standby guardian in writing of the intent to revoke the standby guardianship prior to the filing of the petition under this section; or

(2) Where the petition has already been filed, by executing a written revocation, filing it in the office of the clerk with whom the petition was filed, and promptly providing the standby guardian with a copy of the written revocation.

...

"§ 35A-1376. Restoration of capacity or ability; suspension of guardianship.

In the event that the authority of the standby guardian becomes effective upon the receipt of a determination of incapacity or debilitation and the petitioner or designator is subsequently restored to capacity or ability to care for the child, the authority of the standby guardian based on that incapacity or debilitation shall be suspended. The attending physician shall provide a copy of the determination of restored capacity or ability to the standby guardian, if the identity of the standby guardian is known to the attending physician. If an order appointing the standby guardian as guardian of the person or general guardian of the minor child or incompetent adult has been entered, the standby guardian shall, and the petitioner or designator may, file a copy of the determination of restored capacity or ability in the office of the clerk who entered the order. A determination of restored capacity or ability shall:

(1) Be made by the attending physician to a reasonable degree of medical certainty;

(2) Be in writing; and

(3) Contain the attending physician's opinion regarding the cause and nature of the parent's or legal guardian's restoration to capacity or ability.

Any order appointing the standby guardian as guardian of the person or general guardian of the minor child or incompetent adult shall remain in full force and effect, and the authority of the standby guardian shall recommence upon the standby guardian's receipt of a subsequent determination of the petitioner's or designator's incapacity, pursuant to G.S. 35A-1373(j), or upon the standby guardian's receipt of a subsequent determination of debilitation pursuant to G.S. 35A-1373(k), or upon the receipt of proof of death of the petitioner or designator, or upon the written consent of the petitioner or designator, pursuant to G.S. 35A-1373(l).

...

"§ 35A-1379. Appointment of guardian ad litem.

(a) The clerk may appoint a volunteer guardian ad litem, if available, to represent the best interests of the minor child or incompetent adult and, where appropriate, express the wishes of the minor ~~child.~~child or incompetent adult.

(b) The duties of the guardian ad litem, when appointed, shall be to make an investigation to determine the facts, the needs of the minor child or incompetent adult and the available resources within the family to meet those needs, and to protect and promote the best interests of the minor child or incompetent adult until formally relieved of the responsibility by the clerk.

(c) The court may order the guardian ad litem to conduct an investigation to determine the fitness of the intended standby guardian and alternate standby guardian, if any, to perform the duties of standby guardian.

...

"**§ 35A-1382. Termination.**

(a) Any standby guardianship created under this Article shall continue ~~until~~ until:

(1) If the ward is a minor child, the child reaches 18 years of age unless sooner terminated by order of the clerk who entered the order appointing the standby ~~guardian, by revocation pursuant to this Article, or by renunciation pursuant to this Article.~~ guardian.

(2) Revocation pursuant to this Article.

(3) Renunciation pursuant to this Article.

(b) A standby guardianship shall terminate, and the authority of the standby guardian designated pursuant to G.S. 35A-1374 or of a guardian of the person or general guardian appointed pursuant to this Article shall cease, upon the entry of an order of the district court granting custody of the minor child to any other person."

PART II. AUTHORIZE LIVING PROBATE PROCEDURE ALLOWING A PERSON TO PETITION THE PROBATE COURT FOR AN ORDER CONFIRMING THE VALIDITY OF THAT PERSON'S WILL

SECTION 2. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"Article 2B.

"Living Probate.

"**§ 28A-2B-1. Establishment before death that a will or codicil is valid.**

(a) Any individual who is a resident of North Carolina and who has executed a will or codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

(b) The petition shall be filed with the clerk of superior court and the matter shall proceed as a contested estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. At the hearing before the clerk of superior court, the petitioner shall produce the evidence necessary to establish that the will or codicil would be admitted to probate if the individual were deceased.

If an interested party contests the validity of the will or codicil, that person shall file a written challenge to the will or codicil before the hearing or make an objection to the validity of the will or codicil at the hearing. Upon the filing of a challenge or the raising of an issue contesting the validity of the will or codicil, the clerk shall transfer the cause to the superior court. The matter shall be heard as if it were a caveat proceeding, and the court shall make a determination as to the validity of the will or codicil and enter judgment accordingly.

If no interested party contests the validity of the will or codicil and if the clerk of superior court determines that the will or codicil would be admitted to probate if the individual were deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be valid.

"**§ 28A-2B-2. Venue.**

The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the individual whose will or codicil is the subject of the petition is domiciled.

"**§ 28A-2B-3. Contents of petition for will validity.**

(a) Petition. – A petition requesting an order declaring that an individual's will or codicil is valid shall be verified and shall contain the following information:

(1) A statement that the individual is a resident of North Carolina and specifying the county of the individual's residence.

(2) Allegations that the will was prepared and executed in accordance with North Carolina law and a statement that the will was executed with testamentary intent.

(3) A statement that the individual had testamentary capacity at the time the will was executed.

(4) A statement that the individual was free from undue influence and duress and executed the will in the exercise of the individual's free will.

(5) A statement identifying the individual, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall file the original will or codicil with the petition. If an order is entered declaring the will or codicil to be valid, the court shall affix a certificate of validity to the will or codicil.

"**§ 28A-2B-4. Declaration by court; bar to caveat.**

(a) If the court enters a judgment declaring a will or codicil to be valid, such judgment shall be binding upon all parties to the proceeding, including any persons represented in the proceeding pursuant to the provisions of G.S. 28A-2-7, and no party bound by the judgment shall have any further right to, and shall be barred from filing, a caveat to the will or codicil once that will or codicil is entered into probate following the individual's death.

(b) If the court declares a will or codicil to be valid, upon the motion of the petitioner or the court, the court may order that the will or codicil cannot be revoked and that no subsequent will or codicil will be valid unless the revocation or the subsequent will or codicil is declared valid in a proceeding under this Article. If the court enters such an order, any subsequent revocation of the will or codicil not declared valid in a proceeding under this Article shall be void and any subsequent will or codicil not declared valid in a proceeding under this Article shall be void and shall not be admitted to probate.

(c) If a will or codicil judicially declared valid is revoked or modified by a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in a proceeding under this Article in which the interested person was a party. If a will or codicil judicially declared valid is revoked by a method other than the execution of a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article in which the interested person was a party.

"**§ 28A-2B-5. Confidentiality.**

(a) Following the entry of a judgment, a party to the proceeding may move that the contents of the file be sealed and kept confidential, and upon such motion, the clerk shall seal the contents of the file from public inspection. The contents of the file shall not be released except by order of the clerk to any person other than:

(1) The petitioner named in the petition.

(2) The testator of the will.

(3) Interested persons who appeared in the proceedings, interested persons who have otherwise submitted to the jurisdiction of the court, and the attorneys and guardians of the interested persons.

(4) The attorney for the petitioner.

(5) The judge hearing or reviewing the matter.

For good cause shown, the court may order the records that are confidential under this section to be made available to a person who is not listed in this section.

"**§ 28A-2B-6. Costs and attorneys' fees.**

Costs, including reasonable attorneys' fees, incurred by a party in a proceeding under this Article shall be taxed against any party, or apportioned among the parties, in the discretion of the court, except that the court shall allow attorneys' fees for the attorneys of a party contesting the proceeding only if the court finds that the party had reasonable grounds for contesting the proceeding."

PART III. ENACT THE UNIFORM POWERS OF APPOINTMENT ACT

SECTION 3.(a) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 31D.**

"**North Carolina Uniform Powers of Appointment Act.**

"Article 1.

"General Provisions and Definitions.

"**§ 31D-1-101. Short title.**

This Chapter may be cited as the North Carolina Uniform Powers of Appointment Act.

"**§ 31D-1-102. Definitions.**

The following definitions apply in this Chapter:

(1) "Appointee" means a person to whom a power holder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

a. Expressly uses the words "any power" in exercising any power of appointment the power holder has.

b. Expressly uses the words "any property" in appointing any property over which the power holder has a power of appointment.

c. Disposes of all property subject to disposition by the power holder.

(4) "Donor" means a person who creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person that is not a permissible appointee.

(9) "Instrument" means a writing.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a power holder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a power holder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The power of

appointment may be general or nongeneral and presently exercisable or not presently exercisable. The term does not include a power of attorney.

(14) "Power holder" means a person in whom a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the power holder at the relevant time. The term:

a. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard relating to an individual's health, education, and support or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, or the passage of a specified time only after one of the following:

1. The occurrence of the specified event.
2. The satisfaction of the ascertainable standard.
3. The passage of the specified time.

b. Does not include a power exercisable only at the power holder's death.

(16) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(17) "Taker in default of appointment" means a person who takes all or part of the appointive property to the extent the power holder does not effectively exercise the power of appointment.

(18) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established in a judicial proceeding.

"**§ 31D-1-103. Governing law.**

(a) The creation, revocation, or amendment of the power of appointment is governed by either of the following:

(1) The law of the jurisdiction designated in the terms of the instrument creating the power.

(2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the donor's domicile at the relevant time, then the law of the jurisdiction of the donor's domicile at the relevant time.

(b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by either of the following:

(1) The law of the jurisdiction designated in the terms of the instrument creating the power.

(2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the power holder's domicile at the relevant time, then the law of the jurisdiction of the power holder's domicile at the relevant time.

"**§ 31D-1-104. Common law and principles of equity.**

The common law and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another statute of this State.

"Article 2.

"Creation, Revocation, and Amendment of Power of Appointment.

"**§ 31D-2-201. Creation of power of appointment.**

(a) A power of appointment is created only if all of the following apply:

(1) The instrument creating the power is valid under applicable law.
(2) Except as otherwise provided in subsection (b) of this section, the instrument creating the power transfers the appointive property.
(3) The terms of the instrument creating the power manifest the donor's intent to create in a power holder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subdivision (1) of subsection (a) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities or restraint on alienation, a power of appointment may be created in an unborn or unascertained power holder.

"**§ 31D-2-202. Nontransferability.**

A power holder may not transfer a power of appointment. If a power holder dies without exercising or releasing a power, the power lapses.

"**§ 31D-2-203. Presumption of unlimited authority.**

Subject to the provisions of G.S. 31D-2-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is all of the following:

(1) Presently exercisable.
(2) Exclusionary.
(3) Except as otherwise provided in G.S. 31D-2-204, general.

"**§ 31D-2-204. Exception to presumption of unlimited authority.**

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if both of the following apply:

(1) The power is exercisable only at the power holder's death.
(2) The permissible appointees of the power are a defined and limited class that does not include the power holder's estate, the power holder's creditors, or the creditors of the power holder's estate.

"**§ 31D-2-205. Rules of classification.**

(a) In this section, the term "adverse party" means a person with a substantial beneficial interest in property who would be affected adversely by a power holder's exercise or nonexercise of a power of appointment in favor of the power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.

(b) If a power holder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

"**§ 31D-2-206. Power to revoke or amend.**

A donor may revoke or amend a power of appointment only to the extent that either of the following apply:

(1) The instrument creating the power is revocable by the donor.
(2) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

"Article 3.

"Exercise of Power of Appointment.

"**§ 31D-3-301. Requisites for exercise of power of appointment.**

A power of appointment is exercised only to the extent that the appointment is a permissible exercise of the power, and only if all of the following apply:

(1) The instrument exercising the power is valid under applicable law.
(2) The terms of the instrument exercising the power manifest the power holder's intent to exercise the power.

(3) Subject to the provisions of G.S. 31D-3-304, the terms of the instrument exercising the power satisfy the requirements of exercise, if any, imposed by the donor.

"**§ 31D-3-302. Intent to exercise; determining intent from residuary clause.**

A residuary clause that does not contain a blanket-exercisable clause or specific-exercise clause manifests the power holder's intent to exercise a power of appointment only if all of the following apply:

(1) The terms of the instrument containing the residuary clause (including any valid codicil or amendment to the instrument) do not manifest a contrary intent.

(2) The power is a general power exercisable in favor of the power holder's estate.

(3) There is no gift-in-default clause or the clause is ineffective.

(4) The power holder did not release the power.

"**§ 31D-3-303. Intent to exercise after acquired power.**

Unless the terms of an instrument exercising a power of appointment manifest a contrary intent:

(1) If the power holder is not also the donor of the power, a blanket-exercise clause in the instrument extends to a power acquired by the power holder after executing the instrument containing the clause.

(2) If the power holder is also the donor of the power, the blanket-exercise clause extends to the power acquired by the power holder after executing the instrument only if there is no gift-in-default clause or the gift-in-default clause is ineffective. The blanket-exercise clause does not extend to the power if there is a gift-in-default clause that is effective.

"**§ 31D-3-304. Substantial compliance with donor-imposed formal requirement.**

A power holder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if both of the following apply:

(1) The power holder knows of and intends to exercise the power.

(2) The power holder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

"**§ 31D-3-305. Permissible appointment.**

(a) If a power holder of a general power of appointment permits appointment to the power holder or the power holder's estate, the power holder may make any appointment, including an appointment in trust or an appointment that creates a new power of appointment that the power holder could make in disposing of the power holder's own property.

(b) If a power holder of a general power of appointment permits appointment only to the creditors of the power holder or the creditors of the power holder's estate, or both, the power holder may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power holder of a nongeneral power may:

(1) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee.

(2) Create a general power in a permissible appointee.

(d) The terms of the instrument may permit the power holder of a nongeneral power to create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.

"**§ 31D-3-306. Appointment to deceased appointee.**

An appointment to a deceased appointee is ineffective.

"**§ 31D-3-307. Impermissible appointment.**

(a) An exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent that the appointment is a fraud on the power.

"**§ 31D-3-308. Selective allocation doctrine.**

If a power holder exercises a power of appointment in a disposition that also disposes of property the power holder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the power holder's intent.

"**§ 31D-3-309. Capture doctrine; disposition of ineffectively appointed property under general power.**

To the extent a power holder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) The gift-in-default clause controls the disposition of the ineffectively appointed property.

(2) If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property passes as follows:

a. To the power holder if the power holder is a permissible appointee and living.

b. If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

c. If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-310. Disposition of unappointed property under released or unexercised general power.**

(a) To the extent that a power holder releases a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent that the clause is ineffective, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

(b) To the extent a power holder fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property passes as follows:

(1) To the power holder if the power holder is a permissible appointee and living.

(2) If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

(3) If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-311. Disposition of unappointed property under released or unexercised nongeneral power.**

To the extent that a power holder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) If there is no gift-in-default clause, or to the extent that the clause is ineffective, the unappointed property:

a. Passes to the permissible appointees, if both of the following apply:

1. The permissible appointees are defined and limited.
2. The terms of the instrument creating the power do not manifest a contrary intent.

b. If there is no taker under sub-subdivision a. of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-312. Disposition of unappointed property if partial appointment to taker in default.**

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the power holder makes a valid partial appointment to a taker in default of appointment, then the taker in default of appointment may share fully in unappointed property.

"**§ 31D-3-313. Appointment to taker in default.**

If a power holder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, then the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

"**§ 31D-3-314. Power holder's authority to revoke or amend exercise.**

If the terms of an instrument creating a power of appointment do not prohibit the power holder from revoking or amending an exercise of the power, a power holder may revoke or amend the exercise of a power only if one of the following apply:

(1) The instrument creating the exercise of the power of appointment may be revoked or amended.

(2) The power holder reserves a power of revocation or amendment in the instrument exercising the power of appointment.

"Article 4.

"Disclaimer or Release; Contract to Appoint or Not to Appoint.

"**§ 31D-4-401. Disclaimer.**

Consistent with Chapter 31B of the General Statutes:

(1) A power holder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

"**§ 31D-4-402. Authority to release.**

A power holder may release a power of appointment, in whole or in part, except to the extent that the terms of the instrument creating the power prevent the release.

"**§ 31D-4-403. Method of release.**

A power holder of a releasable power of appointment may release the power in whole or in part as follows:

(1) By substantial compliance with a method provided in the terms of the instrument creating the power.

(2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by an instrument manifesting the power holder's intent by clear and convincing evidence.

"**§ 31D-4-404. Revocation or amendment of release.**

A power holder may revoke or amend a release of a power of appointment only to the extent that one of the following applies:

(1) The instrument of release is revocable by the power holder.

(2) The power holder reserves a power of revocation or amendment in the instrument of release.

"**§ 31D-4-405. Power to contract; presently exercisable power of appointment.**

A power holder of a presently exercisable power of appointment may contract:

(1) Not to exercise the power.
(2) To exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

"**§ 31D-4-406. Power to contract; power of appointment not presently exercisable.**

A power holder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the power holder both:

(1) Is also the donor of the power.
(2) Has reserved the power in a revocable trust.

"**§ 31D-4-407. Remedy for breach of contract to appoint or not to appoint.**

The remedy for a power holder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

"Article 5.

"Rights of Power Holder's Creditors in Appointive Property.

"**§ 31D-5-501. Creditor claim; general power created by power holder.**

(a) In this section, "power of appointment created by the power holder" includes a power of appointment created in a transfer by another person to the extent the power holder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the power holder is subject to a claim of a creditor of the power holder or of the power holder's estate to the extent provided in the Uniform Fraudulent Transfer Act, Chapter 39 of the General Statutes.

(c) Subject to subsection (b) of this section, appointive property subject to a general power of appointment created by the power holder is not subject to a claim of a creditor of the power holder or the power holder's estate to the extent the power holder irrevocably appointed the property in favor of a person other than the power holder or the power holder's estate.

(d) Subject to subsections (b) and (c) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the power holder is subject to a claim of a creditor of:

(1) The power holder, to the same extent as if the power holder owned the appointive property, if the power is presently exercisable.
(2) The power holder's estate, to the extent that the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the power holder's death.

"**§ 31D-5-502. Creditor claim; general power not created by power holder.**

(a) Except as otherwise provided in subsection (b) of this section, and only when and to the extent that the power holder exercises the power, appointive property subject to a general power of appointment created by a person other than the power holder is subject to a claim of a creditor of:

(1) The power holder, to the extent the power holder's property is insufficient, if the power is presently exercisable.
(2) The power holder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to the provisions of G.S. 31D-5-504(c), a power of appointment created by a person other than the power holder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, is treated for purposes of this Article as a nongeneral power.

"**§ 31D-5-503. Power to withdraw.**

(a) For purposes of this Article, a power to withdraw property from a trust is treated as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) The lapse, release, or waiver of a power to withdraw property from a trust shall not be deemed to be an exercise of the power.

"**§ 31D-5-504. Creditor claim; nongeneral power.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the power holder or the power holder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the power holder or the power holder's estate to the extent that the power holder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes.

(c) If the initial gift in default of appointment is to the power holder or the power holder's estate, a nongeneral power of appointment is treated for purposes of this Article as a general power.

"Article 6.

"Miscellaneous Provisions.

"**§ 31D-6-601. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 31D-6-602. Relation to Electronic Signatures in Global and National Commerce Act.**

This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101(c) of 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of 15 U.S.C. § 7003(b).

"**§ 31D-6-603. Application to existing relationships.**

(a) Except as otherwise provided in this Chapter, on or after the effective date of this Chapter:

(1) This Chapter applies to a power of appointment created before, on or after the effective date of this Chapter.

(2) This Chapter applies to a judicial proceeding concerning a power of appointment commenced on or after the effective date of this Chapter.

(3) This Chapter applies to a judicial proceeding concerning a power of appointment commenced before the effective date of this Chapter unless the court finds that application of a particular provision of this Chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this Chapter does not apply and the superseded law applies.

(4) A rule of construction or presumption provided in this Chapter applies to an instrument executed before the effective date of this Chapter unless there is a clear indication of a contrary intent in the terms of the instrument or unless application of that rule of construction or presumption would impair substantial rights of a party created under North Carolina law in effect prior to the effective date of this Chapter, in which case that rule of construction or presumption does not apply and the superseded rule of construction or presumption applies.

(5) Except as otherwise provided in subdivisions (1) through (4) of this subsection, an action taken before the effective date of this Chapter is not affected by this Chapter.

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this State other than this Chapter before the effective date of this Chapter, the law continues to apply to the right."

SECTION 3.(b) G.S. 31-4 and G.S. 31-43 are repealed.

PART IV. CLARIFY THE LAW REGARDING THE AUTHORITY OF A PERSONAL REPRESENTATIVE TO SELL OR TAKE ACTION WITH RESPECT TO REAL PROPERTY OF A DECEDENT AND AMEND THE ELECTIVE SHARE STATUTES REGARDING VALUATION OF PARTIAL OR CONTINGENT INTEREST PROPERTY.

SECTION 4.(a) G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

(1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. ~~The personal representative has the power to~~

(1a) To take possession, custody or control of the real property of the ~~decedent if the personal representative determines such possession, custody or control is in the best interest of the administration of the estate,~~ decedent, including the power to eject occupants of real ~~property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights.~~ property, under subsection (c) of this section or under G.S. 28A-13-3.1. If the personal representative determines that such possession, custody or control is not ~~in the best interest~~ necessary for purposes of ~~the~~ administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

...

(12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11

is ~~controlling.~~controlling unless the authority to mortgage, pledge, or otherwise encumber real property of the decedent to secure loans is granted to the personal representative under G.S. 28A-13-3.1.

...

(27) To ~~sell~~ sell, exchange, give options upon, partition, or lease real property of the estate in the manner prescribed by the provisions of G.S. 28A-13-3.1 or Article 17 of this ~~Chapter.~~Chapter, as applicable.

...

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Repealed by Session Laws 2012-18, s. 3.7, effective June 11, 2012.

(c) ~~Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) of this section to enforce those rights.~~ Unless the authority to take possession, custody, or control of real property is granted to the personal representative under G.S. 28A-13-3.1, prior to the personal representative exercising possession, custody or control over real property of the estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

...."

SECTION 4.(b) Article 13 of Chapter 28A of the General Statutes is amended by adding three new sections to read:

"**§ 28A-13-3.1. Power of personal representative to deal with real property without a court order.**

(a) A personal representative may, without court order, take possession, custody, and control of the decedent's real property and sell, exchange, give options upon, partition, lease, mortgage, or otherwise dispose of the property to the extent that the will expressly grants any of these powers to the personal representative by any of the following grants of power:

(1) Incorporation by reference of the powers in G.S. 32-27 when title to the real property is devised to the personal representative.

(2) An express power granted to the personal representative in the will when title to the real property is devised to the personal representative.

(3) An express power granted to the personal representative in the will when title to the real property is not devised to the personal representative, if (i) the decedent specifically indicates an intent that the power applies to real property and (ii) the personal representative determines that exercise of the power with respect to the real property complies with an express standard set forth by the decedent in the will or, if no such standard is set forth, is in the best interest of the estate. For purposes of this section, provisions in the will stating that the power applies to the real property "whether or not title is devised to the personal representative" or "even though title is not devised to the personal representative" or other similar language is sufficient to indicate such an intent.

(b) No party dealing with the personal representative is under a duty to (i) follow the proceeds or other consideration received by the personal representative from the disposition of the real property pursuant to the exercise of a power authorized by this section or (ii) determine whether the exercise of the power complies with an express standard set forth by the decedent in the will or, if no such standard is set forth, is in the best interest of the estate.

(c) Where the personal representative has the power to sell, lease, or mortgage real property pursuant to the power described in subdivision (3) of subsection (a) of this section, the validity of sales, leases, and mortgages of the real property by the devisees as to the personal representative shall be governed by the provisions of G.S. 28A-17-12.

"**§ 28A-13-3.2. Notice of exercise of power with respect to real property not devised to personal representative.**

(a) If in accordance with G.S. 28A-13-3.1(a)(3) a personal representative intends to exercise a power with respect to real property of the decedent not devised to the personal representative, the personal representative shall give written notice of the personal representative's intent to exercise that power to the devisees of the real property. The notice shall include a description of the real property that is the subject of the notice and a summary of the power the personal representative intends to exercise. The notice shall further include a statement that the devisees of the real property have 30 days from the service date of the notice to file a petition before the clerk under G.S. 28A-2-6 contesting the authority of the personal representative under G.S. 28A-13-3.1(a)(3) to exercise the power the personal representative intends to exercise."

(b) The notice required under this section shall be served on each devisee of the real property in accordance with the provisions of Rule 4(j) and Rule 4(j1) of the North Carolina Rules of Civil Procedure at least 30 days prior to the date on which the personal representative intends to exercise the power.

(c) If no devisee files a petition within 30 days after being served with the notice required under this section, the personal representative shall be entitled to exercise the power with respect to the real property, and the devisees of the real property shall have no further right to contest or challenge the power the personal representative intends to exercise. In such event, the personal representative shall file in the office of the clerk of court in the county where the estate is being administered, as well as in the office of the clerk of court in the county where the real property is located, a copy of the notice required by this section, together with an affidavit of the personal representative or the attorney for the personal representative to the effect that a copy of the notice was served on each devisee entitled to receive notice in accordance with this section and that no devisee filed an action within the requisite time period to determine whether the personal representative had the power with respect to the real property. Such notice and affidavit shall be filed prior to the date on which the personal representative intends to exercise the power.

(d) The affidavit filed pursuant to subsection (c) of this section may be relied upon by all persons as proof of all representations in the affidavit pursuant to subsection (c) of this section in absence of actual knowledge to the contrary.

(e) Notice otherwise required under this section need not be given to a devisee who consents in writing to the exercise of the power by the personal representative and files that written consent with the clerk of superior court in the county where the estate is being administered.

(f) For purposes of this section, the term "devisee" means all persons who have a vested interest in the real property over which the personal representative intends to exercise a power under G.S. 28A-13-3.1(a)(3) and who are in being at the time the personal representative gives notice pursuant to this section.

"**§ 28A-13-3.3. Reimbursement of devisees for payment of carrying costs.**

(a) If in accordance with G.S. 28A-13-3.1(a)(3) the representative sells or exchanges the decedent's real property not devised to the personal representative a devisee shall be entitled to reimbursement from the net proceeds arising from the sale or exchange of all carrying costs incurred by the devisee before the personal representative took possession, custody, and control of the real property.

(b) As used in this section, "carrying costs" are the amounts paid by the devisee for any of the following:

(1) Insurance, ad valorem taxes, or other governmental charges or assessments on the real property.

(2) Reasonable costs incurred to secure or to make necessary repairs to the real property.

(3) Payment of principal and interest on any indebtedness incurred before the decedent's death that is secured by a lien against the real property.

In no case shall carrying costs include betterments to the real property made by the devisee.

(c) Any devisee claiming reimbursement for carrying costs under this section shall present a claim to the personal representative in writing not later than 30 days after a valid deed executed pursuant to the sale or exchange is recorded and served on the devisee in accordance with the provisions of Rule 5 of the North Carolina Rules of Civil Procedure. If the personal representative determines the claim to be valid and reasonable, the claim shall be paid to the extent there are sufficient net proceeds. As used in this subsection, net proceeds are the gross proceeds arising from the sale or exchange of the real property reduced by expenses of the sale and all amounts paid to discharge any indebtedness secured by liens against the real property; except that any indebtedness secured by a lien against the property that is assumed by the purchaser shall not be deducted in determining the net proceeds arising from the sale or exchange. If the personal representative rejects the claim, then G.S. 28A-19-15 and G.S. 28A-19-16 apply."

SECTION 4.(c) G.S. 28A-15-1(c) reads as rewritten:

"(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, exchange, give options upon, partition, lease, ~~or mortgage~~ mortgage, or otherwise dispose of any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a ~~sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17.~~ sale, exchange, option, partition, lease, mortgage, or other disposition under G.S. 28A-13-3.1. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale, lease, or

mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 4.(d) G.S. 28A-15-2 reads as rewritten:

"**§ 28A-15-2. Title and possession of property.**

(a) Personal Property. – Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right of possession of personal property of the decedent is vested in the decedent's heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, the personal representative's possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real ~~Property.~~Property: Title. – The title to real property of a decedent ~~is vested in the decedent's heirs as of the time of the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.~~vests as follows:

(1) Subject to the provisions of subdivisions (2) and (3) of this subsection, title to real property of a decedent is vested in the decedent's heirs as of the time of the decedent's death.

(2) Subject to the provisions of subdivision (3) of this subsection and the provisions of G.S. 28A-17-12 and G.S. 31-39, title to real property of a decedent devised under a valid probated will becomes vested in the devisee and relates back to the decedent's death.

(3) If a decedent's will grants the personal representative a power under G.S. 28A-13-3.1 to transfer the title to the decedent's real property by sale, exchange, or partition, the transfer of the title pursuant to the exercise of that power divests the devisees or heirs of title to the real property and vests title in the grantee of the instrument transferring title. The devisees' or heirs' title is divested, and the title becomes vested in the grantee upon delivery of the instrument transferring title to the grantee. Any transfer of title to real property pursuant to Article 17 of this Chapter also divests the devisees or heirs of the title to that real property and vests title pursuant to the procedure in Article 17 of this Chapter.

(c) Real Property: Options, Leases, or Mortgages. – An option, lease, or mortgage of the decedent's real property by the personal representative under G.S. 28A-13-3.1 or under Article 17 of this Chapter encumbers the devisee's or heir's title upon the recordation of the applicable instrument creating or evidencing the option, lease, or mortgage according to law or upon the execution of the lease if the lease is not required to be recorded by G.S. 47-18 and is not recorded.

(d) Real Property: Docketed Judgments or Other Liens Against Heir or Devisee. – The interest of any heir or devisee and any person claiming through or against any heir or devisee, including a person holding a docketed judgment or other lien against an heir or devisee, is subject to the personal representative's right to sell, exchange, give options upon, partition, lease, mortgage, or otherwise dispose of the real property of the decedent, either under G.S. 28A-13-3.1 or under Article 17 of this Chapter; however, the proceeds from any such sale or other disposition shall be available to satisfy or reduce the amount of any valid judgment outstanding against an heir or devisee to the extent that the proceeds are distributable to that heir or devisee. Any sale, exchange, option, partition, lease, mortgage, or other disposition of the real property of the decedent, either under G.S. 28A-13-3.1 or under Article 17 of this

Chapter, shall be free and clear of the interest of any person claiming through or against an heir or devisee, and any interest in the decedent's real property acquired by the recipient of a sale, exchange, option, lease, mortgage, or other disposition shall not be subject to the interest of any person claiming through or against any heir or devisee."

SECTION 4.(e) G.S. 28A-22-1 reads as rewritten:

"**§ 28A-22-1. Scheme of distribution; testate and intestate estates.**

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized. Assets remaining from the sale of real property by the personal representative retain the character of real property for purposes of distribution to the devisee or heir, or persons having liens against the devisee or heir only."

SECTION 4.(f) G.S. 28A-23-3(b) reads as rewritten:

"(b) In determining the amount of the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property is sold to pay debts or devises, the commission shall be computed only on the proceeds actually applied in the payment of debts or devises. When real property is sold for other reasons under G.S. 28-13-3.1, the proceeds of the sale shall not be considered in computing the commission."

SECTION 4.1 G.S. 30-3.3A(e) reads as rewritten:

"(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are ~~limited.~~ limited, unless upon good cause shown by one of the parties, the clerk determines that the use of such tables or rate of return is not appropriate, then the value of such interests shall be determined under subsection (f) of this section. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the

surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

~~(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~"

PART V. AMEND THE LAW PROVIDING FOR CONVEYANCE OF TENANCY BY THE ENTIRETIES TO A TRUST

SECTION 5. G.S. 39-13.7 reads as rewritten:

"**§ 39-13.7. Tenancy by the entireties trusts in real property.**

(a) Any real property held by a husband and wife as a tenancy by the entireties and conveyed ~~to their joint revocable or irrevocable trust, or to their separate revocable or irrevocable trusts, shall have the same immunity from the claims of the spouses' separate creditors as would exist if the spouses had continued to hold the property as a tenancy by the entireties, so long as (i) the spouses remain husband and wife, (ii) the real property continues to be held in the trust or trusts, and (iii) the spouses remain the beneficial owners of the real property.~~to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held by the husband and wife as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the spouses had continued to hold the property as tenants by the entireties.

(b) The immunity from the claims of separate creditors provided by subsection (a) of this section shall apply as long as all of the following apply:

(1) The husband and wife remain married.

(2) The real property continues to be held in the trust or trusts as provided in subsection (a) of this section.

(3) Both husband and wife are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the real property is conveyed in equal shares to their separate trusts.

(c) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (a) of this section immediately prior to the individual's death shall continue to have immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife continued to hold the property conveyed in trust as tenants by the entirety.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both the husband and wife may waive the immunity from the claims of separate creditors provided under this section as to any specific creditor or any specifically described property including all separate creditors of a husband and wife or all former tenancy by the entirety property conveyed to the trustee.

(e) For purposes of this section:

(1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary conversion of the real property.

(2) The reference to a "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the settlors, and the reference to "separate trusts" means revocable or irrevocable trusts of which the husband is the settlor of one trust and the wife is the settlor of the other trust.

(3) The husband and wife are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other persons are also current or future beneficiaries of the trust."

PART VI. UNIFORM TRUST CODE; AMEND THE STATUTE OF LIMITATIONS AGAINST A TRUSTEE

SECTION 6. G.S. 36C-10-1005(b) reads as rewritten:

"(b) Except as provided in subsection (a) of this section, Chapter 1 of the General Statutes governs the limitations of actions on judicial proceedings involving trusts. However, for purposes of those limitations both of the following apply:

(1) On the date that any limitation starts running as to a person with respect to a claim held by the person involving a trust, the limitation also shall start running as to all other persons the person would be entitled to represent under Article 3 of this Chapter, whether or not the person consented to serve as a representative.

(2) G.S. 1-17 of the General Statutes shall not apply to toll the running of the limitation as to the persons described in subdivision (1) of this subsection. Those persons shall be treated as if they were under no disability on the date that the limitation starts running."

PART VII. UNIFORM TRUST CODE; CLARIFY APPLICABILITY OF DEFAULT AND MANDATORY RULES GOVERNING POWER HOLDERS

SECTION 7. G.S. 36C-1-105 reads as rewritten:

"**§ 36C-1-105. Default and mandatory rules.**

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a ~~trustee,~~ trustee and a power holder under Article 8A of this Chapter, relations among ~~trustees,~~ trustees and those power holders, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust.

(2) The duty of a trustee or a power holder under Article 8A of this Chapter to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries.~~beneficiaries, except as otherwise provided in subsection (c) of this section.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter.

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008.~~G.S. 36C-10-1008, except as otherwise provided in subsection (c) of this section.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary.

(8) Periods of limitation for commencing a judicial proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32).

(c) The provisions of subdivisions (2) and (6) of subsection (b) of this section shall not apply to a power holder described in Article 8A of this Chapter with respect to powers conferred upon the power holder in a nonfiduciary capacity under G.S. 36C-8A-3(a) or under the terms of the trust."

PART VIII. UNIFORM TRUST CODE; AMEND THE LAW GOVERNING DECANTING FROM A TRADITIONAL TRUST TO A SUPPLEMENTAL NEEDS TRUST

SECTION 8. G.S. 36C-8-816.1 reads as rewritten:

"**§ 36C-8-816.1. Trustee's special power to appoint to a second trust.**

(a) For purposes of this section, the following definitions apply:

(1) Current beneficiary. – A person who is a permissible distributee of trust income or principal.

(2) Original trust. – A trust established under an irrevocable trust instrument pursuant to the terms of which a trustee has a discretionary power to distribute principal or income of the trust to or for the benefit of one or more current beneficiaries of the trust.

(3) Second trust. – A trust established under an irrevocable trust instrument, the current beneficiaries of which are one or more of the current beneficiaries of the original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument.

(b) A trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust. The second trust may have a duration that is longer than the duration of the first trust.

(c) The terms of the second trust shall be subject to all of the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the original trust.

(2) A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

(3) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original trust if that interest has come into effect with respect to the beneficiary.

(4) If any contribution to the original trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if

included in the original trust, would have prevented the original trust from qualifying for the deduction or that would have reduced the amount of the deduction.

(5) If contributions to the original trust have been excluded from the gift tax by the application of section 2503(b) and section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust.

(6) If any beneficiary of the original trust has a power of withdrawal over trust property, then either:

a. The terms of the second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or

b. Sufficient trust property must remain in the original trust to satisfy the outstanding power of withdrawal.

(7) If a trustee of an original trust exercises a power to distribute principal or income that is subject to an ascertainable standard by appointing property to a second trust, then the power to distribute income or principal in the second trust must be subject to the same ascertainable standard as in the original trust and must be exercisable in favor of the same current beneficiaries to whom such distribution could be made in the original trust.

(8) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed.

(9) The terms of the second trust shall not contain any provisions that would jeopardize (i) the qualification of a transfer as a direct skip under section 2642(c) of the Code, (ii) if the first trust owns subchapter S Corporation stock, the election to treat a corporation as a subchapter S Corporation under section 1362 of the Code, (iii) if the first trust owns an interest in property subject to the minimum distribution rules of section 401(a)(9) of the Code, a favorable distribution period by shortening the minimum distribution period, or (iv) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes. In this subdivision, "tax benefit" means a federal or State tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for the benefit from having the settlor considered the owner under sections 671 through 679 of the Code. Subject to clause (ii) above, the second trust may be a trust as to which the settlor is not considered the owner under sections 671 through 679 of the Code even if the settlor is considered the owner of the first trust, and the second trust may be a trust as to which the settlor of the first trust is considered the owner under sections 671 through 679 of the Code, even if the settlor is not considered the owner of the first trust.

(10) Notwithstanding any other provision of this section, but subject to the limitations of subdivisions (1), (2), (4), (5), and (9) of this subsection, a trustee may exercise the power to appoint principal and income under subsection (b) of this section with respect to a disabled beneficiary's interest in the original trust to a second trust that is a supplemental needs trust that does not have (i) an ascertainable standard (or has a different ascertainable standard); (ii) a fixed income, annuity, or unitrust interest in the assets of the original trust; or (iii) a right of withdrawal, if the trustee determines that it would be in the best interest of the disabled beneficiary. For purposes of this subsection, the following apply:

a. A "supplemental needs trust" means a trust that is a discretionary trust under G.S. 36C-5-504 and relative to the original trust contains either lesser or greater restrictions on the trustee's power to distribute income or principal, and which the trustee believes would, if implemented, allow the disabled beneficiary to receive greater governmental benefits than the disabled beneficiary would receive if the power to appoint principal and income had not been exercised.

b. "Governmental benefits" means medical assistance, financial aid, or services from any local, State, or federal agency or department.

c. A "disabled beneficiary" means a current beneficiary of the original trust who the trustee determines has a condition that substantially impairs the beneficiary's ability to provide for his or her own support, care, or custody whether or not the beneficiary has been adjudicated a "disabled person" by any government agency or department.

d. The second supplemental needs trust shall not be liable to pay or reimburse the State or any government or public agency for medical assistance, financial aid, or services provided to the disabled beneficiary except as provided in the second supplemental needs trust.

...."

PART IX. UNIFORM TRUST CODE; PROVIDE PERMISSIBLE BENEFICIARIES FOR CERTAIN IRREVOCABLE INTER VIVOS TRUSTS

SECTION 9. G.S. 36C-5-505(c) reads as rewritten:

"(c) Subject to the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, for purposes of this ~~section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:~~section, property contributed to the following trusts is not considered to have been contributed by the settlor and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) If the settlor is a beneficiary after the death of the settlor's spouse:

a. An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.

~~(2)~~b. An irrevocable intervivos marital trust that is treated as a qualified terminable interest ~~property~~ trust under section 2523(f) of the Internal Revenue Code.

~~(3)~~c. An irrevocable intervivos trust of which the settlor's spouse is ~~the sole~~ a beneficiary during the spouse's lifetime ~~of the settlor's spouse~~ but which does not qualify for the federal gift tax marital

~~deduction.~~deduction, and during the lifetime of the settlor's spouse (i) the settlor's spouse is the only beneficiary or (ii) the settlor's spouse and the settlor's issue are the only beneficiaries.

~~(4)~~d. Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in ~~subdivision (1), (2), or (3) of this subsection.~~sub-subdivisions a., b., c., and d. of this subdivision.

For purposes of this ~~subsection,~~ subdivision, notwithstanding the provisions of G.S. 36C-1-103(3), the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of ~~appointment, and~~ appointment.

(2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the person's spouse, regardless of whether or when that person was a settlor of an irrevocable inter vivos trust for the benefit of the person's spouse.

For purposes of this subsection, the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable intervivos trust was created, notwithstanding a subsequent dissolution of the marriage."

PART X. UNIFORM TRUST CODE; CLARIFY STANDARD OF LIABILITY OF DIRECTED COTRUSTEE

SECTION 10. G.S. 36C-7-703 reads as rewritten:

"**§ 36C-7-703. Cotrustees.**

...

~~(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the following apply:~~

~~(1) The duty and liability of the excluded trustee is as follows:~~

~~a. If the terms of a trust confer upon the cotrustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the directed cotrustee.~~

~~b. If the terms of the trust confer upon the cotrustee any other power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the cotrustee.~~

~~c. The excluded trustee has no duty to monitor the conduct of the cotrustee, provide advice to the cotrustee, or consult with or request directions from the cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the cotrustee's authority.~~

~~(2) Except as otherwise provided in sub-subdivision a. of subdivision (1) of this subsection, the cotrustee holding the power to take certain actions with~~

~~respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office and has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.~~

(f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

(g) ~~A trustee~~ Except as provided in subsection (g1) and (h) of this section, each cotrustee shall exercise reasonable care ~~in connection with matters for which the trustee is given authority under the terms of a trust~~ to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust:

(1) The excluded cotrustee is not liable, directly or indirectly, for the action taken by the cotrustee holding the exclusive power.

(2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with or request directions from that cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by that cotrustee.

(3) The cotrustee holding the exclusive power to take certain actions with respect to the trust:

a. Shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office.

b. Has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.

(h) ~~Notwithstanding subsection (g) of this section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:~~If the terms of the trust confer the power to take actions on both or all cotrustees but under the terms of the trust or this Chapter the decision of one or more of the cotrustees controls in the event of a disagreement, then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious breach of trust, a cotrustee who dissents from the action taken by one or more of the other cotrustees is not liable for the action if either of the following apply:

(1) The ~~trustee~~ dissenting cotrustee does not join in ~~an action approved by a majority of the other trustees.~~the action.

(2) The dissenting ~~trustee~~ cotrustee joins in ~~an~~ the action necessary to carry out the decision of the ~~majority of the trustees and notifies in writing the~~ other cotrustee or cotrustees and gives notice of the dissent to the other cotrustee or cotrustees at or before joining in the ~~action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the~~ action.

...."

PART XI. COMMENTS AND EFFECTIVE DATES

SECTION 11.(a) The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Commentary to the Uniform Powers of Appointment Act and of the Official Commentary to the Uniform Trust Code and all explanatory comments of the drafters of those acts, as the Revisor may deem appropriate.

SECTION 11.(b) Section 4 of this act becomes effective January 1, 2016, and applies to estates of persons dying on or after that date. Sections 6, 7, 8, 9, and 10 of this act become effective October 1, 2015, and apply to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date, unless the court finds that application of a particular provision of these sections would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2015, applies. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/2/15

S. B. No. 336 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S336-CSRN-31

(Rep.) Sen.) Glazier

1 moves to amend the bill on page 7, line s 42-43

2 ( ) WHICH CHANGES THE TITLE

3 by inserting the following between those lines:

4 "(c) Failure to use the procedure authorized by

5 this Article shall not have any ~~effect~~ evidentiary or procedural effect on any future

6 probate proceedings."

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 336:
Estate Planning/Uniform Trust Code

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	June 2, 2015
Introduced by:	Sens. Hartsell, Barringer	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition S336-CSRN-31		Committee Counsel

SUMMARY: ***Senate Bill 336 is a recommendation of the North Carolina Bar Association that amends the law governing estate planning and fiduciaries, amends the Uniform Trust Code, and establishes the Uniform Power of Appointment Act. The Proposed Committee Substitute (PCS) adds Sections 4.(a) through 4.(f) addressing the authority of a personal representative to sell or take action with respect to real property of a decedent.***

BILL ANALYSIS:

Part I. Standby and Successor Guardian for Incompetent Adults-

Current law allows the appointment of a standby guardian for a minor child during a parent's period of incapacity or debilitation upon petition to the clerk or by written designation.

Section 1 amends the standby guardian statute to provide for the appointment of standby guardians for incompetent adults. It creates a new definition for "incompetent adult" and provides that a proceeding for a standby guardian for an incompetent adult commences by filing a petition with the clerk of superior court in the county where the guardianship is docketed. It provides that for incompetent adults, a copy of the petition, date, and place of hearing be sent to those who would be required to get notice if the petition was filed as a motion in the cause under G.S. 35A-1207 and that service of process be made pursuant to Rule 5 of the Rules of Civil Procedure unless the clerk directs otherwise. This Part also makes similar changes to the statutes dealing with designating a standby guardian by written designation and makes other conforming changes.

This section is effective when it becomes law.

Part II. Authorize Living Probate Procedure Allowing a Person to Petition the Probate Court for an Order Confirming the Validity of That Person's Will

Under current law, a will's validity can only be determined after the testator's death.

Section 2 would allow an individual to seek a court order confirming the validity of a will or codicil.

The petition must be filed with the clerk of superior court in the county in which the individual whose will or codicil is the subject of the petition is domiciled. The petitioner must present evidence to establish that the will or codicil would be probated if the individual was deceased. If an interested party contests the will or codicil, that person must file a written challenge before the hearing or must object at the hearing. Upon such a challenge, the clerk must transfer the matter to superior court. If no interested party challenges the will or codicil and the clerk determines that it would be admitted to probate, then the clerk must enter an order adjudging the will or codicil to be valid.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The petitioner must file the original will or codicil with the petition. The must be verified and must contain:

- A statement that the person is a resident of North Carolina and specifying the county of residence.
- Allegations that the will was prepared and executed in accordance with State law and a statement that the will was executed with testamentary intent.
- A statement that the individual had testamentary capacity at the time the will was executed.
- A statement that the individual was free from undue influence and executed the will with free will.
- A statement identifying the individual, and all persons believed by the petitioner to have an interest in the proceeding, including any minor's appropriate representative.

If the court determines a will to be valid, that judgment is binding on all parties to the proceeding, and a party is barred from filing a caveat to the will once it is entered into probate after the individual's death. Also, upon motion by the individual or the court, the court may order that the will or codicil not be revoked and no subsequent will or codicil will be valid unless the revocation or subsequent will is declared valid under a proceeding.

If a will or codicil judicially declared valid is revoked or modified by a subsequent will or codicil, nothing shall bar an interested person from contesting the validity of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in a proceeding under this Article and the interested person was a party.

If a will or codicil judicially declared valid is revoked by a method other than the execution of a subsequent will or codicil, nothing shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article and the interested person was a party.

Upon a motion of the party, the clerk must seal the contents of the file and keep the contents confidential. The contents must not be released, except by a court order, to anyone other than those individuals named in G.S. 28A-2-B-5. However, for good cause shown, the court may order that the confidential records be made available to any person not listed in this section.

This section is effective when it becomes law.

Part III. Enact Uniform Power of Appointment Act-

Section 3 enacts the Uniform Powers of Appointment Act in Chapter 31D of the General Statutes.

Article 1 of Chapter 31D creates definitions and specifies three roles. A "donor" is a person who creates a power of appointment. A "powerholder" is a person in whom a donor creates a power of appointment. A "permissible appointee" is a person in whose favor a powerholder may exercise a power of appointment. A "power of appointment" is "a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The power of appointment may be general or nongeneral and presently exercisable or not presently exercisable. The term does not include a power of attorney."

Article 2 of Chapter 31D sets out the creation, revocation, and amendment of powers of appointment. G.S. 31D-2-201 provides that the power of appointment must be in a valid instrument that transfers the

appointive property and must show the donor's intent to create a power to appoint property. A power is nontransferable. Article 2 also addresses presumptions as to the extent of the power of appointment if the terms of the power are not clear. The power of appointment may be revoked or amended if either of the following apply: (1) the instrument creating the power is revocable or (2) the donor reserves a power of revocation or amendment.

Article 3 addresses the exercise of the power of appointment. G.S. 31D-3-301 provides that a power of appointment is exercised only if the instrument exercising the power manifests the powerholder's intent to exercise the power. G.S. 31D-3-302 provides that the residuary clause of a will that does not contain an exercise clause shows the intent to exercise a power of appointment only if (1) the terms do not manifest a contrary intent, (2) the power is exercisable in favor of the powerholder's estate, (3) there is a no gift-in-default clause or the clause is ineffective, and (4) the powerholder did not release the power. Other sections govern appointments to deceased or impermissible appointees, disposition of unappointed property, and a powerholder's ability to revoke or amend an exercise of power.

In Article 4, G.S. 31D-4-401 provides that North Carolina's law on disclaimers and reunciations applies to powerholders and permissible appointees. A powerholder may release a power unless prohibited by the donor. Other provisions address releasing powers of appointment, rules for revoking or amending a release, and contracts to exercise or not exercise a power of appointment.

Articls 5 and 6 govern creditor claims and include other miscellaneous provisions. This section is effective when it becomes law.

Part IV. Authority of Personal Representative to Take Action With Respect to Real Property of Decedent and Amend Elective Share Statutes Regarding Valuation of Partial or Contingent Interest Property

Section 4.(a) provides a personal representative or fiduciary's powers to take possession, custody, or control of a decedent's real property is subject to the provisions of G.S. 28A-13-3(c) or G.S. 28A-13-3.1. It also provides that if the personal representative determines that such custody, possession, or control of the real property is not necessary (standard was, not in the best interest) to administer the estate, then the real property may be left with or surrendered to the heir or devisee presumptively entitled to the real property.

It amends G.S. 28A-13-3(c) to require the personal representative to petition the clerk of court for an order authorizing possession, custody, or control of the real property, unless the authority to take possession, custody, or control of real property is granted to the personal representative under new G.S. 28A-13-3.1.

Section 4.(b) creates the following new statutes, G.S. 28A-13-3.1 (which would allow a personal representative to deal with real property without a court order under certain circumstances), G.S. 28A-13-3.2 (requiring a personal representative to give written notice of his or her intent exercise a power related to real estate that was not devised to the personal representative), and G.S. 28A-13-3.3 (which would allow a devisee to receive reimbursement for carrying costs incurred before the personal representative took control of the real property when the personal representative sells real property not devised to the personal representative).

Section 4.(c) provides that a personal representative is not required to institute a special proceeding for the disposition of real property under G.S. 28A-13-3.1.

Section 4.(d) provides that if a decedent's will gives the personal representative the power to transfer the real property by sale, exchange, or partition, the transfer of the title vests title in the grantee of the instrument. It also provides that an option, lease, or mortgage encumbers the devisee or heir's title upon recordation of the instrument.

Section 4.(e) provides that assets remaining from the sale of real property by the personal representative retain the character of real property for purposes of distribution to the devisee or heir, or persons having liens against the devisee or heir only.

Section 4.(f) provides that when real property is sold for reasons other than to pay debts or devisees, the proceeds from the sale are not to be considered in computing the commission for the personal representative.

Section 4 is effective January 1, 2016, and applies to estates of persons dying on or after that date.

Section 4.1 amends the valuation of life estates and contingent interests in property under the elective share statute to reflect the principle that the value used should be the fair market value. (Effective when it becomes law).

Part V. Amend the Law Providing for a Conveyance of Tenancy by the Entireties to a Trust

Section 5 provides that any real property held by a husband and wife as a tenancy by the entireties and conveyed to a joint trust or in equal shares to two separate trusts is no longer held by the husband and wife as tenants by the entirety and must be disposed of by the terms of the trust or trusts. The real property has the same immunity from the claims of the separate creditors as would exist if the spouses had continued to hold the property as tenants by the entireties if all of the following apply:

- The husband and wife remain married.
- The real property continues to be held in the trust or trusts.
- The husband and wife are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the real property is conveyed in equal shares to their separate trusts.

The trustee may waive immunity if acting under the express provisions of the trust or with the written consent of the husband and wife.

This section is effective when it becomes law.

Part VI. Uniform Trust Code: Amend Statute of Limitations Against a Trustee

Under current law, persons under 18 years of age (or insane or incompetent) are under a disability for purposes of statutes of limitations. When a person turns 18 or the disability is removed, the person may commence an action within three years after the removal of the disability and at no time thereafter.

Section 6 provides that for purposes of statutes of limitations against a trustee, both of the following apply:

- On the date that any limitation starts running as to a person with respect to a claim held by the person involving a trust, the limitation also shall start running as to all other persons the person would be entitled to represent whether or not the person consented to serve as a representative.

- Provisions allowing the statute of limitations for people under a disability would not apply. These persons are to be treated as if they were under no disability on the date that the limitation starts running.

This section becomes effective on October 1, 2015, and applies to trusts created before, on, or after that date.

Part VII. Uniform Trust Code: Clarify Applicability of Default and Mandatory Rules Governing Power Holders

Section 7 amends G.S. 36C-1-105 to specifically refer to a power holder, but provides that the requirement that a power holder act in good faith and the effect of an exculpatory term do not apply to a power holder for powers given to a power holder in a non-fiduciary capacity. This section becomes effective on October 1, 2015, and applies to trusts created before, on, or after that date.

Part VIII. Uniform Trust Code: Amend the Law Governing Decanting from a Traditional Trust to a Supplemental Needs Trust

Section 8 amends G.S. 36C-8-816.1 regarding a trustee's power to appoint a second trust. It clarifies that a second trust may have a duration that is longer than the duration of the first trust. This section creates new definitions and ensures that any trust decanted under North Carolina law does not inadvertently jeopardize an existing tax election or benefit. This section becomes effective on October 1, 2015, and applies to trusts created before, on, or after that date.

Part IX. Uniform Trust Code: Provide Permissible Beneficiaries for Certain Irrevocable Intervivos Trusts-

Section 9 makes organizational and clarifying changes to G.S. 36C-5-505 regarding permissible beneficiaries for certain irrevocable intervivos trusts. This section becomes effective on October 1, 2015, and applies to trusts created before, on, or after that date.

Part X. Uniform Trust Code: Clarify Standard of Liability of Directed Cotrustee

Section 10 amends the statutes addressing the standard of liability for cotrustees. It provides that generally, each cotrustee must exercise reasonable care to avoid enabling a cotrustee to commit a serious breach of trust and to compel a cotrustee to redress a breach of trust. However, if the terms of the trust give a cotrustee, to the exclusion of another cotrustee, the power to take certain actions:

- The excluded cotrustee is not liable for the action taken by the cotrustee holding the power.
- The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with that cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by that cotrustee.

The cotrustee holding exclusive power is liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office, and the cotrustee must account to the beneficiaries and defend any action brought by the beneficiaries. This section becomes effective on October 1, 2015, and applies to trusts created before, on, or after that date.

Part XI. Comments And Effective Dates

Section 11.(a) gives the Revisor of Statutes authority to print relevant portions of the Official Commentary to the Uniform Powers of Appointment Act and the Uniform Trust Code.

Section 11.(b) sets out the effective date which is noted in each corresponding section of this summary. Changes to the Uniform Trust Code, which are set out in Sections 6-10 of the bill, apply to (1) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (2) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date, unless the court funds that this would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties (in which case the law as it existed on September 30, 2015, applies).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 3

SENATE BILL 336
Judiciary I Committee Substitute Adopted 4/21/15
Third Edition Engrossed 4/27/15

Short Title: Estate Planning/Uniform Trust Code. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING ESTATE PLANNING AND FIDUCIARIES, TO AMEND THE UNIFORM TRUST CODE, AND TO ESTABLISH A UNIFORM POWERS OF APPOINTMENT ACT.

The General Assembly of North Carolina enacts:

PART I. AMEND STANDBY GUARDIAN STATUTE TO PROVIDE FOR APPOINTMENT OF STANDBY AND SUCCESSOR GUARDIANS FOR INCOMPETENT ADULTS

SECTION 1. Subchapter IV of Chapter 35A of the General Statutes reads as rewritten:

"**SUBCHAPTER IV. STANDBY ~~GUARDIANS FOR MINOR CHILDREN.~~GUARDIANS.**

"Article 21.

"Standby Guardianship.

"**§ 35A-1370. Definitions.**

For purposes of this Article:

(1) "Alternate standby guardian" means a person identified in either a petition or designation to become the guardian of the person or, when appropriate, the general guardian of a minor ~~child,~~ child or incompetent adult, pursuant to G.S. 35A-1373 or to G.S. 35A-1374, when the person identified as the standby guardian and the designator or petitioner has identified an alternate standby guardian.

(2) "Attending physician" means the physician who has primary responsibility for the treatment and care of the parent or legal guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this section. When no physician has this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to this Article.

(3) "Debilitation" means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one's minor ~~child.~~child or to satisfy his or her duties as guardian of the person or as general guardian of an incompetent adult.

(4) "Designation" means a written document voluntarily executed by the designator pursuant to this Article.

(5) "Designator" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological or adoptive parent, the guardian of the person, or the general guardian of a minor ~~child.~~ child, or (ii) the guardian of the person or the general guardian of an incompetent adult. A designation under this Article may be made on behalf of a designator by the guardian of the person or the general guardian of the designator.

(6) "Determination of debilitation" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the debilitation of the petitioner or designator.

(7) "Determination of incapacity" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the incapacity of the petitioner or designator.

(8) "Incapacity" means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one's minor ~~child,~~ child or of an incompetent adult, and a consequent inability to make these decisions.

(8a) "Incompetent adult" means an adult or emancipated minor who is subject to a guardianship of the person or a general guardianship.

(9) "Minor child" means an unemancipated child or children under the age of 18 years.

(10) "Petitioner" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological parent, the adoptive parent, the guardian of the person, or the general guardian of a minor ~~child.~~ child, or (ii) the guardian of the person or the general guardian of an incompetent adult. A proceeding under this Article may be initiated and pursued on behalf of a petitioner by the guardian of the person, the general guardian of the petitioner, or by a person appointed by the clerk of superior court pursuant to Rule 17 of the Rules of Civil Procedure as guardian ad litem for the purpose of initiating and pursuing a proceeding under this Article on behalf of a petitioner.

(11) "Standby guardian" means a person appointed pursuant to G.S. 35A-1373 or designated pursuant to G.S. 35A-1374 to become the guardian of the person or, when appropriate, the general guardian of a minor child or incompetent adult upon the death of a petitioner or designator, upon a determination of debilitation or incapacity of a petitioner or designator, or with the consent of a petitioner or designator.

(12) "Triggering event" means an event stated in the designation executed or order entered under this Article which empowers the standby guardian, or the alternate standby guardian, if one is identified and the standby guardian is unwilling or unable to serve, to assume the duties of the office, which event may be the death of a petitioner or designator, incapacity of a petitioner or designator, debilitation of a petitioner or designator with the petitioner's or designator's consent, or the consent of the petitioner or designator, whichever occurs first.

...

"§ 35A-1373. Appointment by petition of standby guardian; petition, notice, hearing, order.

(a) A petitioner shall commence a proceeding under this Article for the appointment of a standby guardian (i) in the case of a minor ~~child~~ child, by filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of ~~filing.~~ filing or (ii) in the case of an incompetent adult, by filing a petition with the clerk of superior court in the county where the guardianship is docketed. A petition filed by a guardian of the person or a general guardian of the minor child who was appointed under this Chapter shall be treated as a motion in the cause in the original guardianship, but the provisions of this section shall otherwise apply.

(b) A petition for the judicial appointment of a standby guardian ~~of a minor child~~ shall:

(1) Identify the petitioner, the minor ~~child,~~ child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any;

(2) State that the authority of the standby guardian is to become effective upon the death of the petitioner, upon the incapacity of the petitioner, upon the debilitation of the petitioner with the consent of the petitioner, or upon the petitioner's signing of a written consent stating that the standby guardian's authority is in effect, whichever occurs first;

(3) State that the petitioner suffers from a progressively chronic illness or an irreversible fatal illness, and the basis for such a statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question;

(4) State whether there are any lawsuits, in this or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the petitioner in front of a notary public or another person authorized to administer oaths.

(c) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a ~~petitioner,~~ petitioner (if the petition concerns a minor child) or on such as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor ~~child. Service~~ child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(d) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(e) The petitioner's appearance at the hearing shall not be required if the petitioner is medically unable to appear, unless the clerk determines that the petitioner is able with reasonable accommodation to appear and that the interests of justice require that the petitioner be present at the hearing.

(f) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this Article for the appointment of a standby guardian have been satisfied. If the clerk finds that the petitioner suffers from a progressive chronic illness or an irreversible fatal illness, that the best interests of the minor child or incompetent adult will be promoted by the appointment of a standby guardian of the person or general guardian, and that the standby guardian and the alternate standby guardian, if any, are fit to serve as guardian of the person or general guardian of the minor ~~child,~~ child or incompetent adult, the clerk shall enter an order appointing the standby guardian named in the petition as standby guardian of the person or standby general guardian of the minor child or incompetent adult and shall issue letters of appointment to the standby guardian. The order may also appoint the alternate standby guardian named in the petition as the alternate standby guardian of the person or alternate general guardian of the minor child or incompetent adult in the event that the person named as standby guardian is unwilling or unable to serve as standby guardian and shall provide that, upon a showing of that unwillingness or inability, letters of appointment will be issued to the alternate standby guardian.

...

"§ 35A-1374. Appointment by written designation; form.

(a) A designator may designate a standby guardian by means of a written designation, signed by the designator in the presence of two witnesses at least 18 years of age, other than the standby guardian or alternate standby guardian, who shall also sign the writing. Another person may sign the written designation on the behalf of and at the direction of the designator if the designator is physically unable to do so, provided that the designation is signed in the presence of the designator and the two witnesses.

(b) A designation of a standby guardian shall identify the designator, the minor ~~child,~~ child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any, and shall indicate that the designator intends for the standby guardian or the alternate standby guardian to become the ~~minor child's~~ guardian of the minor child or incompetent adult in the event that the designator either:

(1) Becomes incapacitated;

(2) Becomes debilitated and consents to the commencement of the standby guardian's authority;

(3) Dies prior to the commencement of a judicial proceeding to appoint a guardian of the person or general guardian of a minor child; or

(4) Consents to the commencement of the standby guardian's authority.

(c) The authority of the standby guardian under a designation shall commence upon the same conditions as set forth in G.S. 35A-1373(i) through ~~(l).~~(l), as if the order referred to therein was a written description under this section.

(d) The standby guardian or, if the standby guardian is unable or unwilling to serve, the alternate standby guardian shall commence a proceeding under this Article to be appointed guardian of the person or general guardian of the minor child ~~by~~ or incompetent adult by, in the case of a minor child, filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of ~~filing.~~ filing or, in the case of an incompetent adult, filing a petition with the clerk of superior court in the county where the guardianship is docketed. The petition shall be filed after receipt of either:

(1) A copy of a determination of incapacity made pursuant to G.S. 35A-1375;

(2) A copy of a determination of debilitation made pursuant to G.S. 35A-1375 and a copy of the designator's written consent to such commencement;

(3) A copy of the designator's written consent to such commencement, made pursuant to G.S. 35A-1373(l); or

(4) Proof of death of the designator, such as a copy of a death certificate or a funeral home receipt.

(e) The standby guardian shall file a petition pursuant to subsection (d) of this section within 90 days of the date of the commencement of the standby guardian's authority under this section, or the standby guardian's authority shall lapse after the expiration of those 90 days, to recommence only upon filing of the petition.

(f) A petition filed pursuant to subsection (d) of this section shall:

(1) Append the written designation of such person as standby guardian; and

(2) Append a copy of either (i) the determination of incapacity of the designator; (ii) the determination of debilitation of the designator and the written consent of the designator; (iii) the designator's consent; or (iv) proof of death of the designator, such as a copy of a death certificate or a funeral home receipt; and

(3) If the petition is by a person designated as an alternate standby guardian, state that the person designated as the standby guardian is unwilling or unable to act as standby guardian, and the basis for that statement; and

(4) State whether there are any lawsuits, in this State or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the standby guardian or alternate standby guardian in front of a notary public or another person authorized to administer oaths.

(g) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a ~~designator,~~ designator (if the petition concerns a minor child), on such persons as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor ~~child. Service~~ child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(h) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(i) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this section have been satisfied. The clerk shall enter an order appointing the standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child or incompetent adult if the clerk finds that:

(1) The person was duly designated as a standby guardian or alternate standby guardian;

(2) That (i) there has been a determination of ~~incapacity;~~ incapacity of the designator; (ii) there has been a determination of debilitation and the designator has consented to the commencement of the standby guardian's authority; (iii) the designator has consented to that commencement; or (iv) the designator has died, such information coming from a document, such as a copy of a death certificate or a funeral home receipt;

(3) That the best interests of the minor child or incompetent adult will be promoted by the appointment of the person designated as standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor ~~child;~~child or incompetent adult;

(4) That the standby guardian or alternate standby guardian is fit to serve as guardian of the person or general guardian of the minor ~~child;~~ child or incompetent adult; and

(5) That, if the petition is by a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to serve as standby guardian.

(j) The designator may revoke a standby guardianship created under this section by:

(1) Notifying the standby guardian in writing of the intent to revoke the standby guardianship prior to the filing of the petition under this section; or

(2) Where the petition has already been filed, by executing a written revocation, filing it in the office of the clerk with whom the petition was filed, and promptly providing the standby guardian with a copy of the written revocation.

...

"§ 35A-1376. Restoration of capacity or ability; suspension of guardianship.

In the event that the authority of the standby guardian becomes effective upon the receipt of a determination of incapacity or debilitation and the petitioner or designator is subsequently restored to capacity or ability to care for the child, the authority of the standby guardian based on that incapacity or debilitation shall be suspended. The attending physician shall provide a copy of the determination of restored capacity or ability to the standby guardian, if the identity of the standby guardian is known to the attending physician. If an order appointing the standby guardian as guardian of the person or general guardian of the minor child or incompetent adult has been entered, the standby guardian shall, and the petitioner or designator may, file a copy of the determination of restored capacity or ability in the office of the clerk who entered the order. A determination of restored capacity or ability shall:

(1) Be made by the attending physician to a reasonable degree of medical certainty;

(2) Be in writing; and

(3) Contain the attending physician's opinion regarding the cause and nature of the parent's or legal guardian's restoration to capacity or ability.

Any order appointing the standby guardian as guardian of the person or general guardian of the minor child or incompetent adult shall remain in full force and effect, and the authority of the standby guardian shall recommence upon the standby guardian's receipt of a subsequent determination of the petitioner's or designator's incapacity, pursuant to G.S. 35A-1373(j), or upon the standby guardian's receipt of a subsequent determination of debilitation pursuant to G.S. 35A-1373(k), or upon the receipt of proof of death of the petitioner or designator, or upon the written consent of the petitioner or designator, pursuant to G.S. 35A-1373(l).

...

"§ 35A-1379. Appointment of guardian ad litem.

(a) The clerk may appoint a volunteer guardian ad litem, if available, to represent the best interests of the minor child or incompetent adult and, where appropriate, express the wishes of the minor ~~child.~~child or incompetent adult.

(b) The duties of the guardian ad litem, when appointed, shall be to make an investigation to determine the facts, the needs of the minor child or incompetent adult and the available resources within the family to meet those needs, and to protect and promote the best interests of the minor child or incompetent adult until formally relieved of the responsibility by the clerk.

(c) The court may order the guardian ad litem to conduct an investigation to determine the fitness of the intended standby guardian and alternate standby guardian, if any, to perform the duties of standby guardian.

...

"**§ 35A-1382. Termination.**

(a) Any standby guardianship created under this Article shall continue ~~until~~ until:

(1) If the ward is a minor child, the child reaches 18 years of age unless sooner terminated by order of the clerk who entered the order appointing the standby ~~guardian, by revocation pursuant to this Article, or by renunciation pursuant to this Article.~~ guardian.

(2) Revocation pursuant to this Article.

(3) Renunciation pursuant to this Article.

(b) A standby guardianship shall terminate, and the authority of the standby guardian designated pursuant to G.S. 35A-1374 or of a guardian of the person or general guardian appointed pursuant to this Article shall cease, upon the entry of an order of the district court granting custody of the minor child to any other person."

PART II. AUTHORIZE LIVING PROBATE PROCEDURE ALLOWING A PERSON TO PETITION THE PROBATE COURT FOR AN ORDER CONFIRMING THE VALIDITY OF THAT PERSON'S WILL

SECTION 2. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"Article 2B.

"Living Probate.

"**§ 28A-2B-1. Establishment before death that a will or codicil is valid.**

(a) Any individual who is a resident of North Carolina and who has executed a will or codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

(b) The petition shall be filed with the clerk of superior court and the matter shall proceed as a contested estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. At the hearing before the clerk of superior court, the petitioner shall produce the evidence necessary to establish that the will or codicil would be admitted to probate if the individual were deceased.

If an interested party contests the validity of the will or codicil, that person shall file a written challenge to the will or codicil before the hearing or make an objection to the validity of the will or codicil at the hearing. Upon the filing of a challenge or the raising of an issue contesting the validity of the will or codicil, the clerk shall transfer the cause to the superior court. The matter shall be heard as if it were a caveat proceeding, and the court shall make a determination as to the validity of the will or codicil and enter judgment accordingly.

If no interested party contests the validity of the will or codicil and if the clerk of superior court determines that the will or codicil would be admitted to probate if the individual were deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be valid.

"**§ 28A-2B-2. Venue.**

The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the individual whose will or codicil is the subject of the petition is domiciled.

"**§ 28A-2B-3. Contents of petition for will validity.**

(a) Petition. – A petition requesting an order declaring that an individual's will or codicil is valid shall be verified and shall contain the following information:

(1) A statement that the individual is a resident of North Carolina and specifying the county of the individual's residence.

(2) Allegations that the will was prepared and executed in accordance with North Carolina law and a statement that the will was executed with testamentary intent.

(3) A statement that the individual had testamentary capacity at the time the will was executed.

(4) A statement that the individual was free from undue influence and duress and executed the will in the exercise of the individual's free will.

(5) A statement identifying the individual, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall file the original will or codicil with the petition. If an order is entered declaring the will or codicil to be valid, the court shall affix a certificate of validity to the will or codicil.

"**§ 28A-2B-4. Declaration by court; bar to caveat.**

(a) If the court enters a judgment declaring a will or codicil to be valid, such judgment shall be binding upon all parties to the proceeding, including any persons represented in the proceeding pursuant to the provisions of G.S. 28A-2-7, and no party bound by the judgment shall have any further right to, and shall be barred from filing, a caveat to the will or codicil once that will or codicil is entered into probate following the individual's death.

(b) If the court declares a will or codicil to be valid, upon the motion of the petitioner or the court, the court may order that the will or codicil cannot be revoked and that no subsequent will or codicil will be valid unless the revocation or the subsequent will or codicil is declared valid in a proceeding under this Article. If the court enters such an order, any subsequent revocation of the will or codicil not declared valid in a proceeding under this Article shall be void and any subsequent will or codicil not declared valid in a proceeding under this Article shall be void and shall not be admitted to probate.

(c) If a will or codicil judicially declared valid is revoked or modified by a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in a proceeding under this Article in which the interested person was a party. If a will or codicil judicially declared valid is revoked by a method other than the execution of a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article in which the interested person was a party.

"**§ 28A-2B-5. Confidentiality.**

(a) Following the entry of a judgment, a party to the proceeding may move that the contents of the file be sealed and kept confidential, and upon such motion, the clerk shall seal the contents of the file from public inspection. The contents of the file shall not be released except by order of the clerk to any person other than:

(1) The petitioner named in the petition.

(2) The testator of the will.

(3) Interested persons who appeared in the proceedings, interested persons who have otherwise submitted to the jurisdiction of the court, and the attorneys and guardians of the interested persons.

(4) The attorney for the petitioner.

(5) The judge hearing or reviewing the matter.

For good cause shown, the court may order the records that are confidential under this section to be made available to a person who is not listed in this section.

"**§ 28A-2B-6. Costs and attorneys' fees.**

Costs, including reasonable attorneys' fees, incurred by a party in a proceeding under this Article shall be taxed against any party, or apportioned among the parties, in the discretion of the court, except that the court shall allow attorneys' fees for the attorneys of a party contesting the proceeding only if the court finds that the party had reasonable grounds for contesting the proceeding."

PART III. ENACT THE UNIFORM POWERS OF APPOINTMENT ACT

SECTION 3.(a) The General Statutes are amended by adding a new Chapter to read:

"**Chapter 31D.**

"**North Carolina Uniform Powers of Appointment Act.**

"Article 1.

"General Provisions and Definitions.

"**§ 31D-1-101. Short title.**

This Chapter may be cited as the North Carolina Uniform Powers of Appointment Act.

"**§ 31D-1-102. Definitions.**

The following definitions apply in this Chapter:

(1) "Appointee" means a person to whom a power holder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

a. Expressly uses the words "any power" in exercising any power of appointment the power holder has.

b. Expressly uses the words "any property" in appointing any property over which the power holder has a power of appointment.

c. Disposes of all property subject to disposition by the power holder.

(4) "Donor" means a person who creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person that is not a permissible appointee.

(9) "Instrument" means a writing.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a power holder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a power holder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The power of

appointment may be general or nongeneral and presently exercisable or not presently exercisable. The term does not include a power of attorney.

(14) "Power holder" means a person in whom a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the power holder at the relevant time. The term:

a. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard relating to an individual's health, education, and support or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, or the passage of a specified time only after one of the following:

1. The occurrence of the specified event.
2. The satisfaction of the ascertainable standard.
3. The passage of the specified time.

b. Does not include a power exercisable only at the power holder's death.

(16) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(17) "Taker in default of appointment" means a person who takes all or part of the appointive property to the extent the power holder does not effectively exercise the power of appointment.

(18) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established in a judicial proceeding.

"**§ 31D-1-103. Governing law.**

(a) The creation, revocation, or amendment of the power of appointment is governed by either of the following:

(1) The law of the jurisdiction designated in the terms of the instrument creating the power.

(2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the donor's domicile at the relevant time, then the law of the jurisdiction of the donor's domicile at the relevant time.

(b) The exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by either of the following:

(1) The law of the jurisdiction designated in the terms of the instrument creating the power.

(2) If no jurisdiction's law is designated in the terms of the instrument creating the power or if the jurisdiction's law so designated is contrary to a strong public policy of the law of the jurisdiction of the power holder's domicile at the relevant time, then the law of the jurisdiction of the power holder's domicile at the relevant time.

"**§ 31D-1-104. Common law and principles of equity.**

The common law and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another statute of this State.

"Article 2.

"Creation, Revocation, and Amendment of Power of Appointment.

"**§ 31D-2-201. Creation of power of appointment.**

(a) A power of appointment is created only if all of the following apply:

(1) The instrument creating the power is valid under applicable law.
(2) Except as otherwise provided in subsection (b) of this section, the instrument creating the power transfers the appointive property.
(3) The terms of the instrument creating the power manifest the donor's intent to create in a power holder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subdivision (1) of subsection (a) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities or restraint on alienation, a power of appointment may be created in an unborn or unascertained power holder.

"**§ 31D-2-202. Nontransferability.**

A power holder may not transfer a power of appointment. If a power holder dies without exercising or releasing a power, the power lapses.

"**§ 31D-2-203. Presumption of unlimited authority.**

Subject to the provisions of G.S. 31D-2-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is all of the following:

(1) Presently exercisable.
(2) Exclusionary.
(3) Except as otherwise provided in G.S. 31D-2-204, general.

"**§ 31D-2-204. Exception to presumption of unlimited authority.**

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if both of the following apply:

(1) The power is exercisable only at the power holder's death.
(2) The permissible appointees of the power are a defined and limited class that does not include the power holder's estate, the power holder's creditors, or the creditors of the power holder's estate.

"**§ 31D-2-205. Rules of classification.**

(a) In this section, the term "adverse party" means a person with a substantial beneficial interest in property who would be affected adversely by a power holder's exercise or nonexercise of a power of appointment in favor of the power holder, the power holder's estate, a creditor of the power holder, or a creditor of the power holder's estate.

(b) If a power holder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

"**§ 31D-2-206. Power to revoke or amend.**

A donor may revoke or amend a power of appointment only to the extent that either of the following apply:

(1) The instrument creating the power is revocable by the donor.
(2) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

"Article 3.

"Exercise of Power of Appointment.

"**§ 31D-3-301. Requisites for exercise of power of appointment.**

A power of appointment is exercised only to the extent that the appointment is a permissible exercise of the power, and only if all of the following apply:

(1) The instrument exercising the power is valid under applicable law.
(2) The terms of the instrument exercising the power manifest the power holder's intent to exercise the power.

(3) Subject to the provisions of G.S. 31D-3-304, the terms of the instrument exercising the power satisfy the requirements of exercise, if any, imposed by the donor.

"**§ 31D-3-302. Intent to exercise; determining intent from residuary clause.**

A residuary clause that does not contain a blanket-exercisable clause or specific-exercise clause manifests the power holder's intent to exercise a power of appointment only if all of the following apply:

(1) The terms of the instrument containing the residuary clause (including any valid codicil or amendment to the instrument) do not manifest a contrary intent.

(2) The power is a general power exercisable in favor of the power holder's estate.

(3) There is no gift-in-default clause or the clause is ineffective.

(4) The power holder did not release the power.

"**§ 31D-3-303. Intent to exercise after acquired power.**

Unless the terms of an instrument exercising a power of appointment manifest a contrary intent:

(1) If the power holder is not also the donor of the power, a blanket-exercise clause in the instrument extends to a power acquired by the power holder after executing the instrument containing the clause.

(2) If the power holder is also the donor of the power, the blanket-exercise clause extends to the power acquired by the power holder after executing the instrument only if there is no gift-in-default clause or the gift-in-default clause is ineffective. The blanket-exercise clause does not extend to the power if there is a gift-in-default clause that is effective.

"**§ 31D-3-304. Substantial compliance with donor-imposed formal requirement.**

A power holder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if both of the following apply:

(1) The power holder knows of and intends to exercise the power.

(2) The power holder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

"**§ 31D-3-305. Permissible appointment.**

(a) If a power holder of a general power of appointment permits appointment to the power holder or the power holder's estate, the power holder may make any appointment, including an appointment in trust or an appointment that creates a new power of appointment that the power holder could make in disposing of the power holder's own property.

(b) If a power holder of a general power of appointment permits appointment only to the creditors of the power holder or the creditors of the power holder's estate, or both, the power holder may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power holder of a nongeneral power may:

(1) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee.

(2) Create a general power in a permissible appointee.

(d) The terms of the instrument may permit the power holder of a nongeneral power to create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.

"**§ 31D-3-306. Appointment to deceased appointee.**

An appointment to a deceased appointee is ineffective.

"**§ 31D-3-307. Impermissible appointment.**

(a) An exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent that the appointment is a fraud on the power.

"**§ 31D-3-308. Selective allocation doctrine.**

If a power holder exercises a power of appointment in a disposition that also disposes of property the power holder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the power holder's intent.

"**§ 31D-3-309. Capture doctrine; disposition of ineffectively appointed property under general power.**

To the extent a power holder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) The gift-in-default clause controls the disposition of the ineffectively appointed property.

(2) If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property passes as follows:

a. To the power holder if the power holder is a permissible appointee and living.

b. If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

c. If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-310. Disposition of unappointed property under released or unexercised general power.**

(a) To the extent that a power holder releases a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent that the clause is ineffective, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

(b) To the extent a power holder fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property passes as follows:

(1) To the power holder if the power holder is a permissible appointee and living.

(2) If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

(3) If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-311. Disposition of unappointed property under released or unexercised nongeneral power.**

To the extent that a power holder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) The gift-in-default clause controls the disposition of the unappointed property.

(2) If there is no gift-in-default clause, or to the extent that the clause is ineffective, the unappointed property:

a. Passes to the permissible appointees, if both of the following apply:

1. The permissible appointees are defined and limited.
2. The terms of the instrument creating the power do not manifest a contrary intent.

b. If there is no taker under sub-subdivision a. of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

"**§ 31D-3-312. Disposition of unappointed property if partial appointment to taker in default.**

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the power holder makes a valid partial appointment to a taker in default of appointment, then the taker in default of appointment may share fully in unappointed property.

"**§ 31D-3-313. Appointment to taker in default.**

If a power holder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, then the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

"**§ 31D-3-314. Power holder's authority to revoke or amend exercise.**

If the terms of an instrument creating a power of appointment do not prohibit the power holder from revoking or amending an exercise of the power, a power holder may revoke or amend the exercise of a power only if one of the following apply:

(1) The instrument creating the exercise of the power of appointment may be revoked or amended.

(2) The power holder reserves a power of revocation or amendment in the instrument exercising the power of appointment.

"Article 4.

"Disclaimer or Release; Contract to Appoint or Not to Appoint.

"**§ 31D-4-401. Disclaimer.**

Consistent with Chapter 31B of the General Statutes:

(1) A power holder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

"**§ 31D-4-402. Authority to release.**

A power holder may release a power of appointment, in whole or in part, except to the extent that the terms of the instrument creating the power prevent the release.

"**§ 31D-4-403. Method of release.**

A power holder of a releasable power of appointment may release the power in whole or in part as follows:

(1) By substantial compliance with a method provided in the terms of the instrument creating the power.

(2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by an instrument manifesting the power holder's intent by clear and convincing evidence.

"**§ 31D-4-404. Revocation or amendment of release.**

A power holder may revoke or amend a release of a power of appointment only to the extent that one of the following applies:

(1) The instrument of release is revocable by the power holder.

(2) The power holder reserves a power of revocation or amendment in the instrument of release.

"**§ 31D-4-405. Power to contract; presently exercisable power of appointment.**

A power holder of a presently exercisable power of appointment may contract:

(1) Not to exercise the power.
(2) To exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

"**§ 31D-4-406. Power to contract; power of appointment not presently exercisable.**

A power holder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the power holder both:

(1) Is also the donor of the power.
(2) Has reserved the power in a revocable trust.

"**§ 31D-4-407. Remedy for breach of contract to appoint or not to appoint.**

The remedy for a power holder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

"Article 5.

"Rights of Power Holder's Creditors in Appointive Property.

"**§ 31D-5-501. Creditor claim; general power created by power holder.**

(a) In this section, "power of appointment created by the power holder" includes a power of appointment created in a transfer by another person to the extent the power holder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the power holder is subject to a claim of a creditor of the power holder or of the power holder's estate to the extent provided in the Uniform Fraudulent Transfer Act, Chapter 39 of the General Statutes.

(c) Subject to subsection (b) of this section, appointive property subject to a general power of appointment created by the power holder is not subject to a claim of a creditor of the power holder or the power holder's estate to the extent the power holder irrevocably appointed the property in favor of a person other than the power holder or the power holder's estate.

(d) Subject to subsections (b) and (c) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the power holder is subject to a claim of a creditor of:

(1) The power holder, to the same extent as if the power holder owned the appointive property, if the power is presently exercisable.
(2) The power holder's estate, to the extent that the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the power holder's death.

"**§ 31D-5-502. Creditor claim; general power not created by power holder.**

(a) Except as otherwise provided in subsection (b) of this section, and only when and to the extent that the power holder exercises the power, appointive property subject to a general power of appointment created by a person other than the power holder is subject to a claim of a creditor of:

(1) The power holder, to the extent the power holder's property is insufficient, if the power is presently exercisable.
(2) The power holder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to the provisions of G.S. 31D-5-504(c), a power of appointment created by a person other than the power holder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, is treated for purposes of this Article as a nongeneral power.

"**§ 31D-5-503. Power to withdraw.**

(a) For purposes of this Article, a power to withdraw property from a trust is treated as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) The lapse, release, or waiver of a power to withdraw property from a trust shall not be deemed to be an exercise of the power.

"**§ 31D-5-504. Creditor claim; nongeneral power.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the power holder or the power holder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the power holder or the power holder's estate to the extent that the power holder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes.

(c) If the initial gift in default of appointment is to the power holder or the power holder's estate, a nongeneral power of appointment is treated for purposes of this Article as a general power.

"Article 6.

"Miscellaneous Provisions.

"**§ 31D-6-601. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 31D-6-602. Relation to Electronic Signatures in Global and National Commerce Act.**

This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101(c) of 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of 15 U.S.C. § 7003(b).

"**§ 31D-6-603. Application to existing relationships.**

(a) Except as otherwise provided in this Chapter, on or after the effective date of this Chapter:

(1) This Chapter applies to a power of appointment created before, on or after the effective date of this Chapter.

(2) This Chapter applies to a judicial proceeding concerning a power of appointment commenced on or after the effective date of this Chapter.

(3) This Chapter applies to a judicial proceeding concerning a power of appointment commenced before the effective date of this Chapter unless the court finds that application of a particular provision of this Chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this Chapter does not apply and the superseded law applies.

(4) A rule of construction or presumption provided in this Chapter applies to an instrument executed before the effective date of this Chapter unless there is a clear indication of a contrary intent in the terms of the instrument or unless application of that rule of construction or presumption would impair substantial rights of a party created under North Carolina law in effect prior to the effective date of this Chapter, in which case that rule of construction or presumption does not apply and the superseded rule of construction or presumption applies.

(5) Except as otherwise provided in subdivisions (1) through (4) of this subsection, an action taken before the effective date of this Chapter is not affected by this Chapter.

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this State other than this Chapter before the effective date of this Chapter, the law continues to apply to the right."

SECTION 3.(b) G.S. 31-4 and G.S. 31-43 are repealed.

PART IV. AMEND THE ELECTIVE SHARE STATUTES REGARDING VALUATION OF PARTIAL OR CONTINGENT INTEREST PROPERTY.

SECTION 4. G.S. 30-3.3A(e) reads as rewritten:

"(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are ~~limited.~~ limited, unless upon good cause shown by one of the parties, the clerk determines that the use of such tables or rate of return is not appropriate, then the value of such interests shall be determined under subsection (f) of this section. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

~~(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~"

PART V. AMEND THE LAW PROVIDING FOR CONVEYANCE OF TENANCY BY THE ENTIRETIES TO A TRUST

SECTION 5. G.S. 39-13.7 reads as rewritten:

"**§ 39-13.7. Tenancy by the entireties trusts in real property.**

(a) Any real property held by a husband and wife as a tenancy by the entireties and conveyed ~~to their joint revocable or irrevocable trust, or to their separate revocable or irrevocable trusts, shall have the same immunity from the claims of the spouses' separate creditors as would exist if the spouses had continued to hold the property as a tenancy by the entireties, so long as (i) the spouses remain husband and wife, (ii) the real property continues to be held in the trust or trusts, and (iii) the spouses remain the beneficial owners of the real property.~~to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held by the husband and wife as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the spouses had continued to hold the property as tenants by the entireties.

(b) The immunity from the claims of separate creditors provided by subsection (a) of this section shall apply as long as all of the following apply:

(1) The husband and wife remain married.

(2) The real property continues to be held in the trust or trusts as provided in subsection (a) of this section.

(3) Both husband and wife are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the real property is conveyed in equal shares to their separate trusts.

(c) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (a) of this section immediately prior to the individual's death shall continue to have immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife continued to hold the property conveyed in trust as tenants by the entirety.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both the husband and wife may waive the immunity from the claims of separate creditors provided under this section as to any specific creditor or any specifically described property including all separate creditors of a husband and wife or all former tenancy by the entirety property conveyed to the trustee.

(e) For purposes of this section:

(1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary conversion of the real property.

(2) The reference to a "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the settlors, and the reference to "separate trusts" means revocable or irrevocable trusts of which the husband is the settlor of one trust and the wife is the settlor of the other trust.

(3) The husband and wife are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other persons are also current or future beneficiaries of the trust."

PART VI. UNIFORM TRUST CODE; AMEND THE STATUTE OF LIMITATIONS AGAINST A TRUSTEE

SECTION 6. G.S. 36C-10-1005(b) reads as rewritten:

"(b) Except as provided in subsection (a) of this section, Chapter 1 of the General Statutes governs the limitations of actions on judicial proceedings involving trusts. However, for purposes of those limitations both of the following apply:

(1) On the date that any limitation starts running as to a person with respect to a claim held by the person involving a trust, the limitation also shall start running as to all other persons the person would be entitled to represent under Article 3 of this Chapter, whether or not the person consented to serve as a representative.

(2) G.S. 1-17 of the General Statutes shall not apply to toll the running of the limitation as to the persons described in subdivision (1) of this subsection. Those persons shall be treated as if they were under no disability on the date that the limitation starts running."

PART VII. UNIFORM TRUST CODE; CLARIFY APPLICABILITY OF DEFAULT AND MANDATORY RULES GOVERNING POWER HOLDERS

SECTION 7. G.S. 36C-1-105 reads as rewritten:

"**§ 36C-1-105. Default and mandatory rules.**

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a ~~trustee,~~ trustee and a power holder under Article 8A of this Chapter, relations among ~~trustees,~~ trustees and those power holders, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust.

(2) The duty of a trustee or a power holder under Article 8A of this Chapter to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries.~~beneficiaries, except as otherwise provided in subsection (c) of this section.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter.

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008.~~G.S. 36C-10-1008, except as otherwise provided in subsection (c) of this section.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary.

(8) Periods of limitation for commencing a judicial proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32).

(c) The provisions of subdivisions (2) and (6) of subsection (b) of this section shall not apply to a power holder described in Article 8A of this Chapter with respect to powers

conferred upon the power holder in a nonfiduciary capacity under G.S. 36C-8A-3(a) or under the terms of the trust."

PART VIII. UNIFORM TRUST CODE; AMEND THE LAW GOVERNING DECANTING FROM A TRADITIONAL TRUST TO A SUPPLEMENTAL NEEDS TRUST

SECTION 8. G.S. 36C-8-816.1 reads as rewritten:

"**§ 36C-8-816.1. Trustee's special power to appoint to a second trust.**

(a) For purposes of this section, the following definitions apply:

(1) Current beneficiary. – A person who is a permissible distributee of trust income or principal.

(2) Original trust. – A trust established under an irrevocable trust instrument pursuant to the terms of which a trustee has a discretionary power to distribute principal or income of the trust to or for the benefit of one or more current beneficiaries of the trust.

(3) Second trust. – A trust established under an irrevocable trust instrument, the current beneficiaries of which are one or more of the current beneficiaries of the original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument.

(b) A trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust. The second trust may have a duration that is longer than the duration of the first trust.

(c) The terms of the second trust shall be subject to all of the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the original trust.

(2) A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

(3) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original trust if that interest has come into effect with respect to the beneficiary.

(4) If any contribution to the original trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the original trust, would have prevented the original trust from qualifying for the deduction or that would have reduced the amount of the deduction.

(5) If contributions to the original trust have been excluded from the gift tax by the application of section 2503(b) and section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust.

(6) If any beneficiary of the original trust has a power of withdrawal over trust property, then either:

a. The terms of the second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or

b. Sufficient trust property must remain in the original trust to satisfy the outstanding power of withdrawal.

(7) If a trustee of an original trust exercises a power to distribute principal or income that is subject to an ascertainable standard by appointing property to a second trust, then the power to distribute income or principal in the second trust must be subject to the same ascertainable standard as in the original trust and must be exercisable in favor of the same current beneficiaries to whom such distribution could be made in the original trust.

(8) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed.

(9) The terms of the second trust shall not contain any provisions that would jeopardize (i) the qualification of a transfer as a direct skip under section 2642(c) of the Code, (ii) if the first trust owns subchapter S Corporation stock, the election to treat a corporation as a subchapter S Corporation under section 1362 of the Code, (iii) if the first trust owns an interest in property subject to the minimum distribution rules of section 401(a)(9) of the Code, a favorable distribution period by shortening the minimum distribution period, or (iv) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes. In this subdivision, "tax benefit" means a federal or State tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for the benefit from having the settlor considered the owner under sections 671 through 679 of the Code. Subject to clause (ii) above, the second trust may be a trust as to which the settlor is not considered the owner under sections 671 through 679 of the Code even if the settlor is considered the owner of the first trust, and the second trust may be a trust as to which the settlor of the first trust is considered the owner under sections 671 through 679 of the Code, even if the settlor is not considered the owner of the first trust.

(10) Notwithstanding any other provision of this section, but subject to the limitations of subdivisions (1), (2), (4), (5), and (9) of this subsection, a trustee may exercise the power to appoint principal and income under subsection (b) of this section with respect to a disabled beneficiary's interest in the original trust to a second trust that is a supplemental needs trust that does not have (i) an ascertainable standard (or has a different ascertainable standard); (ii) a fixed income, annuity, or unitrust interest in the assets of the original trust; or (iii) a right of withdrawal, if the trustee determines that it would be in the best interest of the disabled beneficiary. For purposes of this subsection, the following apply:

a. A "supplemental needs trust" means a trust that is a discretionary trust under G.S. 36C-5-504 and relative to the original trust contains

either lesser or greater restrictions on the trustee's power to distribute income or principal, and which the trustee believes would, if implemented, allow the disabled beneficiary to receive greater governmental benefits than the disabled beneficiary would receive if the power to appoint principal and income had not been exercised.

b. "Governmental benefits" means medical assistance, financial aid, or services from any local, State, or federal agency or department.

c. A "disabled beneficiary" means a current beneficiary of the original trust who the trustee determines has a condition that substantially impairs the beneficiary's ability to provide for his or her own support, care, or custody whether or not the beneficiary has been adjudicated a "disabled person" by any government agency or department.

d. The second supplemental needs trust shall not be liable to pay or reimburse the State or any government or public agency for medical assistance, financial aid, or services provided to the disabled beneficiary except as provided in the second supplemental needs trust.

...."

PART IX. UNIFORM TRUST CODE; PROVIDE PERMISSIBLE BENEFICIARIES FOR CERTAIN IRREVOCABLE INTER VIVOS TRUSTS

SECTION 9. G.S. 36C-5-505(c) reads as rewritten:

"(c) Subject to the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General Statutes, for purposes of this ~~section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:~~section, property contributed to the following trusts is not considered to have been contributed by the settlor and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) If the settlor is a beneficiary after the death of the settlor's spouse:

a. An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.

~~(2)~~b. An irrevocable intervivos marital trust that is treated as a qualified terminable interest ~~property~~ trust under section 2523(f) of the Internal Revenue Code.

~~(3)~~c. An irrevocable intervivos trust of which the settlor's spouse is ~~the sole~~ a beneficiary during the spouse's lifetime ~~of the settlor's spouse~~ but which does not qualify for the federal gift tax marital ~~deduction.~~deduction, and during the lifetime of the settlor's spouse (i) the settlor's spouse is the only beneficiary or (ii) the settlor's spouse and the settlor's issue are the only beneficiaries.

~~(4)~~d. Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in ~~subdivision (1), (2), or (3) of this subsection.~~sub-subdivisions a., b., c., and d. of this subdivision.

For purposes of this ~~subsection,~~ subdivision, notwithstanding the provisions of G.S. 36C-1-103(3), the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of ~~appointment, and~~ appointment.

(2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the person's spouse, regardless of whether or when that person was a settlor of an irrevocable inter vivos trust for the benefit of the person's spouse.

For purposes of this subsection, the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable intervivos trust was created, notwithstanding a subsequent dissolution of the marriage."

PART X. UNIFORM TRUST CODE; CLARIFY STANDARD OF LIABILITY OF DIRECTED COTRUSTEE

SECTION 10. G.S. 36C-7-703 reads as rewritten:

"**§ 36C-7-703. Cotrustees.**

…

~~(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the following apply:~~

~~(1) The duty and liability of the excluded trustee is as follows:~~

~~a. If the terms of a trust confer upon the cotrustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the directed cotrustee.~~

~~b. If the terms of the trust confer upon the cotrustee any other power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the cotrustee.~~

~~c. The excluded trustee has no duty to monitor the conduct of the cotrustee, provide advice to the cotrustee, or consult with or request directions from the cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the cotrustee's authority.~~

~~(2) Except as otherwise provided in sub-subdivision a. of subdivision (1) of this subsection, the cotrustee holding the power to take certain actions with respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office and has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.~~

(f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

(g) ~~A trustee~~ Except as provided in subsection (g1) and (h) of this section, each cotrustee shall exercise reasonable care ~~in connection with matters for which the trustee is given authority under the terms of a trust~~ to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust:

(1) The excluded cotrustee is not liable, directly or indirectly, for the action taken by the cotrustee holding the exclusive power.

(2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with or request directions from that cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by that cotrustee.

(3) The cotrustee holding the exclusive power to take certain actions with respect to the trust:

a. Shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office.

b. Has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.

(h) ~~Notwithstanding subsection (g) of this section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:~~If the terms of the trust confer the power to take actions on both or all cotrustees but under the terms of the trust or this Chapter the decision of one or more of the cotrustees controls in the event of a disagreement, then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious breach of trust, a cotrustee who dissents from the action taken by one or more of the other cotrustees is not liable for the action if either of the following apply:

(1) The ~~trustee~~ dissenting cotrustee does not join in ~~an action approved by a majority of the other trustees.~~the action.

(2) The dissenting ~~trustee~~ cotrustee joins in ~~an~~ the action necessary to carry out the decision of the ~~majority of the trustees and notifies in writing the~~ other cotrustee or cotrustees and gives notice of the dissent to the other cotrustee or cotrustees at or before joining in the ~~action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the~~ action.

...."

PART XI. COMMENTS AND EFFECTIVE DATES

SECTION 11.(a) The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Commentary to the Uniform Powers of Appointment Act and of the Official Commentary to the Uniform Trust Code and all explanatory comments of the drafters of those acts, as the Revisor may deem appropriate.

SECTION 11.(b) Sections 6, 7, 8, 9, and 10 of this act become effective October 1, 2015, and apply to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date, unless the court finds that application of a particular provision of these sections would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2015, applies. The remainder of this act is effective when it becomes law.

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-02-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Cory Bryson
3. Name: Joe Crook
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

Tuesday, June 2	Room	Time
JUDICIARY II	421	1:00 pm

Name	County	Sponsor
Jakara Steed	Vance	Nathan Baskerville
Skylar Teague	Wake	Brian Brown
Hudson Weaver	Forsyth	Edward Hanes, Jr.
Collin Winstead	Person	Larry Yarborough

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-02-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Mundy	NCAOC
Amanda Honaker	TSS
Susan Vieira	Duke Energy
Elizabeth Schab	NCPHA
Taylor Emory	Rep. Salmon Intern
Mildred Spearman	NCAOC
[illegible]	S of E.
Tessie Castillo	NCHRC
Will Parry-Hill	NCHFA
Natalie Hobson	NCHFA

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-02-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
J. R. ROWELL	CLERK OF SUPERIOR COURT - UNION CO
Barbara Moore	Conf of Clerks & Sp Ct
Linda Johnson	EP Section, NCBA
Kim Couch	NCBA
Jonathan Brubaker	Brubaker & Assoc.
John Delfiorio	Brubaker & Assoc
Anna Beavin Gravely	NC Family Action
Amanda McQuade	NC Child
Jamison Dixon	NCBA
Andy Brandon	DPS

VISITOR REGISTRATION SHEET

Judiciary II — 6-02-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jamie Sohn	— citizen
Courtney Lockamy	Randolph Cloud + Asso.
Kerri Bonds	NCWC
[signature]	MWC
Zachary Richardson	Rep Glazier
Austin Pruitt	Perkinson Law
[signature]	NMRS
Evan Miller	NMRS
Gerry Cohen	Nelson Mullins
[signature]	Nelson Mullins
Colleen Kochanek	KLG

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-02-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Vitagliano	NC Child
Shyrnri Huntley	NC Department of Public Instruction - Safe and Healthy Schools Divi.
Tony Adams	Adams and Assoc.

House Committee on Judiciary II
Tuesday, June 23, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Joe Crook**

House Committee on Judiciary II
Tuesday, June 23, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 23, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Queen, Reives, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:02 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

The proposed committee substitute for Senate Bill 238 and a summary are provided (Attachment III and Attachment IV)
SENATE BILL 238: AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL AND TO AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY.

Chairman Blust recognized Representative Glazier who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Senator Stein to speak on the bill.

Senate Bill 238 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track an individual's location and would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony. The PCS adds Section 2 to the bill.

The chair recognized Representative Glazier who moved to amend the bill on page 2, lines 29-30. (Attachment V). The motion passed on a unanimous voice vote.

The chair recognized Representative Glazier who moved to amend the bill on page 2, lines 31-37. (Attachment VI). The motion passed on a unanimous voice vote.

After a short discussion, the chair recognized Representative Glazier who moved to have the amendments rolled into a new committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

Senate Bill 286, summary, and fiscal note are provided (Attachment VII, Attachment VIII, and Attachment IX).
SENATE BILL 286: AN ACT PROHIBITING THE SALE OF E-LIQUID CONTAINERS WITHOUT CHILD-RESISTANT PACKAGING AND WITHOUT LABELING E-LIQUID CONTAINERS THAT CONTAIN NICOTINE.

Chairman Jordan recognized Senator Bingham to speak on the bill.

Senate Bill 286 would: (i) make it unlawful to sell e-liquid containers without child-resistant packaging; (ii) make it unlawful to sell an e-liquid product containing nicotine unless the packaging states that the product contains nicotine; (iii) make violation of each provision a Class A1 misdemeanor; (iv) and provide that any person, firm, or corporation would be liable for damages as a result of selling e-liquid containers without child-resistant packaging and any required labeling.

After a short discussion, the chair recognized Representative McGrady who moved for a favorable report. The motion passed without dissent.

The proposed committee substitute for House Bill 882 and summary are provided (Attachment X and Attachment XI).
HOUSE BILL 882: AN ACT TO MAKE VARIOUS CHANGES TO THE PLANNED COMMUNITY ACT.

Chairman Blust recognized Representative McGrady who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Jordan to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 882 would make various changes to the North Carolina Planned Community Act.

The chair recognized Representative Stam who moved to amend the bill on page 3, lines 36-37 and lines 38-47. (Attachments XII and XIII). The motion passed on a unanimous voice vote.

The chair recognized Ole Madsen, of HEAR4NC, to speak on the bill.

The chair recognized Henry Jones, of the Community Association Institute, to speak on the bill.

After a short discussion, the chair recognized Representative Bumgardner who moved to have the amendments rolled into a new committee substitute and given a favorable report unfavorable as to the original bill. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 1:35 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

House Committee on Judiciary II
Tuesday, June 23, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
PCS	SB 238	Stalking by GPS/Criminal Offense.	Senator Stein Senator Hartsell
	SB 286	Regulate the Sale of E-Liquid Containers.	Senator Bingham Senator D. Davis
PCS	HB 882	Comm. Mgr. Licensing & Planned Comm. Act Chgs.	Representative Jordan Representative R. Moore Representative Iler

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE

SB **286** **(CS#1)** Regulate the Sale of E-Liquid Containers.

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

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **882** Comm. Mgr. Licensing & Planned Comm. Act Chgs.

Draft Number:	H882-PCS10402-SA-73
Serial Referral:	**FINANCE**
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jordan

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB **238** **(CS#1)** Stalking by GPS/Criminal Offense.

Draft Number:	S238-PCS35292-SA-75
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Glazier

TOTAL REPORTED: 3

CMR470-V-1

ATTENDANCE

House Committee on Judiciary II

DATES	June 23, 2015														
Rep. Jonathan C. Jordan – Chair	X														
Rep. John M. Blust– Chair	X														
Rep. John Faircloth – Vice Chair	X														
Rep. Rick Glazier – Vice Chair	X														
Rep. Pat Hurley – Vice Chair	X														
Rep. Chuck McGrady – Vice Chair	X														
Rep. Henry Michaux Jr. – Vice Chair															
Rep. Paul Stam – Vice Chair	X														
Rep. Dana Bumgardner	X														
Rep. Debra Conrad	X														
Rep. Joe Queen	X														
Rep. Robert Reives, II	X														
Rep. Stephen Ross															
Rep. Jason Saine															
Rep. Brad Salmon	X														

I

VISITOR REGISTRATION SHEET

House Judiciary II

6-23-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Cox	UNC Law
Andrew Johnstone	UNC Law
Elizabeth Scholl	NCPHA
Chris Agner	DOJ
	MWC
JW Jagner	NEW FRAME
Jonathan Barbaker	Barbaker + Assoc
John DelGorgio	Barbaker + Assoc.
John Stone	CHS
Tom Fetzer	FSP
Susan Vick	Duke Energy

VISITOR REGISTRATION SHEET

House Judiciary II

6-23-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janet Thoren	NCREC
Gle Madsen	hear4nc.org
Ted Bowe	Bowe Asso.
Tim Moore	[illegible]
Gene Ainsworth	A & A
Kim Couch	NC Bar Assn.
[illegible]	UNC Legal Gov
Bubba White	New Frame
Maria Savastakemsky	UNC Law
Will Norrell	UNC Law
Sarah Walker	UNC Law
Molly Harris	UNC Law
Miranda Wodarski	UNC Law
Stacy Kelly	UNC Law
Claude Close	UNC Law
James Powers	UNC Law
Cory McKenna	UNC LAW

VISITOR REGISTRATION SHEET

House Judiciary II

6-23-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Adam Robinson	NCRMA
Alex Miller	KCG
Skye David	KLG
Rivian Merwald	WM
Annaliese Dolph	DL
Paul Hill	FHPOA
Hector Ojeda	Jordan Price
Jon Carr	" "
Hayden Bourgeois	FSP
Andy Elken	NCRMA
Madeline Hurley	Intern
Morgan M. Bielick	intern
Tom Murry	NCAOC
David Ferrell	VB
Dr. Ann Harris	LAHJA
Walter Jones	Jones Law

II

Tuesday, June 23 JUDICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Savannah Bell	Rutherford	Mike Hager
Constantine Boardman	Mecklenburg	Dan Bishop
Floriana Boardman	Mecklenburg	Dan Bishop
Will Dunn	Johnston	N. Leo Daughtry
Drew Huffman	Iredell	John A. Fraley

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-23-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name:
5. Name:

Senate Sgt-At Arms:

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

1 Date 6/23/15

Bill Number S238

PCS Yes

Motion to be before the committee by _____

~~Rep.~~ Sen. Stein explained the bill.

Discussion on the Bill (YES) or NO

Amendments: V + VI

Rep. Glazier motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report ✓ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Handouts:

Rep. Glazier on floor

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 238*
Judiciary II Committee Substitute Adopted 4/15/15
Third Edition Engrossed 4/16/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S238-PCS35292-SA-75

Short Title: Stalking by GPS/Criminal Offense. (Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL AND TO AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any

person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The owner or lessee of any vehicle on which the owner or lessee installs, places, or uses an electronic tracking device, unless the owner or lessee is subject to (i) a domestic violence protective order under Chapter 50B of the General Statutes or (ii) any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.

c. A legal guardian for a disabled adult, as defined in G.S. 108A-101(d), or a legally authorized individual or organization designated to provide protective services to a disabled adult pursuant to G.S. 108A-105(c), when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services.

d. The owner of fleet vehicles, when tracking such vehicles.

e. A creditor or other secured party under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle, and any assignee or successor in interest to that creditor, secured party, or lessor, when tracking a motor vehicle identified as security under the retail installment sales agreement or leased pursuant to a retail lease agreement, including the installation, placement, or use of an electronic tracking device to locate and remotely disable the motor vehicle, with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

g. A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. Rule 803(6) of the Rules of Evidence, Chapter 8C of the General Statutes, reads as rewritten:

"**Rule 803. Hearsay exceptions; availability of declarant immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

(6) Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business ~~activity,~~ activity and ~~if~~ (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified ~~witness,~~ witness, or by affidavit or by document under seal under Rule 902 of the Rules of Evidence made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Authentication of evidence by affidavit shall be confined to the records of non-parties and the proponent of that evidence shall give advance notice to all other parties of intent to offer the evidence with authentication by affidavit. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

SECTION 3. Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. Section 2 of this act becomes effective October 1, 2015. The remainder of this act is effective when it becomes law.

IV

SENATE BILL 238:
Stalking by GPS/Criminal Offense

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	June 23, 2015
Introduced by:	Sens. Stein, Hartsell	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition S238-CSSA-75		

SUMMARY: ***Senate Bill 238 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track an individual's location and would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony. The PCS adds Section 2 to the bill.***

[As introduced, this bill was identical to H187, as introduced by Reps. Glazier, Horn, Faircloth, McGrady, which is currently in House Judiciary II.]

CURRENT LAW: Cyberstalking is punishable as a Class 2 misdemeanor and includes any of the following:

- Use in electronic mail or electronic communication language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or things of value from any person.
- Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
- Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
- Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

Any offense under this section may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State. These provisions do not impair any constitutionally protected activity, including speech, protest, or assembly.

Cyberstalking is punishable as a Class 2 misdemeanor.

BILL ANALYSIS:

Section 1 of Senate Bill 238 would also make it cyberstalking to do the following: "Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person."

It would not constitute cyberstalking for any of the following persons to install, place, or use an electronic tracking device:

- A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, who is lawfully performing official duties.
- The owner or lessee of any vehicle on which the owner or lessee installs, places or uses an electronic tracking device.
    - This exception does not apply if the owner or lessee is subject to a 50B domestic violence protective order or any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.
- A legally authorized representative of a disabled adult.
- The owner of fleet vehicles, when tracking such vehicles.
- The creditor of a motor vehicle dealer or seller when tracking those motor vehicles under the specified circumstances.
- Any person installing, placing or using an electronic tracking device as authorized by an order of a State or federal court.
- A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.

Section 2 would amend the rules of evidence to allow a certification by the custodian of a business record to show the authenticity of the record in lieu of offering the custodian's in-person testimony.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2015, and applies to offenses occurring on or after that date. Section 2 of this act becomes effective October 1, 2015. The remainder of this act is effective when it becomes law.

Brad Krehely and Janice Paul, staff attorneys, substantially contributed to this summary.

Glazier V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 238*

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

S238-ASA-103 [v.1]

Amends Title [NO]
S238-CSSA-~~475~~

Date _____ ,2015

Representative Glazier

moves to amend the bill on page 2, lines ~~27-28~~ 29-30
by rewriting those lines to read:

"c. A legal guardian for a disabled adult, as defined in G.S. 108A-101(d), or a legally authorized individual or organization designated to provide protective services to a disabled adult pursuant to G.S. 108A-105(c), when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Glazier VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 238*

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

S238-ASA-102 [v.1]

Amends Title [NO]
S238-CSSA-~~7475~~

Date June 23 ,2015

Representative Glazier

moves to amend the bill on page 2, lines 30-36
by rewriting those lines to read:

"e. A creditor or other secured party under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle, and any assignee or successor in interest to that creditor, secured party, or lessor, when tracking a motor vehicle identified as security under the retail installment sales agreement or leased pursuant to a retail lease agreement, including the installation, placement, or use of an electronic tracking device to locate and remotely disable the motor vehicle, with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2 Date 6/23/2015

Bill Number S286

PCS _____

Motion to be before the committee by _____

~~Rep.~~ Sen. Brigham explained the bill.

Discussion on the Bill YES or NO

Amendments: _____

Rep. McGrady motioned for:

✓ Favorable Report _____ Adoption

_____ Unfavorable Report _____ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Handouts:

VII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 3

SENATE BILL 286
Health Care Committee Substitute Adopted 4/21/15
Third Edition Engrossed 4/22/15

Short Title: Regulate the Sale of E-Liquid Containers. (Public)

Sponsors:

Referred to:

March 16, 2015

A BILL TO BE ENTITLED

AN ACT PROHIBITING THE SALE OF E-LIQUID CONTAINERS WITHOUT CHILD-RESISTANT PACKAGING AND WITHOUT LABELING E-LIQUID CONTAINERS THAT CONTAIN NICOTINE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.18A. Sale of certain e-liquid containers prohibited.**

(a) The following definitions apply in this section:

(1) Child-resistant packaging. – Packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(2) E-liquid. – A liquid product, whether or not it contains nicotine, that is intended to be vaporized and inhaled using a vapor product.

(3) E-liquid container. – A bottle or other container of e-liquid. The term does not include a container holding liquid that is intended for use in a vapor product if the container is pre-filled and sealed by the manufacturer and is not intended to be opened by the consumer.

(4) Vapor product. – Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid solution contained in a vapor cartridge. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipe.

(b) It shall be unlawful for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in this State an e-liquid container unless the container constitutes child-resistant packaging. Any person who violates this section is guilty of a Class A1 misdemeanor.

(c) It shall be unlawful for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in this State an e-liquid container for an e-liquid product containing nicotine unless the packaging for the e-liquid product states that the product contains nicotine. Any person who violates this section is guilty of a Class A1 misdemeanor.

(d) Any person, firm, or corporation that violates the provisions of this section shall be liable in damages to any person injured as a result of the violation."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

VIII

SENATE BILL 286:
Regulate the Sale of E-Liquid Containers

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	June 23, 2015
Introduced by:	Sens. Bingham, D. Davis	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***Senate Bill 286 would: (i) make it unlawful to sell e-liquid containers without child-resistant packaging; (ii) make it unlawful to sell an e-liquid product containing nicotine unless the packaging states that the product contains nicotine; (iii) make violation of each provision a Class A1 misdemeanor; (iv) and provide that any person, firm, or corporation would be liable for damages as a result of selling e-liquid containers without child-resistant packaging and any required labeling.***

BILL ANALYSIS: Senate Bill 286 would create a new statute to prohibit the sale of certain e-liquid containers by:

- Making it unlawful for any person, firm or corporation to sell, offer for sale, or introduce into commerce in the State an e-liquid container unless the container constitutes child-resistant packaging.
- Making it unlawful for any person, firm or corporation to sell, offer for sale, or introduce into commerce in the State an e-liquid container an e-liquid product containing nicotine unless the packaging for the e-liquid states that it contains nicotine.

A person who violates either of these provisions would be guilty of a Class A1 misdemeanor. Any person, firm, or corporation in violation of this statute would be liable for damages to any person injured as a result of the violation.

The bill would define the following terms:

- Child-resistant packaging – Packaging that is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.
- E-liquid – a liquid product intended to be vaporized and inhaled using a vapor product, whether or not it contains nicotine.
- E-liquid container – a bottle or other container of e-liquid. The term does not include a container holding liquid that is intended for use in a vapor product if the container is pre-filled and sealed by the manufacturer and is not intended to be opened by the consumer.
- Vapor product – any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid solution contained in a vapor cartridge. The term includes: electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipe.

EFFECTIVE DATE: This act would become effective December 1, 2015, and apply to offenses committed on or after that date.

Jennifer Mundt and Theresa Matula, Research Division staff, substantially contributed to this summary.

O. Walker Reagan
Director

S286-SMSA-80 E3 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA

IX

Session 2015

Legislative Incarceration Fiscal Note
REVISED

BILL NUMBER: Senate Bill 286 (Third Edition)

SHORT TITLE: Regulate the Sale of E-Liquid Containers.

SPONSOR(S):

FISCAL IMPACT
($ in millions)

☐ Yes ☐ No ☑ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
NET STATE IMPACT	**Likely budget cost. See Assumptions & Methodology section for additional details.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:
None

Revision Note: ***This note has been revised to correct the fiscal year column headers in the table above.***

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated, and having penalties applied to those convicted of the new offense. However, given 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 this crime:

- Administrative Office of the Courts: $286 per disposition
- Indigent Defense Services: $204 per disposition
- Department of Public Safety (DPS) - Prison Section: No cost.
- DPS - Community Corrections: Minimum of $2,219

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

The bill creates a new Class A1 misdemeanor for violation of new G.S. 14-401.18A, Sale of certain e-liquid containers prohibited, which requires that e-liquid containers constitute child-resistant packaging.

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 F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

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.

The bill creates a new Class A1 misdemeanor offense. Because this is a new offense, 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. For every additional person charged with a Class A1 misdemeanor, the average cost to the court would be $286.

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. In FY 2011-12, 52% of Class A1 misdemeanor cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class A1 misdemeanor is $204 per case for a private appointed counsel (PAC) attorney. This estimate assumes 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.

Department of Public Safety –Prison Section

This bill creates a new Class A1 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who

receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

Department of Public Safety – Community Correction Section

All misdemeanor offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

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, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs $130.50 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, intermediate sanctions and supervised probation.

In FY 2013-14, 35% of Class A1 misdemeanor offenders received active sentences; 65% received probation. Active misdemeanor sentences of less than 180 days are served in local jails and do not require any post-release supervision. The average length of probation imposed for this offense class was 17 months. Therefore, at a minimum, one conviction resulting from the bill will require at least 17 months of supervision. The cost of 17 months of supervision is $2,219 per offender ($130.50 per month times 17 months).[1]

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

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[1] Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

Official
Fiscal Research Division
Publication

DATE: April 22, 2015

Signed Copy Located in the NCGA Principal Clerk's Offices

3 Date June 23, 2015

Bill Number H882

PCS Yes

Motion to be before the committee by McGrady

Rep. Jordan explained the bill.

Discussion on the Bill (YES or NO)

Amendments: XII + XIII stam

Rep. Bumgarcher motioned for:

_____ Favorable Report _____ Adoption

_____ Unfavorable Report ✓ Unfavorable to original bill, favorable to PCS

_____ No vote

_____ Other: _____

Serial referral to: _____

Speakers:

Ole Madsen - Heal4NC

Henry Jones - Comm. Assoc. Institute

Handouts:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 882
PROPOSED COMMITTEE SUBSTITUTE H882-PCS10402-SA-73

Short Title: Comm. Mgr. Licensing & Planned Comm. Act Chgs. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE PLANNED COMMUNITY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-2-105. Contents of the declaration.**

(a) The declaration for a planned community shall contain all of the following:

(1) The name of the planned community and the association and a statement that the community is a planned community.

(2) The name of every county in which any portion of the planned community is situated.

(3) A legal description of the real estate included in the planned community.

(4) A statement of the maximum number of lots that the declarant reserves the right to create.

(5) A description of the boundaries of each lot created by the declaration, including the lot's identifying number.

(6) A description of any limited common elements and any real estate that is or must become a common element.

(7) A description of any development rights and other special declarant rights reserved by the declarant, together with a legal description of the real estate to which each of those rights applies and a time limit within which each of those rights must be exercised.

(8) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with all of the following:

a. A statement fixing the boundaries of the affected parcels and the order in which the affected parcels will be subjected to the exercise of each development right or an affirmative statement that no assurances are made by the declarant with respect to the exercise of development rights.

b. A statement as to whether, if a development right is exercised in any portion of the real estate subject to that development right, the development right will be reserved and applied to the remaining portions of the subject real estate.

(9) All conditions or limitations under which the rights described in subdivision (7) of this subsection may be exercised or will lapse.

(10) The allocation to each lot of the allocated common expense and votes.
(11) The recording information for all easements and licenses (i) appurtenant to or included in the planned community or (ii) to which any portion of the planned community may become subject by virtue of a reservation in the declaration.
(12) Any authorization that entitles the association to establish and enforce construction and design criteria and aesthetic standards.
(13) If an authorization is included pursuant to subdivision (12) of this subsection, a provision allowing for members to adopt (i) rules for the establishment and enforcement of construction and design criteria and aesthetic standards and (ii) procedures for enforcement of those criteria and standards, including approval of applications, establishment of a reasonable time for review of applications, and the consequences of the association's failure to timely respond.
(14) Any other matters the declarant deems appropriate and that are consistent with this Chapter."

SECTION 2. G.S. 47F-2-117 reads as rewritten:

"**§ 47F-2-117. Amendment of declaration.**

(a) Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47F-2-118(b), and notwithstanding the content of the declaration and any intention of the declarant, the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration ~~specifies~~specifies, but not exceeding eighty percent (80%), or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use. To the extent the procedures and requirements for amending the declaration conflict with the provisions of this section, this section shall control.

(b) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than ~~one year~~three years after the amendment is recorded.

(c) Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation.

(d) Any amendment passed pursuant to the provisions of this section or the procedures provided for in the declaration are presumed valid and ~~enforceable.~~enforceable, unless the amendment conflicts with the provisions of this Chapter or violates G.S. 47F-1-104(a) or G.S. 47F-2-103(c).

...."

SECTION 3. G.S. 47F-3-118 reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall ~~keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a~~

~~vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~retain all of the following:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records.

(2) Minutes of all meetings of the lot owners and executive board, other than executive sessions, a record of all actions taken by the lot owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association.

(3) The names of lot owners in a form that permits preparation of a list of the names of all owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast.

(4) The association's original or restated organizational documents, the bylaws and all amendments to them, and all rules of the association currently in effect.

(5) All financial statements, audits, and tax returns of the association for the preceding three years.

(6) A list of the names and addresses of the association's current executive board members and officers.

(7) All financial and other records sufficiently detailed so as to enable the association or lot owner to comply with a required disclosure statement.

(8) Copies of current contracts to which the association is a party.

(9) All records of executive board or committee actions to approve or deny requests for design or architectural approval from unit owners.

(10) All ballots, proxies, and other records related to voting by unit owners for a period of one year following the election, action, or vote to which they relate.

(b) Subject to the provisions of subsections (c) and (d) of this section, all records retained by the association, including those records required pursuant to Chapter 55A of the General Statutes, shall be made available for inspection and copying by a lot owner or the lot owner's authorized agent. For purposes of this section, copying of records may be done by photocopying or other means, including the receipt of copies through an electronic transmission, if available, upon request by the lot owner. An association is not obligated to compile or synthesize information. Information provided pursuant to this section shall not be used for commercial purposes. The association may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the lot owner. The charge shall not exceed the estimated cost of production or reproduction of the records.

(c) Upon failure of the association to provide access to records requested pursuant to this section, the lot owner may obtain relief pursuant to G.S. 55A-16-04. A request made pursuant to this section shall be subject to all of the following requirements:

(1) Access to the records shall be during reasonable business hours or at a mutually convenient time and location.

(2) The requestor shall provide at least 10 days' written notice that reasonably identifies the specific records requested.

(d) Records retained by an association may be withheld from inspection and copying to the extent the documents contain any of the following:

(1) Personnel, salary, and medical records relating to specific individuals.

(2) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently being negotiated.

(3) Information regarding existing or reasonably anticipated litigation or mediation, arbitration, or administrative proceedings.

(4) Information regarding existing or reasonably anticipated federal, State, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules.

(5) Communications with the association's attorney that are otherwise protected by the attorney-client privilege or the attorney work product doctrine.

(6) Information that, if disclosed, would violate a State or federal law.

(7) Records of an executive session of the executive board.

(8) Files pertaining to an individual lot owner other than those of the requesting owner.

(e) In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates.

(f) Notwithstanding the bylaws of the association, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at an annual meeting or any special meeting duly called for that purpose.

~~(b)~~(g) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

~~(c)~~(h) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 4. This act becomes effective July 1, 2016. Nothing in this act shall be construed as being applicable to or affecting any pending litigation.

XT

HOUSE BILL 882: Comm. Mgr. Licensing & Planned Comm. Act Chgs

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	June 23, 2015
Introduced by:	Reps. Jordan, R. Moore, Iler	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H882-CSSA-73		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 882 would make various changes to the North Carolina Planned Community Act.

CURRENT LAW: The North Carolina Planned Community Act is contained in Chapter 47F of the General Statutes and, with limited exception, applies to all planned communities created on or after January 1, 1999 and planned communities created before that date that have chosen for the Act to apply to their community.

BILL ANALYSIS:

Section 1 would add a new G.S. 47F-2-105 setting forth required contents of the declaration that creates a planned community and listing 14 specific items that must be included.

Section 2 would amend G.S. 47F-2-117, Amendment of declaration, to make the following changes:

- Provide that an association cannot require more than an 80% majority vote to amend the declaration.
- Extend the time period to challenge the validity of an amendment from one year to three years.
- Clarify that amendments are not presumed valid and enforceable if they conflict with the requirements of the Planned Community Act or violate specific provisions of the Act.

Section 3 would amend G.S. 47F-3-118, Association records, to specifically list 10 types of records that must be kept by the association and must be made available for inspection and copying by a lot owner unless they meet a stated exception. Failure to provide access to records would entitle the lot owner to $10 per day that access is denied. The requestor would be required to give 10 days' written notice of the request and there would be eight specific types of information that would be exempt from the requirement.

The association would be required to make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year. A more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year could be required by a vote of the majority of the executive board or a majority of the lot owners present and voting in person or by proxy at an annual meeting or a special meeting called specifically for that purpose.

EFFECTIVE DATE: This act becomes effective July 1, 2016. Nothing in this act shall be construed as applicable to or affecting any pending litigation.

O. Walker Reagan
Director

H882-SMSA-83 CSSA-73 -V1

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

XII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 882

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

H882-ASA-104 [v.1]

Amends Title [NO]
H882-CSSA-73

Date June 23, ,2015

Representative Stam

moves to amend the bill on page 3, lines 36-37
by rewriting those lines to read:
"used for commercial purposes. The association may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the lot owner. The charge shall not exceed the estimated cost of production or reproduction of the records.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

XIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 882

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

H882-ASA-105 [v.1]

Amends Title [NO]
H882-CSSA-73

Date June 23 ,2015

Representative Stam

moves to amend the bill on page 3, lines 38-47
by rewriting those lines to read:
"(c) Upon failure of the association to provide access to records requested pursuant to this section, the lot owner may obtain relief pursuant to G.S. 55A-16-04. A request made pursuant to this section shall be subject to all of the following requirements:

(1) Access to the records shall be during reasonable business hours or at a mutually convenient time and location.

(2) The requestor shall provide at least 10 days' written notice that reasonably identifies the specific records requested.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

House Committee on Judiciary II
Tuesday, June 30, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 30, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, Michaux, Queen, Ross, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:01 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

The following bills were considered:

SB 29 DOB Redaction Requests For Public Documents. (Senator Curtis)

Chairman Blust recognized Senator Curtis to present the bill. Representative Michaux made the motion to bring the Proposed House Committee Substitute before the committee, and the motion passed. After committee discussion, the decision was made to displace the bill until the next committee meeting. Mr. John Bussian, North Carolina Press Association, spoke against the bill.

HB 482 Employee Misclassification Reform. (Representatives Pendleton, Blust, Szoka, Bishop)

Chairman Blust recognized Representative Pendleton to present the bill. Two handouts were given to each committee member: Worker Misclassification Complaint Flow and Reasons for HB 482. Representatives Bishop and Szoka assisted in answering questions from the committee. After a lengthy discussion, the committee decided to send the bill to a subcommittee. Representatives Blust and Jordan appointed the following subcommittee members: Representative McGrady will serve as the chair; and the members are Representatives Conrad, Glazier, Reives, and Ross. Representatives Pendleton, Bishop, and Szoka, bill sponsors, asked to be involved with the subcommittee meetings, along with a number of interested parties. Mr. Doug Burton, Whitman Masonry, spoke in favor of the bill.

The meeting adjourned at 1:42 PM.

Respectfully submitted,

John M. Blust
Representative John M. Blust, Chairman
Presiding

Jennie L. Thurlow
Jennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, June 30, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 482	Employee Misclassification Reform.	Representative Pendleton Representative Blust Representative Szoka Representative Bishop
SB 29	DOB Redaction Requests For Public Documents.	Senator Curtis

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:37 PM on Thursday, June 25, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, June 30, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks
Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
	HB 482	Employee Misclassification Reform.	Representative Pendleton Representative Blust Representative Szoka Representative Bishop
PCS	SB 29	DOB Redaction Requests For Public Documents.	Senator Curtis

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 29
Judiciary II Committee Substitute Adopted 3/23/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S29-CSSU-26 [v.5]

6/29/2015 8:19:58 PM

Short Title: DOB Public Docs/Birth Cert./Marriage Lic. (Public)

Sponsors:

Referred to:

February 5, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERS OF DEEDS AND CLERKS OF COURT TO REDACT CERTAIN IDENTIFYING INFORMATION FROM CERTAIN PUBLIC RECORDS TO PROTECT THE PUBLIC FROM IDENTITY THEFT, TO ALLOW PARENTS TO DETERMINE THEIR PARENTAL DESIGNATION ON BIRTH CERTIFICATES, AND TO AMEND THE REQUIRED FORMAT FOR MARRIAGE LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10(f) reads as rewritten:

"**§ 132-1.10. Social security numbers and other personal identifying information.**

...

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record.~~ personal identifying information as described in this subsection. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords~~ personal identifying information, as described in this subsection, to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation. Except as prohibited by some other provision of law:

(1) The register of deeds or clerk of court shall, upon receipt of a request made pursuant to this subsection, comply with the request for redaction for the following personal information displayed in a manner described in this subsection:
a. Social Security number.
b. Employer taxpayer identification number.
c. Drivers license number.
d. State identification number.
e. Passport number.
f. Checking or savings account number.
g. Credit or debit card number.
h. Personal identification (PIN) code or passwords.

(2) Upon receipt of a request made pursuant to this subsection, the register of deeds may comply with the request for redaction of all, or a portion of, the requestor's date of birth from any land records displayed in a manner described in this subsection."

SECTION 2. G.S. 130A-102 reads as rewritten:

"**§ 130A-102. Contents of birth certificate.**

The certificate of birth shall contain those items recommended by the federal agency responsible for national vital statistics, except as amended or changed by the State Registrar. Each parent listed on the birth certificate shall be designated as "mother", "father", or "parent", as directed by the parent providing information for the birth certificate. Medical information contained in a birth certificate shall not be public records open to inspection."

SECTION 3. G.S. 51-16 reads as rewritten:

"**§ 51-16. Form of license.**

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by a church, any magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the ~~man~~ applicant to be written in full) of (here state ~~his~~ applicant's residence), aged ____ years (race, as the case may be), the ~~son~~ child of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the ~~woman~~ applicant in full) of (here state ~~her~~ applicant's residence), aged ____ years (race, as the case may be), the ~~daughter~~ child of (here state names and residences of the parents, if ~~known, as is required above with respect to the man). (If~~ known). If either of the parties is under 18 years of age, the license shall here contain the ~~following:)~~ following: And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the State. You are required within 10 days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars ($200.00) to the use of any person who shall sue for the same.

Issued this ____ day of ____, ____

_____ L.M.

Register of Deeds of ____ County

Every register of deeds shall, at the request of an applicant, designate in a marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white," "black," "African-American," "American Indian," "Alaska Native," "Asian Indian," "Chinese," "Filipino," "Japanese," "Korean," "Vietnamese," "Other Asian," "Native

Hawaiian," "Guamarian," "Chamorro," "Samoan," "Other Pacific Islander," "Mexican," "Mexican-American," "Chicano," "Puerto Rican," "Cuban," "Other Spanish/Hispanic/Latino," or "other," as the case may be. If the form contains a descriptive title for an applicant, the register of deeds shall include "bride", "groom", "applicant", or other appropriate term on the marriage certificate as a descriptor, as directed by each applicant. The certificate shall be filled out and signed by the minister, officer, or other authorized individual celebrating the marriage, and also be signed by two witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N.O., an ordained or authorized minister or other authorized individual of (here state to what religious denomination, or magistrate, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the ___ day of _____, ___, at the house of P.R., in (here name the town, if any, the township and county), according to law.

_____ N.O.

Witness present at the marriage:

S.T., of (here give residence)."

SECTION 4. The Department of Health and Human Services shall develop or amend the Parent's Worksheet for Child's Birth Certificate and any other forms necessary to implement the requirements in Sections 2 and 3 of this act.

SECTION 5. Sections 2 and 3 of this act become effective October 1, 2015, and apply to births registered and marriage licenses issued on or after that date. The remainder of the act is effective when it becomes law.

SENATE BILL 29:
DOB Redaction Requests For Public Documents

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	June 29, 2015
Introduced by:	Sen. Curtis	**Prepared by:**	Wendy Graf Ray Staff Attorney Tawanda Foster Committee Counsel
Analysis of:	PCS to Second Edition S29-CSSU-26		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 29 would allow Registers of Deeds and Clerks of Court to redact certain personal identifying information from certain public records to protect the public from identity theft; would allow parents to determine their parental designation on birth certificates; and would amend the required format for marriage licenses***

CURRENT LAW: G.S. 132-1.10(f) allows a person to request a register of deeds or clerk of court redact certain identifying information from internet websites made available to the general public, lists the information that may be redacted, and outlines the process for making the request. G.S.130A-102 specifies the items that must be included on birth certificates. G.S. 51-16 specifies the form for marriage licenses issued in this State.

BILL ANALYSIS: The PCS to Senate Bill 29 would amend the current law as follows:

Section 1 would require the register of deeds or clerk of court to comply with the request for redaction of the personal identifying information in the manner described in G.S. 132-1.10(f).

Section 2 would permit each parent listed on a birth certificate to designate themselves as "mother", "father", or "parent."

Section 3 would amend the statute setting out the required marriage license form to reflect the gender neutral term "applicant." Each applicant may designate themselves as "bride", "groom", "applicant", or any other appropriate term on their marriage certificate.

Section 4 would require the Department of Health and Human Services to develop or amend the Parent's Worksheet for Child's Birth Certificate and any other forms necessary to implement the requirements in Sections 2 and 3.

EFFECTIVE DATE: Sections 2 and 3 of this act become effective October 1, 2015, and apply to births registered and marriage licenses issued on or after that date. The remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 29
Judiciary II Committee Substitute Adopted 3/23/15

Short Title: DOB Redaction Requests For Public Documents. (Public)

Sponsors:

Referred to:

February 5, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERS OF DEEDS AND CLERKS OF COURT TO REDACT CERTAIN IDENTIFYING INFORMATION FROM CERTAIN PUBLIC RECORDS TO PROTECT THE PUBLIC FROM IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10(f) reads as rewritten:

"**§ 132-1.10. Social security numbers and other personal identifying information.**

...

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record.~~ personal identifying information as described in this subsection. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the ~~social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords~~ personal identifying information, as described in this subsection, to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation. Except as prohibited by some other provision of law:

(1) The register of deeds or clerk of court shall, upon receipt of a request made pursuant to this subsection, comply with the request for redaction for the following personal information displayed in a manner described in this subsection:

a. Social Security number.
b. Employer taxpayer identification number.
c. Drivers license number.
d. State identification number.
e. Passport number.
f. Checking or savings account number.
g. Credit or debit card number.
h. Personal identification (PIN) code or passwords.

(2) Upon receipt of a request made pursuant to this subsection, the register of deeds may comply with the request for redaction of all, or a portion of, the requestor's date of birth from any land records displayed in a manner described in this subsection."

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

HOUSE BILL 482
Committee Substitute Favorable 6/17/15

Short Title: Employee Misclassification Reform. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.

The General Assembly of North Carolina enacts:

PART I. EMPLOYEE FAIR CLASSIFICATION ACT

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.

"Employee Fair Classification Act.

"**§ 143-760. Title.**

This Article shall be known and may be cited as the "Employee Fair Classification Act."

"**§ 143-761. Definitions; scope.**

(a) The following definitions apply in this Article:

(1) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(2) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor. The term does not include an individual or entity where the individual or entity provides transportation services and trucking equipment as an owner-operator under written contract as referenced in 49 C.F.R. Part 376, et seq., to a common carrier, contract carrier, or exempt hauler. The owner-operator and the drivers provided by an owner-operator are not employees of any such common carrier, contract carrier, or exempt hauler for the purposes of this Article.

(3) Employee Classification Division or Division. – The Employee Classification Division within the Department of Revenue.

(4) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, or 105 of the General Statutes by misclassifying an employee as an independent contractor.

(5) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(6) Secretary. – The Secretary of the Department of Revenue.

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law.

"**§ 143-762. Establishment of Employee Classification Division; appointment of director; salaries; other staff.**

(a) The Employee Classification Division is established within the Department of Revenue.

(b) The Secretary shall appoint a director of the Division to serve at the Secretary's pleasure with such authority as the Secretary deems necessary to direct and oversee the Division in carrying out the purposes of this Article. The director shall be exempt from the State Human Resources Act and shall devote his or her entire time to the duties of the Division. The director may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Division. The director's salary shall be set by the General Assembly.

(c) The Secretary may employ clerical staff, investigators, and other staff within the Division as is necessary for the Division to perform its duties under this Article. Notwithstanding Chapters 126, 143A, and 143B of the General Statutes or any other provision of law, the director may hire or fire personnel and transfer personnel within the Division. The Division shall be provided with adequate offices in which the Division's records shall be kept and its official business transacted during regular business hours. The Division shall also be provided with necessary office furniture, stationery, and other supplies.

(d) The Office of the State Chief Information Officer shall ensure that the Division is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

"**§ 143-763. Division powers and duties.**

(a) The Division shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Assess administrative civil penalties for instances of employee misclassification as set forth in G.S. 143-765.

(4) Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(5) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 143, 95, 96, 97, or 105 of the General Statutes.

(6) Create a publicly available notice that includes the definition of employee misclassification and indicates the civil penalties provided for in G.S. 143-765.

(7) Develop methods and strategies for information-sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(8) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) The director shall appoint an informal advisory council to advise the director on issues within the jurisdiction of the Division. The members of the advisory council shall include, at a minimum:

(1) The following officers or the officer's designee:
a. Commissioner of Labor.
b. Secretary of Revenue.
c. Chairman of the Industrial Commission.
d. Assistant Secretary of Commerce for the Division of Employment Security.
e. State Budget Director.
(2) A representative of workers in this State.
(3) A representative of employers in this State.

The members of the council shall not receive compensation, per diem, or expense reimbursement from the State Treasury for their service on the advisory council.

(c) No later than October 1 of each year, the Division shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Division deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(d) The Division shall adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes and that are not inconsistent with this Article for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"**§ 143-764. Determination of independent contractor status.**

(a) The following factors shall be considered in determining whether an individual is an independent contractor for purposes of this Article:
(1) Whether the individual is engaged in an independent business, calling, or occupation.
(2) Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
(3) Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
(4) Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
(5) Whether the individual is not in the regular employ of the other contracting party.
(6) Whether the individual is free to use such assistants as he or she may think proper.
(7) Whether the individual has full control over such assistants.
(8) Whether the individual selects his or her own time.

(b) The presence of one or more of the foregoing factors is not controlling, nor is the presence of all of the foregoing factors required in determining whether an individual is an independent contractor.

(c) The provisions of this section are intended to codify the holding in *Hayes v. Board of Trustees of Elon College*, 224 N.C. 11 (1944). Other factors consistent with that holding may also be considered in making a determination under this section.

"**§ 143-765. Employee misclassification prohibited; civil penalties; repeated instances of misclassification.**

(a) Employee misclassification is prohibited.

(b) Any employer who is found by the Division to have engaged in willful employee misclassification after being assessed any back taxes, wages, benefits, penalties, or other monies by any State agency as a result of misclassifying one or more employees within the

previous three calendar years shall be assessed a civil penalty of no greater than one thousand dollars ($1,000) per misclassified employee for any future instances of employee misclassification. In determining the amount of the penalty to be assessed, the Division shall consider the degree of willfulness or negligence by the employer in engaging in the employee misclassification. The penalty herein provided shall be assessed by the Division administratively. Any employer found by the Division to have engaged in employee misclassification or any other violation of this Article may within 60 days of receiving written notification of a final finding by the Division, appeal the final finding and any accompanying penalty or other sanction by either (i) commencing a contested case under Chapter 150B of the General Statutes or (ii) filing a petition with the Superior Court of Wake County or of such county where the events giving rise to the finding arose. The procedure shall be the same as in all other contested cases or civil actions, except that the review of the Division's findings and any accompanying penalties or sanctions shall be de novo for both factual findings and questions of law. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Nothing in this section shall be construed to create a private right of action, at law or in equity, for the activities prohibited by this Article.

"**§ 143-766. Temporary amnesty program.**

(a) The Division shall establish and administer a temporary amnesty program for the purpose of encouraging voluntary self-reporting by employers currently engaging in employee misclassification. Every employer participating in the temporary amnesty program shall be immune from the civil penalties provided for in G.S. 143-765 for past instances of employee misclassification that are voluntarily self-reported by the employer in accordance with the procedures of the temporary amnesty program.

(b) The Division shall establish procedures for participation in the temporary amnesty program. These procedures shall require, at a minimum, that a participating employer:

(1) File an application with the Division on a form prescribed by the Division on or before October 1, 2016. This form shall require, at a minimum, the employer's name, physical address, mailing address, telephone number, Social Security number or taxpayer ID number, and disclosure of all actual or potential instances of employee misclassification. If available, this form shall require the employer's registered agent, drivers license number, license number(s), and issuing agency of all licenses issued by a State licensing board.

(2) Comply with any and all determinations made or directives issued by the Division pertaining to the employer's application and compliance with this Article.

(c) Nothing in this section shall be construed to limit the liability of a participating employer in any civil or criminal matter not provided for by this Article.

"**§ 143-767. Occupational licensing boards and commissions; notice requirement; applicant certification.**

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, a certification that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(b) Every applicant for a license, permit, or certification issued by a State occupational licensing board or commission shall truthfully certify on the appropriate application that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(c) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification requirement set forth in subsection (b) of this section.

"**§ 143-768. Confidentiality; access to records.**

The records of the Division that are not civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, insofar as they refer to reported violations, investigations, or other enforcement actions taken by the Division, are not public records under G.S. 132-1, but are subject to inspection by State and federal agencies as required by the provisions of this Article and Chapters 95, 96, 97, and 105 of the General Statutes."

SECTION 1.2. G.S. 97-5.1 is repealed.

PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS

SECTION 2.1. G.S. 95-25.15(c) reads as rewritten:

"(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following:

(1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.

(2) Any employee who believes that they have been misclassified as an independent contractor by their employer may report the suspected misclassification to the Employee Classification Division.

(3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification may be reported to the Employee Classification Division."

SECTION 2.2. This section becomes effective January 1, 2016.

PART III. SANCTIONS AND OTHER REQUIREMENTS CONCERNING EMPLOYEE MISCLASSIFICATION

SECTION 3.1. G.S. 87-11 reads as rewritten:

"**§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.**

(a) The Board shall have the power to refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency, or misconduct in the practice of his or her profession, or willful violation of any provision of this ~~Article.~~Article, or if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of fraud, deceit, negligence, or misconduct against any general contractor licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses. These guidelines shall include references to the prohibition of employee misclassification under Article 81 of Chapter 143 of the General Statutes and state that engaging in employee misclassification is grounds for revocation of a license issued under this Article.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, five or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its findings in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 3.1A. G.S. 87-23 reads as rewritten:

"**§ 87-23. Revocation or suspension of license for cause.**

(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of the charges shall be in writing and investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Chapter, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee.

(d) The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes."

SECTION 3.1B. G.S. 87-42 reads as rewritten:

"**§ 87-42. Duties and powers of Board.**

In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the written examination of all applicants for certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all applications for certification as a qualified individual and all applications for licenses to be issued under this Article, shall examine all applicants to determine that each has met the requirements for certification and shall discharge all duties enumerated in this Article. Applicants for certification as a qualified individual must be at least 18 years of age and shall be required to demonstrate to the satisfaction of the Board their good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code as incorporated in the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of the installation of electrical work and equipment. Certification of qualified individuals shall be issued in the same classifications as provided in this Article for license classifications. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of qualified individuals, which may vary for the various license classifications. The Board shall issue certifications and licenses to all applicants meeting the requirements of this Article and of the Board upon the receipt of the fees prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this Article. The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes. The Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the Chairman for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. The Board shall have the power to acquire, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. The Board shall keep minutes of all its proceedings and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public accountant, and the audit report shall be filed with the State of North Carolina in accordance with Chapter 93B of the General Statutes."

SECTION 3.1C. G.S. 87-47(a1) reads as rewritten:

"(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.

(6) Engaging in false or misleading advertising.

(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.

(8) Willfully engaging in employee misclassification in violation of G.S. 143-765(b) where there was no good-faith argument that the individual was an independent contractor."

SECTION 3.2. G.S. 143-59.2(a) reads as rewritten:

"(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business ~~entity,~~entity; within five years prior to the date of the bid solicitation, has been assessed a civil penalty pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor; or within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934."

SECTION 3.3. G.S. 153A-134 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a county under this section shall certify to the county on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.4. G.S. 160A-194 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a city under this section shall certify to the city on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.5. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the county on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.6. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the city on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

PART IV. APPROPRIATIONS

SECTION 4.(a) There is appropriated from the General Fund to the Department of Revenue the sum of two hundred ninety-three thousand dollars ($293,000) for the 2015-2016 fiscal year and the sum of two hundred ninety-three thousand dollars ($293,000) for the 2016-2017 fiscal year to establish up to five new positions in the Employee Classification Division of the Department of Revenue to carry out the duties of the Division pursuant to G.S. 143-763. The Department of Revenue shall consult with the Industrial Commission, the Office of State Budget and Management, the Division of Employment Security of the Department of Commerce, and the Department of Labor in hiring staff for this function.

SECTION 4.(b) There is appropriated from the General Fund to the Employee Classification Division of the Department of Revenue the sum of seventeen thousand five hundred dollars ($17,500) for the 2015-2016 fiscal year for nonrecurring costs associated with the positions authorized by this section.

PART V. SEVERABILITY

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

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act becomes effective August 1, 2015.

HOUSE BILL 482:
Employee Misclassification Reform

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	June 30, 2015
Introduced by:	Reps. Pendleton, Blust, Szoka, Bishop	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 482 would enact the Employee Fair Classification Act (Act) to prevent the misclassification of employees as independent contractors and make other reforms regarding employee misclassification.

BILL ANALYSIS:

PART I. EMPLOYEE FAIR CLASSIFICATION ACT

Section 1 would create a new Article in Chapter 143 of the General Statutes entitled the "Employee Fair Classification Act" (Act).

Employee Classification Division: The bill would establish the Employee Classification Division (Division) in the Department of Revenue to carry out the purposes of the Act. The Secretary of Revenue would appoint the Director of the Division. The Division would have the following duties:

- Be available to receive reports of employee misclassification by telephonic, written, or electronic communication.
- Investigate reports of employee misclassification and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies as a result of employee misclassification.
- Assess administrative civil penalties for instances of employee misclassification.
- Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer or individual's involvement in employee misclassification.
- Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the North Carolina Department of Revenue, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission to facilitate investigation of potential statutory violations.
- Create a publicly available notice that includes the definition of employee misclassification and indicates the civil penalties.
- Develop methods and strategies for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.
- Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

Informal Advisory Council: The Director must appoint an informal advisory council to assist with matters within the jurisdiction of the Division. The advisory council includes the following members:

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- The following officers or their designee: Commissioner of Labor; Secretary of Revenue; Chairman of the Industrial Commission; the Assistant Secretary of Commerce for the Division of Employment Security, and the State Budget Director.
- A representative of workers in this State.
- A representative of employers in this State.

Reporting: The Division would issue annually on October 1 to the Joint Legislative Commission on Governmental Operations a report on the administration of the Article and any recommendations of the Division. The report would include: the number of reports of employee misclassification received; the number and amount of back taxes, wages, benefits, penalties, or other monies assessed; the amount of back taxes, wages, benefits, penalties, or other monies collected; and the number of cases referred to each State agency.

Determination of Independent Contractor Status: This provision is intended to codify the holding in *Hayes v. Board of Trustees of Elon College*. Any factors consistent with the holding, including the following factors, would be considered when determining whether an individual is an independent contractor:

- Whether the individual is engaged in an independent business, calling, or occupation.
- Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
- Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
- Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
- Whether the individual is not in the regular employ of the other contracting party.
- Whether the individual is free to use such assistants as he or she may think proper.
- Whether the individual has full control over such assistants.
- Whether the individual selects his or her own time.

Prohibition on Employee Misclassification and Civil Penalties: The bill would prohibit employee misclassification. Employee misclassification is defined as avoiding tax liabilities and other obligations imposed by Chapter 95, Chapter 96, Chapter 97, or Chapter 105 of the General Statutes by misclassifying an employee as an independent contractor.

If an employer is found by the Division to have engaged in willful employee misclassification and has been assessed back taxes, wages, benefits, penalties, or other monies by any State agency as a result of misclassifying one or more employees within the previous three calendar years, then subsequent violations as determined by the Division may result in civil penalties up to $1,000 per misclassified employee.

An employer may appeal from a final finding of and penalty imposed by the Division within 60 days of receiving written notice by either (1) commencing a contested case before the Office of Administrative Hearings, or (2) filing a petition in Superior Court of Wake County or the county where the events occurred.

Temporary Amnesty Program: The Division would establish and administer a temporary amnesty program to encourage voluntary self-reporting by employers currently engaging in employee misclassification. Employers participating in this program would be immune from civil penalties for past instances of employee misclassification that are voluntarily self-reported.

The Division would establish procedures for participation in the temporary amnesty program. These procedures would require, at minimum, the employer file an application with the Division before October 1, 2016 and comply with all determinations and directives issued by the Division pursuant to this Act.

Nothing in this section would be construed to limit the liability of an employer in a civil or criminal matter not provided for by this Act.

Notice and Certification Requirement by Occupational Licensing Boards and Commissions: Every State occupational licensing board or commission would be required to include on every application for licensure, permit, or certification, a certification that the applicant has read and understands the employee misclassification notice provided by the Division. Every applicant for a license, permit, or certification shall certify that he or she has read and understands the misclassification notice. An occupational licensing board or commission would be required to deny the license, permit, or certification of any applicant who fails to comply with the certification requirement.

Confidentiality: The records of the Division would not be public records. This does not apply to civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, or other enforcement actions taken by the Division. The records of the Division would be subject to inspection by State and federal agencies as required by other statutory provisions.

Taxicab Drivers: Section 1.2 would repeal G.S. 97-5.1, which creates a rebuttable presumption that taxicab drivers are independent contractors under the Workers' Compensation Act.

PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS

Section 2 would require the Department of Labor to include on the required poster summarizing the Wage and Hour Act in covered businesses, a notice indicating the following:

- Any worker who is defined as an employee under the law shall be treated as an employee unless the individual is an independent contractor.
- Any employee who believes that he or she has been misclassified may report to the Division.
- The physical location, mailing address, telephone number, and email address where alleged incidents of misclassification occurred may be reported to the Division.

This section becomes effective January 1, 2016.

PART III. SANCTIONS AND OTHER REQUIREMENTS

Section 3.1 would authorize the State Licensing Board for General Contractors to refuse to issue or renew or revoke, suspend, or restrict a license or take disciplinary action if a civil penalty was imposed on a licensed general contractor pursuant to a violation of the Act, if the violation was willful, and there was no good faith argument that the individual was an independent contractor. This section would also direct the Board to adopt and publish guidelines referencing the prohibition on employee misclassification and providing that a violation of that prohibition is grounds for revocation of a license.

Section 3.1A would make an identical change to the law governing the disciplinary authority of the State Licensing Board for Plumbing, Heating, and Fire Sprinkler Contractors. The Board would also be authorized to conduct audits of the pay and project records of licensees in furtherance of the Act.

Section 3.1B would authorize the State Board of Examiners of Electrical Contractors, to conduct audits in furtherance of the Act.

Section 3.1C makes willful employee misclassification with no good faith argument that an electrical contractor was an independent contractor a prohibited activity under the Act.

Section 3.2 would make a vendor ineligible to enter into a contract with an agency of the State government if, within five years of the bid solicitation, the vendor has been assessed a civil penalty for a violation of the Act.

Section 3.3 and 3.4 would require applicants subject to regulation and licensure by a county or city to certify to the county or city that they have read and understand the employee misclassification notice provided by the Division.

Section 3.5 and 3.6 would require owners of sites with work in progress subject to local inspection by the county or city to certify to the county or city that they have read and understand the employee misclassification notice provided by the Division.

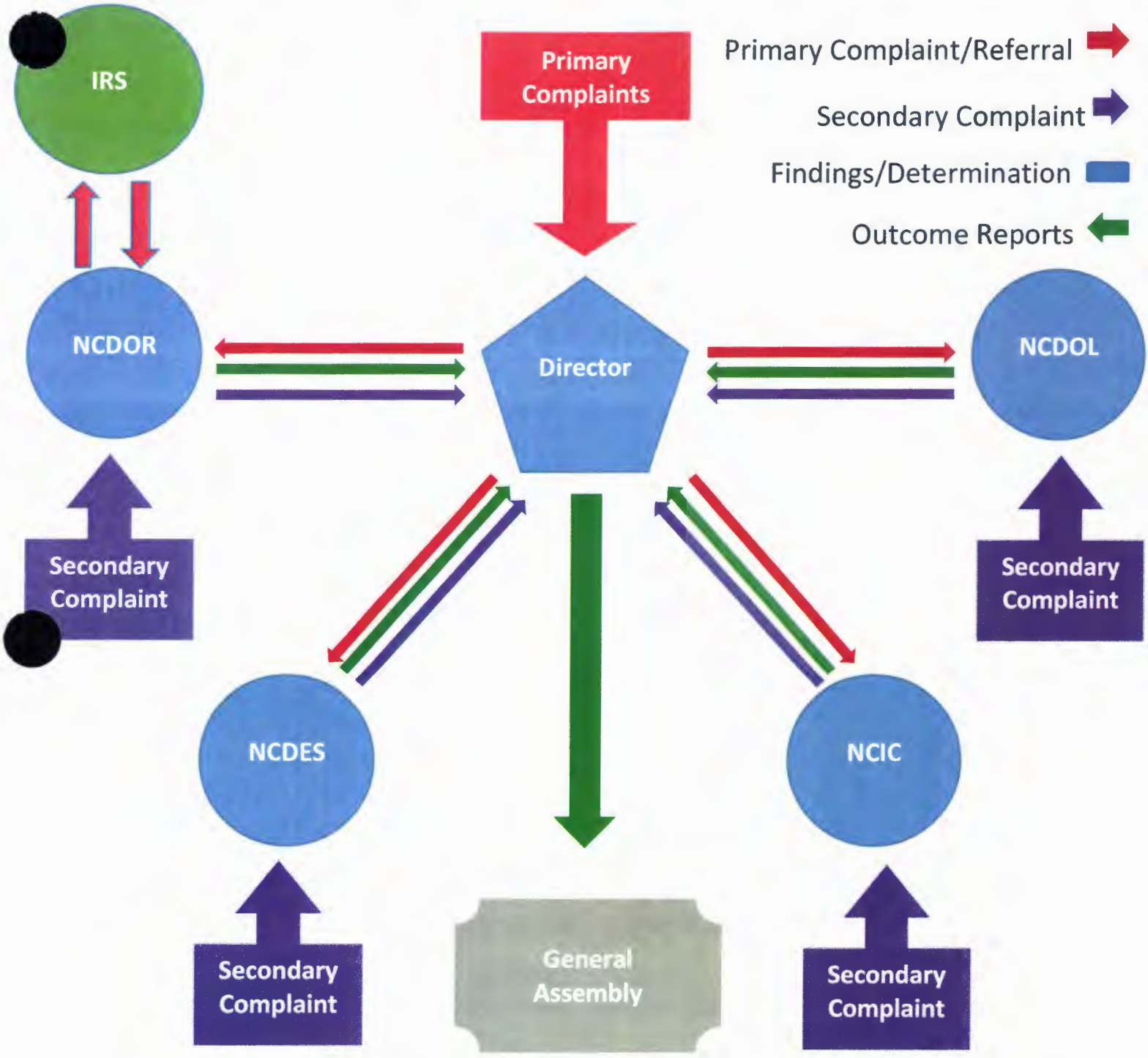
PART IV. APPROPRIATION

Section 4 would provide an appropriation to the Department of Revenue to establish up to five new positions to implement the Act.

EFFECTIVE DATE: Except as otherwise provided, the act becomes effective August 1, 2015.

Karen Cochrane-Brown and Layla Cummings, Staff Attorneys with the Research Division, contributed substantially to this summary.

Worker Misclassification Complaint Flow



1. Primary complaints are filed directly with the Director;
2. Secondary complaints originate at the agency level and are referred to the Director;
3. The Director collects information on all primary and secondary complaints, creates cases for each complaint and refers the cases to every agency;
4. Each agency conducts its own independent review of each case and prosecutes offending businesses under the agency's existing laws;
5. The agencies report outcomes of each case to the Director;
6. The Director penalizes repeat offenders; and
7. The Director reports quarterly to the General Assembly.

REASONS FOR HB-482

5.17.15

1. Many workers that should be treated as employees are treated as independent contractors (1099's). We have had numerous workers killed on the job and their loved ones receive nothing when they should have received over one years' compensation from workers compensation. Many more are hurt on the job and disabled for a period of time or for life and they and their families receive no compensation from workers compensation. This costs local and state government millions of dollars in welfare payments. In addition, our hospitals treat them and usually are not compensated.

2. Many lawful employers have been put out of business by these rouge employers. Some of these businesses have moved from other states since North Carolina has the most liberal laws in the South. For instance, Florida passed legislation in the last few years to allow cease and desist orders against these businesses and a $5,000 per employee fine. An example is a concrete finishing

firm that moved from Florida to Wake County and in the last two years now has control of 80% of the concrete finishing work. I have talked to many of his former competitors who have gone out of business due to his unlawful practices. He consistently underbids the others by 20% by not offering health insurance as mandated by Obamacare, Social Security, worker's compensation, etc.

3. North Carolina lost approximately $191M in state income and payroll taxes last year because of our liberal laws.

4. DHHS said 40% of people that are in arrears on child support are paid as independent contractors (1099) and due to this, their income is very hard to garnish.

5. The companion bill SB-694 introduced by Senator Newton passed unanimously.

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-30-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: David Leighton
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

Thursday, June 25 JUDICIARY II	Room 421	Time 1:00 pm

Name	County	Sponsor
Brandon Farris	Gaston	Kelly E. Hastings
Trey Jones III	Columbus	James L. Boles, Jr.
Meredith Levy	Gaston	Dana Bumgardner
Lauren Luther	Pasquotank	Bob Steinburg

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-30-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank Mecca	UPS
Rick Zechini	WM
Jake Cashion	NCC
Tom Killian	Nelson Mullins
W H Potter Jr	Fink & Potter
Zack Richardson	Rep. Gray
Mike Okun	NC State AFL-CIO
LEONARD FERNICAN	FERNICAN LAW FIRM
Amy Fulk	30 PR
Bill Rowe	NC Justice Center
Todd Barlow	NC Advocates for Justice

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-30-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cady Thomas	Focus Carolina
David K. Evan	Partner Mack Law
Crosby	WM
Mike Carpenter	NCHSA
Elizabeth Robinson	NCRMH
Doug Burton	Whitman Masonry
John Bode	BAH
Carol Brooke	NC Justice Ctr
Benjamin Gurlitz	NC Justice Ctr.
Danewrys Tejeda	NC Justice Ctr.
Andis Vickens	SEANC
Lynn Tennant	NCGA

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-30-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J BUSSIAN	NCPA
Araca Wadsworth	
MARK Sliver	Rhino Times
SOLARI	DST
Brian Lewis	New Frame LLC
Bubba White	New Frame LLC
Sarah Krouse	NCDOL
Jane Gilchrist	NCDOL
Sean McCabe	NCDOL
Phoebe Landon	Brooks Pierce
Crystal Collins	NC Trucking Assn

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-30-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	MWC
Meghan Cook	OITS
Walt Gray	NCIC
Ryan Boyce	NCIC
Locke	NHO
Evan Lee	NCDPI
Weldon Adams	
Donna Beard	
Jennifer Haigwood	NCDOL
Betsy Bailey	CAGC
John DelGorno	Brickkort Assoc.

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-30-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
A. J. SAIN	FedEx Corporation
duPLe TrAVillion	fedex Corp.
Sarah Bales	Brubaker & Assoc.
[illegible]	Brubaker & [illegible]
Gary D Dunbar	FedEx Ground
Nelson Freeman	DOR
Elizabeth Biser	Brooks Pierce

House Committee on Judiciary II
Tuesday, July 28, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Joe Crook**

House Committee on Judiciary II
Tuesday, July 28, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on July 28, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Reives, Ross, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King and Gennie Thurlow (Committee Clerks) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:00 PM. He introduced the Pages and Sergeants at Arms (Attachment II). The following bills were considered:

The proposed committee substitute for House Bill 287 and a summary are provided (Attachment III and Attachment IV)
HOUSE BILL 287: AN ACT TO MAKE CONFORMING AND CLARIFYING CHANGES TO THE LAWS GOVERNING PROFESSIONAL EMPLOYER ORGANIZATIONS, INSURANCE COMPANY DEPOSITS, CONTINUING CARE RETIREMENT COMMUNITIES, HEALTH INSURANCE EXTERNAL REVIEW, HEALTH INSURANCE FIDUCIARIES, AND INSURANCE COMPANY NAMES; TO PROVIDE FOR A STUDY OF THE HEALTH INSURANCE PREMIUM RATE REVIEW PROCESS AND MONEYS FROM THE INSURANCE REGULATORY FUND TO IMPLEMENT THAT STUDY, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE; TO ALLOW AN ITEMIZED INDIVIDUAL INCOME TAX DEDUCTION FOR INVESTORS WHO INCUR LOSSES FROM CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS; AND TO ALLOW HEALTH CARE PROVIDERS TO SELECT THE LAB OF THEIR CHOICE.

Chairman Jordan recognized Representative Ross who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Bumgardner to speak on the bill.

House Bill 287 would make conforming and clarifying changes to the laws governing professional employer organizations, insurance company deposits, continuing care retirement communities, health insurance external review, health insurance fiduciaries, and insurance company names; would provide for a study of the health insurance premium rate review process and moneys from the insurance regulatory fund to implement that study; would allow an itemized individual income tax deduction for investors who incur losses from criminally fraudulent investment arrangements; and would allow health care providers to select the lab of their choice.

The chair recognized Representative Glazier who moved to amend the bill on page 2, line 39. (Attachment V). The motion passed on a unanimous voice vote.

The chair recognized Representative Bumgardner who moved to amend the bill on page 1, lines 12-13, and on page 4, line 2 through page 6, line 6, and page 6, lines 10-12. (Attachment VI).

The chair recognized Representative Stam to speak against the amendment.

The chair recognized Chris Evans, of Blue Cross Blue Shield of North Carolina, to speak on the amendment.

The chair recognized Ed Turlington, of United Health Care, to speak on the amendment.

The chair recognized Chad Price, of Mako Labs, to speak on the amendment.

After a short discussion, the motion passed 9-3.

The chair then recognized Representative Bumgardner who moved to have the amendments rolled into a new committee substitute and given a favorable report, unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for Senate Bill 238 and a summary are provided (Attachment VII and Attachment VII)
SENATE BILL 238: AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL AND TO AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY.

Chairman Jordan recognized Representative Stam who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Senator Stein to speak on the bill.

Senate Bill 238 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track an individual's location.

The chair recognized Skye David, of the Coalition Against Domestic Violence, to speak on the bill.

The chair recognized Jerry Pittman, of the North Carolina Private Investigators Association, to speak on the bill.

After a short discussion, the chair recognized Representative Glazier who moved to give a favorable report to the proposed committee substitute, unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for Senate Bill 332 and a summary are provided (Attachment IX and Attachment X)
SENATE BILL 332: AN ACT TO ENABLE REGISTERS OF DEEDS TO COLLECT ADDITIONAL FEES FOR INDEXING INSTRUMENTS THAT CONTAIN EXHIBITS WITH MULTIPLE ENTERABLE PARTIES.

Chairman Jordan recognized Representative Glazier who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Blust recognized Representative Jordan to speak on the bill.

Senate Bill 332 would impose an additional fee of $2 per entity to register or file an instrument with the register of deeds that includes the indexing of more than 20 distinct entities. The Proposed Committee Substitute (PCS) corrects the effective date.

The chair recognized Representative Jordan who moved to amend the bill on page 1, line 21 and line 23. (Attachment XI). The motion passed on a unanimous voice vote.

The chair recognized Chip Killian, representing the Register of Deeds, to speak on the bill.

The chair recognized Judy Martin, Moore County Register of Deeds, to speak on the bill.

After a short discussion, the chair recognized Representative Jordan who moved to have the amendments rolled into a new committee substitute and given a favorable report, unfavorable as to the original bill, with a serial referral to Finance, then Rules. The motion passed without dissent.

Senate Bill 183 and summary are provided (Attachment XII and Attachment XIII).
SENATE BILL 183: AN ACT TO ELIMINATE CONFINEMENT IN RESPONSE TO VIOLATION FOR MISDEMEANANTS SENTENCED UNDER STRUCTURED SENTENCING, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

Chairman Jordan recognized Senator McKissick to speak on the bill.

Senate Bill 183 would eliminate confinement in response to violation for misdemeanants sentenced under Structured Sentencing, as recommended by the North Carolina Sentencing and Policy Advisory Committee.

The chair recognized John Madler, staff of the Sentencing Commission, to speak on the bill.

Chairman Jordan spoke on the bill, stating one of his Chief District Court Judges had expressed concerns about the bill. Mr. Madler acknowledged that he would contact the judge.

After a short discussion, the chair recognized Representative Michaux who moved for a favorable report. The motion passed with some dissent.

Senate Bill 233 and summary are provided (Attachment VII and Attachment VIII).
SENATE BILL 233: AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF CERTAIN RECORDS OF A PERSON WHEN THE CHARGE OR CHARGES AGAINST THE PERSON ARE DISMISSED AS A RESULT OF IDENTITY THEFT OR MISTAKEN IDENTITY.

Chairman Jordan recognized Senator McKissick to speak on the bill.

Senate Bill 233 would provide for the automatic expunction of certain records of a person when the charge or charges against the person are dismissed as a result of identity theft or mistaken identity.

After a short discussion, the chair recognized Representative Hurley who moved for a favorable report. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 1:58 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, July 28, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative Jonathan Jordan will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 287	Amend Insurance Laws.-AB	Representative Setzer Representative Bumgardner
SB 238	Stalking by GPS/Criminal Offense.	Senator Stein Senator Hartsell
SB 332	Register of Deeds-POA Indexing Fees.	Senator Daniel
SB 183	Eliminate CRVs for Misdemeanants.	Senator McKissick Senator Daniel Senator Randleman
SB 233	Automatic Expunction/Mistaken Identity.	Senator McKissick Senator Bingham Senator Daniel

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 8:50 AM on Tuesday, July 28, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Kevin King (Committee Assistant)

ATTENDANCE

House Committee on Judiciary II

DATES	July 28, 2015														
Rep. Jonathan C. Jordan – Chair	X														
Rep. John M. Blust– Chair	X														
Rep. John Faircloth – Vice Chair	X														
Rep. Rick Glazier – Vice Chair	X														
Rep. Pat Hurley – Vice Chair	X														
Rep. Chuck McGrady – Vice Chair	X														
Rep. Henry Michaux Jr. – Vice Chair	X														
Rep. Paul Stam – Vice Chair	X														
Rep. Dana Bumgardner	X														
Rep. Debra Conrad	X														
Rep. Joe Queen															
Rep. Robert Reives, II	X														
Rep. Stephen Ross	X														
Rep. Jason Saine															
Rep. Brad Salmon	X														

I

VISITOR REGISTRATION SHEET

House Judiciary II

JULY 28, 2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Ayers	NC DOI CIJ
Ben Popkin	NCDOI
CHARLES BELK	FITTING THE DESCRIPTION
Michael Smallwood	UNC SOG
[illegible]	BSS
Alex Miller	KLG
Brian Merrald	WM
Skye David	KLG
Amanda Honaker	TSS
Jami Fitzgerald	NC Values
Amy Falk	30 PR
Alex Bowen	CCS
Elizabeth Biser	BP
Fred Baron	Baron & Bud.
[illegible]	NMRS
Michele Frazier	MF+S
Evan Lee	NCOPI

VISITOR REGISTRATION SHEET

House Judiciary II

JULY 28, 2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Padraig Gibbons	CCS
Regan Gatun	Safran Law Offices
Judy Reed	Moore County Register of Deeds
Kevin Kelly	Nelson Mullins
Sarah Walker	NMC
Kem Burke	NLUC
Jeff Craver	ACP
LC Pennington	CSS
Lori Ann Harris	CSS
Ann C	BIBSNC
Mark Fleming	BCBSNC
John Madler	NC Sentencing Commission
Michelle Hall	NC Sentencing Commission
Cara Townsend	GOV office
Thomas Moss	[illegible]

VISITOR REGISTRATION SHEET

House Judiciary II

JULY 28, 2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Brannan	DMV 3141 Mail Service Ctr Raleigh NC
~~Hope Mozingo~~	NCDMV
Kelly Thomas	DMV
JERRY D. PITMAN	NCAPI
John McMillan	NCAOS
Stephen Kaufman	CCS
Becky Jenkins	CAROLINAS AGC
Betsy Bailey	CAGC
Andy Walsh	Smith Anderson
Chris Agnew	DOJ
Walt Gray	NCIC
Ryan Boyce	NCIC
Rachel Bearden	NCDPI
J Goodman	NC Chamber
[illegible]	[illegible]
Gary Poston	NC Assoc. of Private Investigators
Mike Carpenter	NCHBA

VISITOR REGISTRATION SHEET

House Judiciary II

JULY 28, 2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stewart Winters	NCHBA
Andy Ellen	NCBWA
John Palumbo	NCAJ
Jake Parker	NCFB
J. Graham Sherrill	NCFB
Bill Rowe	NC Justice Center
Hayes Jernigan	Jernigan Law Firm
Rick Zechini	LCM
David Heinen	NC Center for Nonprofits
[illegible]	[illegible]
Tom Norman	NCBELS

II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II 1:00 PM

DATE: 7-28-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

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

Tuesday, July 28	Room	Time
JUDICIARY II	421	1:00 pm
HB	287	Amend Insurance Laws.-AB
SB	183	Eliminate CRVs for Misdemeanants.
SB	233	Automatic Expunction/Mistaken Identity.
SB	238	Stalking by GPS/Criminal Offense.
SB	332	Register of Deeds-POA Indexing Fees.

Name	County	Sponsor
Ashley Barker	Rockingham	Bryan R. Holloway
Greylon Barwick	Sampson	William D. Brisson
Jonathan Beasley	Harnett	David R. Lewis
Ivey Brooks	Wake	Darren G. Jackson

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 287
Committee Substitute Favorable 4/14/15
PROPOSED COMMITTEE SUBSTITUTE H287-PCS30413-SA-87

Short Title: Amend Insurance Laws.-AB (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING AND CLARIFYING CHANGES TO THE LAWS GOVERNING PROFESSIONAL EMPLOYER ORGANIZATIONS, INSURANCE COMPANY DEPOSITS, CONTINUING CARE RETIREMENT COMMUNITIES, HEALTH INSURANCE EXTERNAL REVIEW, HEALTH INSURANCE FIDUCIARIES, AND INSURANCE COMPANY NAMES; TO PROVIDE FOR A STUDY OF THE HEALTH INSURANCE PREMIUM RATE REVIEW PROCESS AND MONEYS FROM THE INSURANCE REGULATORY FUND TO IMPLEMENT THAT STUDY, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE; AND TO ALLOW AN ITEMIZED INDIVIDUAL INCOME TAX DEDUCTION FOR INVESTORS WHO INCUR LOSSES FROM CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.

The General Assembly of North Carolina enacts:

CONFORMING AND CLARIFYING CHANGES

SECTION 1. G.S. 58-89A-60(d) reads as rewritten:

"(d) Every applicant shall furnish the Commissioner a complete set of fingerprints ~~and a recent photograph~~ of each officer, director, and controlling person in a form prescribed by the ~~Commissioner of each officer, director, and controlling person.~~Commissioner. Each set of fingerprints shall be certified by an authorized law enforcement officer.

Upon request by the Department, the Department of Public Safety shall provide to the Department from the State and National Repositories of Criminal Histories the criminal history of any applicant and the officer, director, and controlling person of any applicant. Along with the request, the Department shall provide to the Department of Public Safety the fingerprints of the person that is the subject of the request, a form signed by the person that is the subject of the request 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 person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation may forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department shall keep all information obtained pursuant to this subsection 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.

In the event that an applicant has secured a professional employer organization license in another state in which the professional employer organization's controlling persons have completed a criminal background investigation within 12 months of this application, a certified copy of the report from the appropriate authority of that state may satisfy the requirement of this subsection. This subsection also applies to a change in a controlling party of a professional employer organization. For purposes of investigation under this subsection, the Commissioner shall have all the power conferred by G.S. 58-2-50 and other applicable provisions of this Chapter."

SECTION 2. G.S. 58-5-55(a) reads as rewritten:

"(a) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic stock insurance companies shall deposit their required statutory capital with the ~~Commissioner.~~Commissioner, and all domestic nonstock insurance companies shall deposit their required statutory surplus with the Commissioner. Such deposits shall be under the exclusive control of the Commissioner for the protection of policyholders."

SECTION 3. G.S. 58-64-80 reads as rewritten:

"**§ 58-64-80. Advisory Committee.**

There shall be a nine member Continuing Care Advisory Committee appointed by the Commissioner. The Committee shall consist of at least two residents of facilities, two representatives of ~~the North Carolina Association of Nonprofit Homes for the Aging,~~LeadingAge North Carolina, one individual who is a certified public accountant and is licensed to practice in this State, one individual skilled in the field of architecture or engineering, and one individual who is a health care professional."

SECTION 4. G.S. 58-50-82(b)(1) reads as rewritten:

"**§ 58-50-82. Expedited external review.**

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

SECTION 5. G.S. 58-50-40(c) reads as rewritten:

"(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of ~~a Class H felony.~~the following felony offense:

(1) If the total value of losses suffered as a result of an insurance fiduciary's violation of subsection (b) of this section is one hundred thousand dollars ($100,000) or more, the violation is a Class F felony.

(2) If the total value of losses suffered as a result of an insurance fiduciary's violation of subsection (b) of this section is less than one hundred thousand dollars ($100,000), the violation is a Class H felony."

SECTION 6. G.S. 58-3-50 reads as rewritten:

"**§ 58-3-50. Companies must do business in own name; emblems, insignias, etc.**

Every insurance company or group of companies must conduct its business in the State in, and the policies and contracts of insurance issued by it shall be headed or entitled only by, its proper or corporate name or names. There shall not appear on the policy anything that would indicate that it is the obligation of any other than the company or companies responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the policy, the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated. The use of any emblem, insignia, or anything other than the true and proper corporate name of the company or group of companies shall be permitted only with the approval of the ~~Commissioner.~~Commissioner,

provided that, with the exception of policies subject to the provisions of Article 36 of this Chapter, a coverage within a policy may be issued by more than one company, so long as the policy clearly identifies the company responsible for each coverage."

HEALTH INSURANCE PREMIUM RATE REVIEW MODERNIZATION STUDY

SECTION 7.(a) Authorization. – The Department of Insurance shall study and evaluate the need for and the expected impact of modernization in the Department's regulatory processes and requirements related to health insurance premium rate review.

SECTION 7.(b) Elements of Study. – As part of the study and evaluation, the Department shall, at a minimum, include the following:

(1) Consideration and evaluation of other states' health insurance rate review laws, requirements, and processes.

(2) Consideration and evaluation of the expected impact of modernization on the costs of health insurance for businesses and consumers.

(3) Consideration and evaluation of the expected impact of modernization on insurers' and the State's operations and costs.

(4) Consideration and evaluation of federal provisions relating to rate review of health insurance premium rates and the expected impact of modernization in light of the federal requirements.

SECTION 7.(c) Report. – The Department of Insurance shall submit a report with its findings and recommendations to the 2015 General Assembly when it reconvenes in 2016. The report may include proposed legislation and any other recommendations requiring legislative action.

SECTION 7.(d) Consultants. – The Commissioner of Insurance may hire consultants to assist the Department in completing its duties under this section.

SECTION 7.(e) Funding. – There is appropriated from the Insurance Regulatory Fund created under G.S. 58-6-25 to the Department of Insurance the sum of one hundred fifty thousand dollars ($150,000) for the 2015-2016 fiscal year for the purposes of conducting the study described by this section. Unspent and unencumbered funds remaining on June 30, 2017, shall revert to the Fund.

INDIVIDUAL INCOME TAX ITEMIZED DEDUCTION FOR INVESTORS WHO INCUR LOSSES FROM CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS

SECTION 8. G.S. 105-153.5(a) reads as rewritten:

"(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. The deduction amounts are as follows:

...

(2) Itemized deduction amount. – An amount equal to the sum of the items listed in this subdivision. The amounts allowed under this subdivision are not subject to the overall limitation on itemized deductions under section 68 of the Code:

...

c. The amount allowed as a deduction for losses incurred from criminally fraudulent investment arrangements under section 165(c)(2) of the Code."

EFFECTIVE DATE

SECTION 9. Section 4 of this act becomes effective January 1, 2016. Section 8 of this act becomes effective for taxable years beginning on or after January 1, 2014. The remainder of this act is effective when it becomes law.

IV

HOUSE BILL 287:
Amend Insurance Laws.-AB

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	July 28, 2015
Introduced by:	Reps. Setzer, Bumgardner	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H287-CSSA-87		

SUMMARY: House Bill 287 would make conforming and clarifying changes to the laws governing professional employer organizations, insurance company deposits, continuing care retirement communities, health insurance external review, health insurance fiduciaries, and insurance company names; would provide for a study of the health insurance premium rate review process and moneys from the insurance regulatory fund to implement that study; would allow an itemized individual income tax deduction for investors who incur losses from criminally fraudulent investment arrangements; and would allow health care providers to select the lab of their choice.

BILL ANALYSIS: G.S. 58-7-37(a) was changed during the legislative session to remove the requirement for control individuals to submit, along with fingerprints, "a recent photograph." This was due to the fact that the SBI no longer requires a photograph. **Section 1** would make the Professional Employer Organizations (PEO) statute consistent with the General Domestic Companies statute.

Section 2 would update the law pertaining to domestic security deposits (G.S. 58-5-55) to include a deposit requirement for domestic "non-stock insurance companies" organized pursuant to G.S. 58-7-75(1a). G.S. 58-5-55 addresses the deposit requirements for stock and mutual companies, but it does not address the requirement for non-stock companies.

Section 3 would update language in G.S. 58-64-80 referencing the "**N**orth **C**arolina **A**ssociation of **N**on-**P**rofit **H**omes for the **A**ging". (NCANPHA). NCANPHA is now called the "LeadingAge North Carolina."

Section 4 would require insurers in an expedited external review process to provide information to the Commissioner within one day as opposed to one "business" day.

Section 5 would increase the penalties from a Class H to a Class C felony for an insurance fiduciary who causes the cancellation of a group health or life insurance policy by failing to pay premiums if the resulting losses are $100,000 or more.

Section 6 would allow insurers to write coverage within a policy jointly as long as the policy identifies the company responsible for each coverage.

Section 7 would require the Department of Insurance to study and evaluate the need for and impact of modernization of regulatory processes related to health insurance premium rates. The bill would appropriate from the Insurance Regulatory Fund $150,000 for the 2015-2016 fiscal year to conduct the study.

Section 8 would allow an individual income tax itemized deduction for investors who incur losses from criminally fraudulent investment arrangements.

Section 9 would allow health care providers to select the laboratory of their choice. Health benefit plans would not be allowed to prohibit or limit a health care provider from selecting their choice of laboratory, could not deny a laboratory the opportunity to participate as a contract provider if they agree to reimbursement terms, could not impose additional copays or fees on beneficiaries for laboratory services at certain laboratories, and could not reduce allowable reimbursement because of the choice of laboratory.

EFFECTIVE DATE: Section 4 of this act becomes effective January 1, 2016. Section 8 of this act becomes effective for taxable years beginning on or after January 1, 2014. Section 9 of this act becomes effective October 1, 2015, and applies to contracts entered into or amended on or after that date. The remainder of this act is effective when it becomes law.

V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 287

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

H287-ASA-122 [v.1]

Amends Title [NO]
H287-CSSA-87

Date July 28 ,2015

Representative Glazier

moves to amend the bill on page 2, line 39
by deleting "Class C felony." And inserting "Class F felony.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT yes VI

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 287 DATE 7-28-15

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

COMMITTEE SUBSTITUTE H287-CSSA-87

Rep.) Burngardner
Sen.)

moves to amend the bill on page 1, lines 12-13

(X) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"ARRANGEMENTS.";

and on page 4, line 2 through page 6, line 6

by deleting those lines;

and on page 6, lines 10-12

by deleting the following sentence:

"Section 9 of this act becomes effective October 1, 2015, and applies to contracts entered into or amended on or after that date."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 238*
Judiciary II Committee Substitute Adopted 4/15/15
Third Edition Engrossed 4/16/15
House Committee Substitute Favorable 6/24/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S238-PCS45395-SA-88

Short Title: Stalking by GPS/Criminal Offense. (Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

(4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(5) Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

a. A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The owner or lessee of any vehicle on which the owner or lessee installs, places, or uses an electronic tracking device, unless the owner or lessee is subject to (i) a domestic violence protective order under Chapter 50B of the General Statutes or (ii) any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.

c. A legal guardian for a disabled adult, as defined in G.S. 108A-101(d), or a legally authorized individual or organization designated to provide protective services to a disabled adult pursuant to G.S. 108A-105(c), when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services.

d. The owner of fleet vehicles, when tracking such vehicles.

e. A creditor or other secured party under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle, and any assignee or successor in interest to that creditor, secured party, or lessor, when tracking a motor vehicle identified as security under the retail installment sales agreement or leased pursuant to a retail lease agreement, including the installation, placement, or use of an electronic tracking device to locate and remotely disable the motor vehicle, with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

g. A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.

h. A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor

unless the parent or legal guardian is subject to a domestic violence protective order under Chapter 50B of the General Statutes or any court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor or that minor's parent, legal guardian, custodian, or caretaker as defined in G.S. 7B-101.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

VIII

SENATE BILL 238:
Stalking by GPS/Criminal Offense

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	July 28, 2015
Introduced by:	Sens. Stein, Hartsell	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Fourth Edition S238-CSSA-88		

SUMMARY: Senate Bill 238 would provide that a person commits the offense of cyberstalking if the person knowingly installs or places a tracking device without consent and uses the device to track an individual's location.

[As introduced, this bill was identical to H187, as introduced by Reps. Glazier, Horn, Faircloth, McGrady, which is currently in House Judiciary II.]

CURRENT LAW: Cyberstalking is punishable as a Class 2 misdemeanor and includes any of the following:

- Use in electronic mail or electronic communication language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or things of value from any person.
- Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
- Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
- Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

Any offense under this section may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State. These provisions do not impair any constitutionally protected activity, including speech, protest, or assembly.

Cyberstalking is punishable as a Class 2 misdemeanor.

BILL ANALYSIS:

Section 1 of Senate Bill 238 would also make it cyberstalking to do the following: "Knowingly install or place an electronic tracking device without consent, or to cause an electronic tracking device to be installed without consent, and use the device to track the location of any person."

It would not constitute cyberstalking for any of the following persons to install, place, or use an electronic tracking device:

- A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, who is lawfully performing official duties.
- The owner or lessee of any vehicle on which the owner or lessee installs, places or uses an electronic tracking device.
    - This exception does not apply if the owner or lessee is subject to a 50B domestic violence protective order or any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.
- A legal guardian or legally authorized representative of a disabled adult, when installed to track the disabled adult.
- The owner of fleet vehicles, when tracking such vehicles.
- The creditor of a motor vehicle dealer or seller when tracking those motor vehicles under the specified circumstances.
- Any person installing, placing or using an electronic tracking device as authorized by an order of a State or federal court.
- A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.
- A parent or legal guardian of a minor when used to track the minor's location unless the parent or legal guardian is subject to a 50B order or other order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor or that minor's parent, legal guardian, custodian, or caretaker.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to offenses occurring on or after that date.

Brad Krehely and Janice Paul, staff attorneys, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 332

Judiciary II Committee Substitute Adopted 4/6/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S332-CSRNf-40 [v.1]
7/27/2015 5:38:38 PM

Short Title: Register of Deeds-POA Indexing Fees. (Public)

Sponsors:

Referred to:

March 19, 2015

A BILL TO BE ENTITLED

AN ACT TO ENABLE REGISTERS OF DEEDS TO COLLECT ADDITIONAL FEES FOR INDEXING INSTRUMENTS THAT CONTAIN EXHIBITS WITH MULTIPLE ENTERABLE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-10(a) reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars ($26.00) for the first 15 pages plus four dollars ($4.00) for each additional page or fraction thereof.

For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars ($10.00) for each additional reference.

For an instrument that contains excessive recording data, the fee shall be an additional two dollars ($2.00) for each entity listed in the instrument. An instrument contains excessive recording data when there are more than 20 distinct entities listed in the instrument, including any attachments and exhibits, that require indexing pursuant to G.S. 147-54.3 or this Chapter.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

...."

SECTION 2. This act becomes effective October 1, 2015.

X

SENATE BILL 332:
Register of Deeds-POA Indexing Fees

2015-2016 General Assembly

Committee:	Judiciary II, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House	**Date:**	July 28, 2015
Introduced by:	Sen. Daniel	**Prepared by:**	Brad Krehely Committee Counsel
Analysis of:	PCS to Second Edition S332-CSRNf-40		

SUMMARY: ***Senate Bill 332 would impose an additional fee of $2 per entity to register or file an instrument with the register of deeds that includes the indexing of more than 20 distinct entities. The Proposed Committee Substitute (PCS) corrects the effective date.***

CURRENT LAW: The general fee for registering or filing an instrument with the register of deeds is $26 for the first 15 pages and $4 for each additional page or fraction thereof. The register of deeds must register a written instrument presented for registration if all statutory and locally adopted prerequisites for recording have been met. An instrument is not considered registered until it has been indexed in a manner to put a reasonably careful and prudent examiner on notice upon inquiry, and if upon inquiry, the instrument may be found. In addition to the recording and indexing procedures in Chapter 161, the chapter describing the duties and functions of the register of deeds, a register of deeds must follow the rules specifying minimum standards and procedures in land records management adopted by the Department of the Secretary of State.

BILL ANALYSIS: A lending institution that is the secured party in a debt instrument that involves a securitized trust pool often includes with the instrument an attachment listing hundreds of "trusts" that may have a limited power of attorney with the lending institution so there is something in the record making a link between a servicer who might sign a loan document and the secured party of record.

It can be hard for registers of deeds to know whether the names on these attachments must be indexed. Although the listed "trusts" do not hold title to the property and will not be searched in connection with the title, the names seem to be required indexed entries under indexing rules. These entries are often hard to decipher as names outside securitized lending. The process of indexing the names is a tedious process that takes hours of time.

Senate Bill 332 would address the issue of indexing each entity listed in a power of attorney by imposing an additional fee to register or file an instrument that indexes more than 20 distinct entities. The additional fee would be $2 for each entity listed in the instrument. The additional fee is not limited to powers of attorney because to narrow the bill to apply only to powers of attorney would require registers to examine the nature of instruments and try to determine if it is a power of attorney.

Currently, a register of deeds can choose to index the names without having to collect an additional fee, and many choose to index even though it is a tedious process because the register would rather err on the side of indexing the names. Under the bill, a register of deeds must charge an additional fee if the

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

register determines the names are required to be indexed, and the presenter of the instrument cannot "waive" the need to index.[1]

EFFECTIVE DATE: This act becomes effective October 1, 2015.

Cindy Avrette, Counsel to Senate Finance, contributed substantially to this summary.

[1] Since the listed trusts do not hold title to the property and will not be searched in connection with the title, it is conceivable that presenters of these instruments may change the forms they file or register with the register of deeds if they are confronted with an expensive filing fee for recording a power of attorney.

XI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. _____ DATE 7-28-15

S. B. No. 332 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Jordan
Sen.)

moves to amend the bill on page 1, line 21

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"an additional two dollars ($2.00) for each party listed in the instrument in excess of 20. An";

and on page 1, line 23, by deleting "entities" and substituting "parties".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 183

Short Title:	Eliminate CRVs for Misdemeanants.	(Public)
Sponsors:	Senators McKissick, Daniel, Randleman (Primary Sponsors); and Newton.	
Referred to:	Rules and Operations of the Senate.	

March 5, 2015

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE CONFINEMENT IN RESPONSE TO VIOLATION FOR MISDEMEANANTS SENTENCED UNDER STRUCTURED SENTENCING, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344(d2) reads as rewritten:

"(d2) Confinement in Response to Violation. – When a defendant under supervision for a felony conviction has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement of 90 consecutive days to be served in the custody of the Division of Adult Correction of the Department of Public Safety. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. The 90-day term of confinement ordered under this subsection for a felony shall not be reduced by credit for time already served in the case. Any such credit shall instead be applied to the suspended sentence. However, if the time remaining on the maximum imposed sentence on a defendant under supervision for a felony conviction is 90 days or less, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction sentenced pursuant to Article 81B of Chapter 15A of the General Statutes has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement pursuant to G.S. 15A-1343(a1)(3). The court may not revoke probation unless the defendant has previously received at least two periods of confinement for violating a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). Those periods of confinement may have been imposed pursuant to G.S. 15A-1343(a1)(3), 15A-1343.2(e)(5), or 15A-1343.2(f)(6). The second period of confinement must have been imposed for a violation that occurred after the defendant served the first period of confinement. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction not sentenced pursuant to Article 81B of Chapter 15A of the General Statutes has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement of up to 90 consecutive days to be served where the defendant would have served an active sentence. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive

only two periods of confinement under this subsection. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

The period of confinement imposed under this subsection on a defendant who is on probation for multiple offenses shall run concurrently on all cases related to the violation. Confinement shall be immediate unless otherwise specified by the court."

SECTION 2. This act becomes effective December 1, 2015, and applies to persons placed on probation on or after that date.

XIII

SENATE BILL 183:
Eliminate CRVs for Misdemeanants

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	July 28, 2015
Introduced by:	Sens. McKissick, Daniel, Randleman	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 183 would eliminate confinement in response to violation for misdemeanants sentenced under Structured Sentencing, as recommended by the North Carolina Sentencing and Policy Advisory Committee.***

CURRENT LAW: When a defendant on probation for a misdemeanor conviction violates a condition of probation other than committing a new criminal act or absconding from probation, the first two violations can only result in "confinement in response to violation" (CRV) which is confinement for 90 consecutive days. Probation may only be revoked after the defendant has served two CRVs.

BILL ANALYSIS: Senate Bill 183 would eliminate CRVs for misdemeanor offenders sentenced under Structured Sentencing and would instead require a period of confinement known as a "quick dip", which is a 2-3 day period of confinement for up to 6 days per month for up to 3 months, to be imposed for at least the first two violations that are not a new criminal act or absconding from probation. Only after the defendant has served two quick dips could probation be revoked.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to persons placed on probation on or after that date.

XIV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S **1**

SENATE BILL 233

Short Title:	Automatic Expunction/Mistaken Identity.	(Public)
Sponsors:	Senators McKissick, Bingham, Daniel (Primary Sponsors); Clark, Foushee, Lowe, Newton, Pate, Robinson, Smith-Ingram, and Waddell.	
Referred to:	Rules and Operations of the Senate.	

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF CERTAIN RECORDS OF A PERSON WHEN THE CHARGE OR CHARGES AGAINST THE PERSON ARE DISMISSED AS A RESULT OF IDENTITY THEFT OR MISTAKEN IDENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~theft.~~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 ~~the charge against the named person is dismissed,~~ 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.

(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~~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."

SECTION 2. This act becomes effective December 1, 2015, and applies to charges filed on or after that date.

XV

SENATE BILL 233:
Automatic Expunction/Mistaken Identity

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	July 28, 2015
Introduced by:	Sens. McKissick, Bingham, Daniel	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 233 would provide for the automatic expunction of certain records of a person when the charge or charges against the person are dismissed as a result of identity theft or mistaken identity.***

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 the individual is restored to the status he or she 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 expungement in his or her lifetime.

G.S. 15A-147 provides for the expunction of records when a charge is dismissed, there is a finding of not guilty, or the conviction is set aside in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged.

The application is made 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. The petition or motion seeks an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. If the court finds that 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.

The effect of the expungement is that these entries are removed from the records of the court, the Division of Motor Vehicles (DMV), and other State and local government agencies identified by the petitioner. Additionally, DMV and the Division of Adult must reverse any administrative actions taken against a person whose record is expunged by this section.

BILL ANALYSIS: Senate Bill 233 allows for expunction of records in instances of mistaken identity. The act defines "mistaken identity" as "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."

In instances of mistaken identity where there is a finding of not guilty or the conviction is set aside, the process the aggrieved person applies by petition or written motion to the court where the charge was last pending.

However, if the charge against the named person is dismissed, there is a process for automatic expunction. The prosecutor or other judicial officer who ordered the dismissal must provide notice to

the court of the dismissal. The court must order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial and must direct all law enforcement officers, the Division of Adult Corrections of the Department of Public Safety, and the DMV to expunge their records.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to charges filed on or after that date.

**Brad Krehely, Committee Counsel, substantially contributed to this summary.*

House Committee on Judiciary II
Tuesday, August 4, 2015 at 15 Minutes After Session
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 15 Minutes After Session on August 4, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Reives, Ross, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:52 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

The following bills were considered:

SB 124 Modernize Assumed Business Name Statutes. (Senator Hartsell)

Chairman Blust recognized Senator Hartsell to present the bill. Ms. Bly Hall and Mr. Floyd M. Lewis, General Statutes Commission, explained parts of the bill and answered questions from the committee. After a lengthy discussion, the decision was made to displace the bill until the next Judiciary II committee meeting. Ms. Haley Haynes, Deputy Secretary of State, and Mr. Leon M. "Chip" Killian, Attorney, Nelson Mullins Riley & Scarborough, spoke on the bill.

HB 482 Employee Misclassification Reform. (Representatives Pendleton, Blust, Szoka, Bishop)

Representative Pendleton was recognized to present the bill. Representative Jordan chaired the committee meeting during the discussion on HB 482. Representative McGrady, chairman of the subcommittee assigned to study this bill, explained the bill and discussed the proceedings of the subcommittee meetings. Representative McGrady made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. After committee discussion, Representative McGrady made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report, with an unfavorable report as to the original bill.

The meeting adjourned at 2:50 PM.

Respectfully submitted,

Representative John M. Blust, Chairman
Presiding

Gennie L. Thurlow, Committee Clerk

Corrected #1: Meeting Will Be Held 15 Minutes After Session

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 II** will meet as follows:

DAY & DATE: Tuesday, August 4, 2015
TIME: **15 Minutes After Session**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 482	Employee Misclassification Reform.	Representative Pendleton Representative Blust Representative Szoka Representative Bishop
SB 124	Modernize Assumed Business Name Statutes.	Senator Hartsell
SB 671	DL Restoration/DWI Treatment Court.	Senator Apodaca Senator Van Duyn Senator J. Davis
SB 675	Limit Parole Review Frequency.	Senator Apodaca

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 9:40 AM on Tuesday, August 04, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (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 II** will meet as follows:

DAY & DATE: Tuesday, August 4, 2015
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 482	Employee Misclassification Reform.	Representative Pendleton Representative Blust Representative Szoka Representative Bishop
SB 124	Modernize Assumed Business Name Statutes.	Senator Hartsell
SB 671	DL Restoration/DWI Treatment Court.	Senator Apodaca Senator Van Duyn Senator J. Davis
SB 675	Limit Parole Review Frequency.	Senator Apodaca

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:42 PM on Thursday, July 30, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, August 4, 2015, 15 Minutes After Session
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks
Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
PCS **If favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House**	HB 482	Employee Misclassification Reform.	Representative Pendleton Representative Blust Representative Szoka Representative Bishop
If favorable, Rules, Calendar, and Operations of the House	SB 124	Modernize Assumed Business Name Statutes.	Senator Hartsell
If favorable, Finance	SB 671	DL Restoration/ DWI Treatment Court.	Senator Apodaca Senator Van Duyn Senator J. Davis
	SB 675	Limit Parole Review Frequency.	Senator Apodaca

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

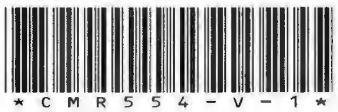
JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB NO. 2, UNFAVORABLE COM SUB NO. 1 AND RE-REFERRED

HB **482** **(CS#1)** Employee Misclassification Reform.

Draft Number:	H482-PCS20390-RN-34
Serial Referral:	**APPROPRIATIONS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Pendleton

TOTAL REPORTED: 1



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 482
Committee Substitute Favorable 6/17/15
PROPOSED COMMITTEE SUBSTITUTE H482-CSRN-34 [v.6]
8/3/2015 2:44:57 PM

Short Title: Employee Misclassification Reform. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.

The General Assembly of North Carolina enacts:

PART I. EMPLOYEE FAIR CLASSIFICATION ACT

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.
"Employee Fair Classification Act.

"**§ 143-760. Title.**

This Article shall be known and may be cited as the "Employee Fair Classification Act."

"**§ 143-761. Definitions; scope.**

(a) The following definitions apply in this Article:

(1) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(2) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor.

(3) Employee Classification Division or Division. – The Employee Classification Division within the Department of Revenue.

(4) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, or 105 of the General Statutes by misclassifying an employee as an independent contractor.

(5) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(6) Secretary. – The Secretary of the Department of Revenue.

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law.

"**§ 143-762. Establishment of Employee Classification Division; appointment of director; salaries; other staff.**

(a) The Employee Classification Division is established within the Department of Revenue.

(b) The Secretary shall appoint a director of the Division to serve at the Secretary's pleasure with such authority as the Secretary deems necessary to direct and oversee the Division in carrying out the purposes of this Article. The director shall be exempt from the State Human Resources Act and shall devote his or her entire time to the duties of the Division. The director may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Division. The director's salary shall be set by the General Assembly.

(c) The Secretary may employ clerical staff, investigators, and other staff within the Division as is necessary for the Division to perform its duties under this Article. Notwithstanding Chapters 126, 143A, and 143B of the General Statutes or any other provision of law, the director may hire or fire personnel and transfer personnel within the Division. The Division shall be provided with adequate offices in which the Division's records shall be kept and its official business transacted during regular business hours. The Division shall also be provided with necessary office furniture, stationery, and other supplies.

(d) The Office of the State Chief Information Officer shall ensure that the Division is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

"**§ 143-763. Division powers and duties.**

(a) The Division shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Assess administrative civil penalties for instances of employee misclassification as set forth in G.S. 143-765.

(4) Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(5) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 143, 95, 96, 97, or 105 of the General Statutes.

(6) Create a publicly available notice that includes the definition of employee misclassification and indicates the civil penalties provided for in G.S. 143-765.

(7) Develop methods and strategies for information-sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(8) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) The director shall appoint an informal advisory council to advise the director on issues within the jurisdiction of the Division. The members of the advisory council shall include, at a minimum:

(1) The following officers or the officer's designee:

a. Commissioner of Labor.

b. Secretary of Revenue.

c. Chairman of the Industrial Commission.

d. Assistant Secretary of Commerce for the Division of Employment Security.
e. State Budget Director.
(2) A representative of workers in this State.
(3) A representative of employers in this State.

The members of the council shall not receive compensation, per diem, or expense reimbursement from the State Treasury for their service on the advisory council.

(c) No later than October 1 of each year, the Division shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Division deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(d) The Division shall adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes and that are not inconsistent with this Article for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"**§ 143-764. Determination of independent contractor status.**

(a) The following factors shall be considered in determining whether an individual is an independent contractor for purposes of this Article:
(1) Whether the individual is engaged in an independent business, calling, or occupation.
(2) Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
(3) Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
(4) Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
(5) Whether the individual is not in the regular employ of the other contracting party.
(6) Whether the individual is free to use such assistants as he or she may think proper.
(7) Whether the individual has full control over such assistants.
(8) Whether the individual selects his or her own time.

(b) The presence of one or more of the foregoing factors is not controlling, nor is the presence of all of the foregoing factors required in determining whether an individual is an independent contractor.

(c) The provisions of this section are intended to codify the holding in *Hayes v. Board of Trustees of Elon College*, 224 N.C. 11 (1944). Other factors consistent with that holding may also be considered in making a determination under this section.

"**§ 143-765. Employee misclassification prohibited; civil penalties; repeated instances of misclassification.**

(a) Employee misclassification is prohibited.

(b) Any employer who is found by the Division to have engaged in willful employee misclassification after being assessed any back taxes, wages, benefits, penalties, or other monies by any State agency as a result of misclassifying one or more employees within the previous three calendar years shall be assessed a civil penalty of no greater than one thousand dollars ($1,000) per misclassified employee for any future instances of employee misclassification. In determining the amount of the penalty to be assessed, the Division shall consider the degree of willfulness or negligence by the employer in engaging in the employee

misclassification. The penalty herein provided shall be assessed by the Division administratively. Any employer found by the Division to have engaged in employee misclassification or any other violation of this Article may within 60 days of receiving written notification of a final finding by the Division, appeal the final finding and any accompanying penalty or other sanction by either (i) commencing a contested case under Chapter 150B of the General Statutes or (ii) filing a petition with the Superior Court of Wake County or of such county where the events giving rise to the finding arose. The procedure shall be the same as in all other contested cases or civil actions, except that the review of the Division's findings and any accompanying penalties or sanctions shall be de novo for both factual findings and questions of law. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Nothing in this section shall be construed to create a private right of action, at law or in equity, for the activities prohibited by this Article.

"**§ 143-766. Temporary amnesty program.**

(a) The Division shall establish and administer a temporary amnesty program for the purpose of encouraging voluntary self-reporting by employers currently engaging in employee misclassification. Every employer participating in the temporary amnesty program shall be immune from the civil penalties provided for in G.S. 143-765 for past instances of employee misclassification that are voluntarily self-reported by the employer in accordance with the procedures of the temporary amnesty program.

(b) The Division shall establish procedures for participation in the temporary amnesty program. These procedures shall require, at a minimum, that a participating employer:

(1) File an application with the Division on a form prescribed by the Division on or before October 1, 2016. This form shall require, at a minimum, the employer's name, physical address, mailing address, telephone number, Social Security number or taxpayer ID number, and disclosure of all actual or potential instances of employee misclassification. If available, this form shall require the employer's registered agent, drivers license number, license number(s), and issuing agency of all licenses issued by a State licensing board.

(2) Comply with any and all determinations made or directives issued by the Division pertaining to the employer's application and compliance with this Article.

(c) Nothing in this section shall be construed to limit the liability of a participating employer in any civil or criminal matter not provided for by this Article.

"**§ 143-767. Occupational licensing boards and commissions; notice requirement; applicant certification.**

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, a certification that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(b) Every applicant for a license, permit, or certification issued by a State occupational licensing board or commission shall truthfully certify on the appropriate application that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(c) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification requirement set forth in subsection (b) of this section.

"**§ 143-768. Confidentiality; access to records.**

The records of the Division that are not civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, insofar as they refer to reported violations, investigations, or other enforcement actions taken by the Division, are not public records under G.S. 132-1, but may be shared by the Division with State and federal agencies as permitted or required by law."

SECTION 1.2. G.S. 97-5.1 is repealed.

SECTION 1.3. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(49) To furnish to the North Carolina Department of Labor, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission employee misclassification information pursuant to G.S. 143-763(a)(5) unless prohibited by law."

SECTION 1.4. G.S. 143-760, G.S. 143-761, and G.S. 143-762 are effective when the act becomes law. The remainder of this section becomes effective January 1, 2016, and applies to instances of employee misclassification occurring on or after that date.

PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS

SECTION 2.1. G.S. 95-25.15(c) reads as rewritten:

"(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following:

(1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.

(2) Any employee who believes that he or she has been misclassified as an independent contractor by their employer may report the suspected misclassification to the Employee Classification Division within the Department of Revenue.

(3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification may be reported to the Employee Classification Division within the Department of Revenue."

PART III. SANCTIONS AND OTHER REQUIREMENTS CONCERNING EMPLOYEE MISCLASSIFICATION

SECTION 3.1. G.S. 87-11 reads as rewritten:

"**§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.**

(a) The Board shall have the power to refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency, or misconduct in the practice of his or her profession, or willful violation of any provision of this ~~Article.~~Article, or if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of fraud, deceit, negligence, or misconduct against any general contractor licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses. These guidelines shall include references to the prohibition of employee misclassification under Article 81 of Chapter 143 of the General Statutes and state that engaging in employee misclassification is grounds for revocation of a license issued under this Article.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, five or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its findings in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 3.1A. G.S. 87-23 reads as rewritten:

"**§ 87-23. Revocation or suspension of license for cause.**

(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of the charges shall be in writing and investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Chapter, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee.

(d) The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes."

SECTION 3.1B. G.S. 87-42 reads as rewritten:

"**§ 87-42. Duties and powers of Board.**

In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the written examination of all applicants for certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all applications for certification as a qualified individual and all applications for licenses to be issued under this Article, shall examine all applicants to determine that each has met the requirements for certification and shall discharge all duties enumerated in this Article. Applicants for certification as a qualified individual must be at least 18 years of age and shall be required to demonstrate to the satisfaction of the Board their good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code as incorporated in the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of the installation of electrical work and equipment. Certification of qualified individuals shall be issued in the same classifications as provided in this Article for license classifications. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of qualified individuals, which may vary for the various license classifications. The Board shall issue certifications and licenses to all applicants meeting the requirements of this Article and of the Board upon the receipt of the fees prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this Article. The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes. The Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the Chairman for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. The Board shall have the power to acquire, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. The Board shall keep minutes of all its proceedings and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public accountant, and the audit report shall be filed with the State of North Carolina in accordance with Chapter 93B of the General Statutes."

SECTION 3.1C. G.S. 87-47(a1) reads as rewritten:

"(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.

(6) Engaging in false or misleading advertising.
(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.
(8) Willfully engaging in employee misclassification in violation of G.S. 143-765(b) where there was no good-faith argument that the individual was an independent contractor."

SECTION 3.2. G.S. 143-59.2(a) reads as rewritten:

"(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business ~~entity,~~entity; within five years prior to the date of the bid solicitation, has been assessed a civil penalty pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor; or within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934."

SECTION 3.3. G.S. 153A-134 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a county under this section shall certify to the county on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.4. G.S. 160A-194 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a city under this section shall certify to the city on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.5. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the county on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.6. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the city on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

PART IV. APPROPRIATIONS

SECTION 4.(a) There is appropriated from the General Fund to the Department of Revenue the sum of two hundred ninety-three thousand dollars ($293,000) for the 2015-2016 fiscal year and the sum of two hundred ninety-three thousand dollars ($293,000) for the 2016-2017 fiscal year to establish up to five new positions in the Employee Classification Division of the Department of Revenue to carry out the duties of the Division pursuant to G.S. 143-763. The Department of Revenue shall consult with the Industrial Commission, the Office of State Budget and Management, the Division of Employment Security of the Department of Commerce, and the Department of Labor in hiring staff for this function.

SECTION 4.(b) There is appropriated from the General Fund to the Employee Classification Division of the Department of Revenue the sum of seventeen thousand five hundred dollars ($17,500) for the 2015-2016 fiscal year for nonrecurring costs associated with the positions authorized by this section.

PART V. SEVERABILITY

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

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act becomes effective January 1, 2016.

Reported

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 482
Committee Substitute Favorable 6/17/15
PROPOSED COMMITTEE SUBSTITUTE H482-PCS20390-RN-34

Short Title: Employee Misclassification Reform. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.

The General Assembly of North Carolina enacts:

PART I. EMPLOYEE FAIR CLASSIFICATION ACT

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.

"Employee Fair Classification Act.

"**§ 143-760. Title.**

This Article shall be known and may be cited as the "Employee Fair Classification Act."

"**§ 143-761. Definitions; scope.**

(a) The following definitions apply in this Article:

(1) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(2) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor.

(3) Employee Classification Division or Division. – The Employee Classification Division within the Department of Revenue.

(4) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, or 105 of the General Statutes by misclassifying an employee as an independent contractor.

(5) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(6) Secretary. – The Secretary of the Department of Revenue.

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law.

"**§ 143-762. Establishment of Employee Classification Division; appointment of director; salaries; other staff.**

(a) The Employee Classification Division is established within the Department of Revenue.

(b) The Secretary shall appoint a director of the Division to serve at the Secretary's pleasure with such authority as the Secretary deems necessary to direct and oversee the Division in carrying out the purposes of this Article. The director shall be exempt from the State Human Resources Act and shall devote his or her entire time to the duties of the Division. The director may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Division. The director's salary shall be set by the General Assembly.

(c) The Secretary may employ clerical staff, investigators, and other staff within the Division as is necessary for the Division to perform its duties under this Article. Notwithstanding Chapters 126, 143A, and 143B of the General Statutes or any other provision of law, the director may hire or fire personnel and transfer personnel within the Division. The Division shall be provided with adequate offices in which the Division's records shall be kept and its official business transacted during regular business hours. The Division shall also be provided with necessary office furniture, stationery, and other supplies.

(d) The Office of the State Chief Information Officer shall ensure that the Division is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

"**§ 143-763. Division powers and duties.**

(a) The Division shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Assess administrative civil penalties for instances of employee misclassification as set forth in G.S. 143-765.

(4) Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(5) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 143, 95, 96, 97, or 105 of the General Statutes.

(6) Create a publicly available notice that includes the definition of employee misclassification and indicates the civil penalties provided for in G.S. 143-765.

(7) Develop methods and strategies for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(8) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) The director shall appoint an informal advisory council to advise the director on issues within the jurisdiction of the Division. The members of the advisory council shall include, at a minimum:

(1) The following officers or the officer's designee:

a. Commissioner of Labor.

b. Secretary of Revenue.

c. Chairman of the Industrial Commission.

d. Assistant Secretary of Commerce for the Division of Employment Security.
e. State Budget Director.
(2) A representative of workers in this State.
(3) A representative of employers in this State.

The members of the council shall not receive compensation, per diem, or expense reimbursement from the State Treasury for their service on the advisory council.

(c) No later than October 1 of each year, the Division shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Division deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(d) The Division shall adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes and that are not inconsistent with this Article for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"**§ 143-764. Determination of independent contractor status.**

(a) The following factors shall be considered in determining whether an individual is an independent contractor for purposes of this Article:
(1) Whether the individual is engaged in an independent business, calling, or occupation.
(2) Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
(3) Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
(4) Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
(5) Whether the individual is not in the regular employ of the other contracting party.
(6) Whether the individual is free to use such assistants as he or she may think proper.
(7) Whether the individual has full control over such assistants.
(8) Whether the individual selects his or her own time.

(b) The presence of one or more of the foregoing factors is not controlling, nor is the presence of all of the foregoing factors required in determining whether an individual is an independent contractor.

(c) The provisions of this section are intended to codify the holding in *Hayes v. Board of Trustees of Elon College*, 224 N.C. 11 (1944). Other factors consistent with that holding may also be considered in making a determination under this section.

"**§ 143-765. Employee misclassification prohibited; civil penalties; repeated instances of misclassification.**

(a) Employee misclassification is prohibited.

(b) Any employer who is found by the Division to have engaged in willful employee misclassification after being assessed any back taxes, wages, benefits, penalties, or other monies by any State agency as a result of misclassifying one or more employees within the previous three calendar years shall be assessed a civil penalty of no greater than one thousand dollars ($1,000) per misclassified employee for any future instances of employee misclassification. In determining the amount of the penalty to be assessed, the Division shall consider the degree of willfulness or negligence by the employer in engaging in the employee

misclassification. The penalty herein provided shall be assessed by the Division administratively. Any employer found by the Division to have engaged in employee misclassification or any other violation of this Article may, within 60 days of receiving written notification of a final finding by the Division, appeal the final finding and any accompanying penalty or other sanction by either (i) commencing a contested case under Chapter 150B of the General Statutes or (ii) filing a petition with the Superior Court of Wake County or of such county where the events giving rise to the finding arose. The procedure shall be the same as in all other contested cases or civil actions, except that the review of the Division's findings and any accompanying penalties or sanctions shall be de novo for both factual findings and questions of law. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Nothing in this section shall be construed to create a private right of action, at law or in equity, for the activities prohibited by this Article.

"**§ 143-766. Temporary amnesty program.**

(a) The Division shall establish and administer a temporary amnesty program for the purpose of encouraging voluntary self-reporting by employers currently engaging in employee misclassification. Every employer participating in the temporary amnesty program shall be immune from the civil penalties provided for in G.S. 143-765 for past instances of employee misclassification that are voluntarily self-reported by the employer in accordance with the procedures of the temporary amnesty program.

(b) The Division shall establish procedures for participation in the temporary amnesty program. These procedures shall require, at a minimum, that a participating employer:

(1) File an application with the Division on a form prescribed by the Division on or before October 1, 2016. This form shall require, at a minimum, the employer's name, physical address, mailing address, telephone number, Social Security number or taxpayer ID number, and disclosure of all actual or potential instances of employee misclassification. If available, this form shall require the employer's registered agent, drivers license number, license number(s), and issuing agency of all licenses issued by a State licensing board.

(2) Comply with any and all determinations made or directives issued by the Division pertaining to the employer's application and compliance with this Article.

(c) Nothing in this section shall be construed to limit the liability of a participating employer in any civil or criminal matter not provided for by this Article.

"**§ 143-767. Occupational licensing boards and commissions; notice requirement; applicant certification.**

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, a certification that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(b) Every applicant for a license, permit, or certification issued by a State occupational licensing board or commission shall truthfully certify on the appropriate application that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(c) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification requirement set forth in subsection (b) of this section.

"**§ 143-768. Confidentiality; access to records.**

The records of the Division that are not civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, insofar as they refer to reported violations, investigations, or other enforcement actions taken by the Division, are not public records under G.S. 132-1 but may be shared by the Division with State and federal agencies as permitted or required by law."

SECTION 1.2. G.S. 97-5.1 is repealed.

SECTION 1.3. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(49) To furnish to the North Carolina Department of Labor, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission employee misclassification information pursuant to G.S. 143-763(a)(5) unless prohibited by law."

SECTION 1.4. G.S. 143-760, 143-761, and 143-762 are effective when the act becomes law. The remainder of this section becomes effective January 1, 2016, and applies to instances of employee misclassification occurring on or after that date.

PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS

SECTION 2.1. G.S. 95-25.15(c) reads as rewritten:

"(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following:

(1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.

(2) Any employee who believes that he or she has been misclassified as an independent contractor by their employer may report the suspected misclassification to the Employee Classification Division within the Department of Revenue.

(3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification may be reported to the Employee Classification Division within the Department of Revenue."

PART III. SANCTIONS AND OTHER REQUIREMENTS CONCERNING EMPLOYEE MISCLASSIFICATION

SECTION 3.1. G.S. 87-11 reads as rewritten:

"**§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.**

(a) The Board shall have the power to refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency, or misconduct in the practice of his or her profession, or willful violation of any provision of this ~~Article.~~Article, or if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of fraud, deceit, negligence, or misconduct against any general contractor licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses. These guidelines shall include references to the prohibition of employee misclassification under Article 81 of Chapter 143 of the General Statutes and state that engaging in employee misclassification is grounds for revocation of a license issued under this Article.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, five or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its findings in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 3.1A. G.S. 87-23 reads as rewritten:

"**§ 87-23. Revocation or suspension of license for cause.**

(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of the charges shall be in writing and investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Chapter, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee.

(d) The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes."

SECTION 3.1B. G.S. 87-42 reads as rewritten:

"**§ 87-42. Duties and powers of Board.**

In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the written examination of all applicants for certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all applications for certification as a qualified individual and all applications for licenses to be issued under this Article, shall examine all applicants to determine that each has met the requirements for certification and shall discharge all duties enumerated in this Article. Applicants for certification as a qualified individual must be at least 18 years of age and shall be required to demonstrate to the satisfaction of the Board their good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code as incorporated in the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of the installation of electrical work and equipment. Certification of qualified individuals shall be issued in the same classifications as provided in this Article for license classifications. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of qualified individuals, which may vary for the various license classifications. The Board shall issue certifications and licenses to all applicants meeting the requirements of this Article and of the Board upon the receipt of the fees prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this Article. The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes. The Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the Chairman for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. The Board shall have the power to acquire, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. The Board shall keep minutes of all its proceedings and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public accountant, and the audit report shall be filed with the State of North Carolina in accordance with Chapter 93B of the General Statutes."

SECTION 3.1C. G.S. 87-47(a1) reads as rewritten:

"(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.

(6) Engaging in false or misleading advertising.
(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.
(8) Willfully engaging in employee misclassification in violation of G.S. 143-765(b) where there was no good-faith argument that the individual was an independent contractor."

SECTION 3.2. G.S. 143-59.2(a) reads as rewritten:

"(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business ~~entity,~~entity; within five years prior to the date of the bid solicitation, has been assessed a civil penalty pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor; or within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934."

SECTION 3.3. G.S. 153A-134 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a county under this section shall certify to the county on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.4. G.S. 160A-194 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a city under this section shall certify to the city on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.5. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the county on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.6. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the city on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

PART IV. APPROPRIATIONS

SECTION 4.(a) There is appropriated from the General Fund to the Department of Revenue the sum of two hundred ninety-three thousand dollars ($293,000) for the 2015-2016 fiscal year and the sum of two hundred ninety-three thousand dollars ($293,000) for the 2016-2017 fiscal year to establish up to five new positions in the Employee Classification Division of the Department of Revenue to carry out the duties of the Division pursuant to G.S. 143-763. The Department of Revenue shall consult with the Industrial Commission, the Office of State Budget and Management, the Division of Employment Security of the Department of Commerce, and the Department of Labor in hiring staff for this function.

SECTION 4.(b) There is appropriated from the General Fund to the Employee Classification Division of the Department of Revenue the sum of seventeen thousand five hundred dollars ($17,500) for the 2015-2016 fiscal year for nonrecurring costs associated with the positions authorized by this section.

PART V. SEVERABILITY

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

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act becomes effective January 1, 2016.

HOUSE BILL 482:
Employee Misclassification Reform

2015-2016 General Assembly

Committee:	House Judiciary II, Serial Referral To Appropriations, Serial Referral To Rules, Calendar, and Operations of the House Added	**Date:**	August 4, 2015
Introduced by:	Reps. Pendleton, Blust, Szoka, Bishop	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Second Edition H482-CSRN		Committee Counsel

SUMMARY: House Bill 482 would enact the Employee Fair Classification Act (Act) to prevent the misclassification of employees as independent contractors and make other reforms regarding employee misclassification. The Proposed Committee Substitute (PCS) does all of the following: (1) removes the truckers' exception from the definition of "employee", (2) changes the effective date to January 1, 2016, and (3) makes other technical and clarifying changes.

BILL ANALYSIS:

PART I. EMPLOYEE FAIR CLASSIFICATION ACT

Section 1 would create a new Article in Chapter 143 of the General Statutes entitled the "Employee Fair Classification Act" (Act).

Employee Classification Division: The PCS would establish the Employee Classification Division (Division) in the Department of Revenue to carry out the purposes of the Act. The Secretary of Revenue would appoint the Director of the Division. The Division would have the following duties:

- Be available to receive reports of employee misclassification by telephonic, written, or electronic communication.
- Investigate reports of employee misclassification and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies as a result of employee misclassification.
- Assess administrative civil penalties for instances of employee misclassification.
- Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer or individual's involvement in employee misclassification.
- Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the North Carolina Department of Revenue, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission to facilitate investigation of potential statutory violations.
- Create a publicly available notice that includes the definition of employee misclassification and indicates the civil penalties.
- Develop methods and strategies for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

Informal Advisory Council: The Director must appoint an informal advisory council to assist with matters within the jurisdiction of the Division. The advisory council includes the following members:

- The following officers or their designee: Commissioner of Labor; Secretary of Revenue; Chairman of the Industrial Commission; the Assistant Secretary of Commerce for the Division of Employment Security, and the State Budget Director.
- A representative of workers in this State.
- A representative of employers in this State.

Reporting: The Division would issue annually on October 1 to the Joint Legislative Commission on Governmental Operations a report on the administration of the Article and any recommendations of the Division. The report would include: the number of reports of employee misclassification received; the number and amount of back taxes, wages, benefits, penalties, or other monies assessed; the amount of back taxes, wages, benefits, penalties, or other monies collected; and the number of cases referred to each State agency.

Determination of Independent Contractor Status: This provision is intended to codify the holding in *Hayes v. Board of Trustees of Elon College*. Any factors consistent with the holding, including the following factors, would be considered when determining whether an individual is an independent contractor:

- Whether the individual is engaged in an independent business, calling, or occupation.
- Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
- Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
- Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
- Whether the individual is not in the regular employ of the other contracting party.
- Whether the individual is free to use such assistants as he or she may think proper.
- Whether the individual has full control over such assistants.
- Whether the individual selects his or her own time.

Prohibition on Employee Misclassification and Civil Penalties: The PCS would prohibit employee misclassification. Employee misclassification is defined as avoiding tax liabilities and other obligations imposed by Chapter 95, Chapter 96, Chapter 97, or Chapter 105 of the General Statutes by misclassifying an employee as an independent contractor.

If an employer is found by the Division to have engaged in willful employee misclassification and has been assessed back taxes, wages, benefits, penalties, or other monies by any State agency as a result of misclassifying one or more employees within the previous three calendar years, then subsequent violations as determined by the Division may result in civil penalties up to $1,000 per misclassified employee.

An employer may appeal from a final finding of and penalty imposed by the Division within 60 days of receiving written notice by either (1) commencing a contested case before the Office of Administrative Hearings, or (2) filing a petition in Superior Court of Wake County or the county where the events occurred.

Temporary Amnesty Program: The Division would establish and administer a temporary amnesty program to encourage voluntary self-reporting by employers currently engaging in employee misclassification. Employers participating in this program would be immune from civil penalties for past instances of employee misclassification that are voluntarily self-reported.

The Division would establish procedures for participation in the temporary amnesty program. These procedures would require, at minimum, the employer file an application with the Division before October 1, 2016 and comply with all determinations and directives issued by the Division pursuant to this Act.

Nothing in this section would be construed to limit the liability of an employer in a civil or criminal matter not provided for by this Act.

Notice and Certification Requirement by Occupational Licensing Boards and Commissions: Every State occupational licensing board or commission would be required to include on every application for licensure, permit, or certification, a certification that the applicant has read and understands the employee misclassification notice provided by the Division. Every applicant for a license, permit, or certification shall certify that he or she has read and understands the misclassification notice. An occupational licensing board or commission would be required to deny the license, permit, or certification of any applicant who fails to comply with the certification requirement.

Confidentiality: The records of the Division would not be public records. This does not apply to civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, or other enforcement actions taken by the Division. The Division may share records with State and federal agencies as permitted or required by law.

Taxicab Drivers: Section 1.2 would repeal G.S. 97-5.1, which creates a rebuttable presumption that taxicab drivers are independent contractors under the Workers' Compensation Act.

Effective Date: The statutory provisions which establish the Division are effective when the PCS becomes law. The remainder of this section becomes effective January 1, 2016, and applies to instances of employee misclassification occurring on or after that date.

PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS

Section 2 would require the Department of Labor to include on the required poster summarizing the Wage and Hour Act in covered businesses, a notice indicating the following:

- Any worker who is defined as an employee under the law shall be treated as an employee unless the individual is an independent contractor.
- Any employee who believes that he or she has been misclassified may report to the Division.
- The physical location, mailing address, telephone number, and email address where alleged incidents of misclassification occurred may be reported to the Division.

PART III. SANCTIONS AND OTHER REQUIREMENTS

Section 3.1 would authorize the State Licensing Board for General Contractors to refuse to issue or renew or revoke, suspend, or restrict a license or take disciplinary action if a civil penalty was imposed on a licensed general contractor pursuant to a violation of the Act, if the violation was willful, and there

was no good faith argument that the individual was an independent contractor. This section would also direct the Board to adopt and publish guidelines referencing the prohibition on employee misclassification and providing that a violation of that prohibition is grounds for revocation of a license.

Section 3.1A would make an identical change to the law governing the disciplinary authority of the State Licensing Board for Plumbing, Heating, and Fire Sprinkler Contractors. The Board would also be authorized to conduct audits of the pay and project records of licensees in furtherance of the Act.

Section 3.1B would authorize the State Board of Examiners of Electrical Contractors, to conduct audits in furtherance of the Act.

Section 3.1C makes willful employee misclassification with no good faith argument that an electrical contractor was an independent contractor a prohibited activity under the Act.

Section 3.2 would make a vendor ineligible to enter into a contract with an agency of the State government if, within five years of the bid solicitation, the vendor has been assessed a civil penalty for a violation of the Act.

Section 3.3 and 3.4 would require applicants subject to regulation and licensure by a county or city to certify to the county or city that they have read and understand the employee misclassification notice provided by the Division.

Section 3.5 and 3.6 would require owners of sites with work in progress subject to local inspection by the county or city to certify to the county or city that they have read and understand the employee misclassification notice provided by the Division.

PART IV. APPROPRIATION

Section 4 would provide an appropriation to the Department of Revenue to establish up to five new positions to implement the Act.

EFFECTIVE DATE: Except as otherwise provided, the PCS becomes effective January 1, 2016.

Karen Cochrane-Brown and Layla Cummings, Staff Attorneys with the Research Division, contributed substantially to this summary.

HOUSE BILL 482
Committee Substitute Favorable 6/17/15

Short Title: Employee Misclassification Reform. (Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.

The General Assembly of North Carolina enacts:

PART I. EMPLOYEE FAIR CLASSIFICATION ACT

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.

"Employee Fair Classification Act.

"**§ 143-760. Title.**

This Article shall be known and may be cited as the "Employee Fair Classification Act."

"**§ 143-761. Definitions; scope.**

(a) The following definitions apply in this Article:

(1) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(2) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor. The term does not include an individual or entity where the individual or entity provides transportation services and trucking equipment as an owner-operator under written contract as referenced in 49 C.F.R. Part 376, et seq., to a common carrier, contract carrier, or exempt hauler. The owner-operator and the drivers provided by an owner-operator are not employees of any such common carrier, contract carrier, or exempt hauler for the purposes of this Article.

(3) Employee Classification Division or Division. – The Employee Classification Division within the Department of Revenue.

(4) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, or 105 of the General Statutes by misclassifying an employee as an independent contractor.

(5) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(6) Secretary. – The Secretary of the Department of Revenue.

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law.

"**§ 143-762. Establishment of Employee Classification Division; appointment of director; salaries; other staff.**

(a) The Employee Classification Division is established within the Department of Revenue.

(b) The Secretary shall appoint a director of the Division to serve at the Secretary's pleasure with such authority as the Secretary deems necessary to direct and oversee the Division in carrying out the purposes of this Article. The director shall be exempt from the State Human Resources Act and shall devote his or her entire time to the duties of the Division. The director may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Division. The director's salary shall be set by the General Assembly.

(c) The Secretary may employ clerical staff, investigators, and other staff within the Division as is necessary for the Division to perform its duties under this Article. Notwithstanding Chapters 126, 143A, and 143B of the General Statutes or any other provision of law, the director may hire or fire personnel and transfer personnel within the Division. The Division shall be provided with adequate offices in which the Division's records shall be kept and its official business transacted during regular business hours. The Division shall also be provided with necessary office furniture, stationery, and other supplies.

(d) The Office of the State Chief Information Officer shall ensure that the Division is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

"**§ 143-763. Division powers and duties.**

(a) The Division shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Assess administrative civil penalties for instances of employee misclassification as set forth in G.S. 143-765.

(4) Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(5) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the North Carolina Division of Employment Security, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 143, 95, 96, 97, or 105 of the General Statutes.

(6) Create a publicly available notice that includes the definition of employee misclassification and indicates the civil penalties provided for in G.S. 143-765.

(7) Develop methods and strategies for information-sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(8) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) The director shall appoint an informal advisory council to advise the director on issues within the jurisdiction of the Division. The members of the advisory council shall include, at a minimum:

(1) The following officers or the officer's designee:
a. Commissioner of Labor.
b. Secretary of Revenue.
c. Chairman of the Industrial Commission.
d. Assistant Secretary of Commerce for the Division of Employment Security.
e. State Budget Director.
(2) A representative of workers in this State.
(3) A representative of employers in this State.

The members of the council shall not receive compensation, per diem, or expense reimbursement from the State Treasury for their service on the advisory council.

(c) No later than October 1 of each year, the Division shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Division deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(d) The Division shall adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes and that are not inconsistent with this Article for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"**§ 143-764. Determination of independent contractor status.**

(a) The following factors shall be considered in determining whether an individual is an independent contractor for purposes of this Article:
(1) Whether the individual is engaged in an independent business, calling, or occupation.
(2) Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
(3) Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
(4) Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
(5) Whether the individual is not in the regular employ of the other contracting party.
(6) Whether the individual is free to use such assistants as he or she may think proper.
(7) Whether the individual has full control over such assistants.
(8) Whether the individual selects his or her own time.

(b) The presence of one or more of the foregoing factors is not controlling, nor is the presence of all of the foregoing factors required in determining whether an individual is an independent contractor.

(c) The provisions of this section are intended to codify the holding in *Hayes v. Board of Trustees of Elon College*, 224 N.C. 11 (1944). Other factors consistent with that holding may also be considered in making a determination under this section.

"**§ 143-765. Employee misclassification prohibited; civil penalties; repeated instances of misclassification.**

(a) Employee misclassification is prohibited.

(b) Any employer who is found by the Division to have engaged in willful employee misclassification after being assessed any back taxes, wages, benefits, penalties, or other monies by any State agency as a result of misclassifying one or more employees within the

previous three calendar years shall be assessed a civil penalty of no greater than one thousand dollars ($1,000) per misclassified employee for any future instances of employee misclassification. In determining the amount of the penalty to be assessed, the Division shall consider the degree of willfulness or negligence by the employer in engaging in the employee misclassification. The penalty herein provided shall be assessed by the Division administratively. Any employer found by the Division to have engaged in employee misclassification or any other violation of this Article may within 60 days of receiving written notification of a final finding by the Division, appeal the final finding and any accompanying penalty or other sanction by either (i) commencing a contested case under Chapter 150B of the General Statutes or (ii) filing a petition with the Superior Court of Wake County or of such county where the events giving rise to the finding arose. The procedure shall be the same as in all other contested cases or civil actions, except that the review of the Division's findings and any accompanying penalties or sanctions shall be de novo for both factual findings and questions of law. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Nothing in this section shall be construed to create a private right of action, at law or in equity, for the activities prohibited by this Article.

"**§ 143-766. Temporary amnesty program.**

(a) The Division shall establish and administer a temporary amnesty program for the purpose of encouraging voluntary self-reporting by employers currently engaging in employee misclassification. Every employer participating in the temporary amnesty program shall be immune from the civil penalties provided for in G.S. 143-765 for past instances of employee misclassification that are voluntarily self-reported by the employer in accordance with the procedures of the temporary amnesty program.

(b) The Division shall establish procedures for participation in the temporary amnesty program. These procedures shall require, at a minimum, that a participating employer:

(1) File an application with the Division on a form prescribed by the Division on or before October 1, 2016. This form shall require, at a minimum, the employer's name, physical address, mailing address, telephone number, Social Security number or taxpayer ID number, and disclosure of all actual or potential instances of employee misclassification. If available, this form shall require the employer's registered agent, drivers license number, license number(s), and issuing agency of all licenses issued by a State licensing board.

(2) Comply with any and all determinations made or directives issued by the Division pertaining to the employer's application and compliance with this Article.

(c) Nothing in this section shall be construed to limit the liability of a participating employer in any civil or criminal matter not provided for by this Article.

"**§ 143-767. Occupational licensing boards and commissions; notice requirement; applicant certification.**

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, a certification that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(b) Every applicant for a license, permit, or certification issued by a State occupational licensing board or commission shall truthfully certify on the appropriate application that the applicant has read and understands the employee misclassification notice set forth in G.S. 143-763(a)(7).

(c) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification requirement set forth in subsection (b) of this section.

"**§ 143-768. Confidentiality; access to records.**

The records of the Division that are not civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, insofar as they refer to reported violations, investigations, or other enforcement actions taken by the Division, are not public records under G.S. 132-1, but are subject to inspection by State and federal agencies as required by the provisions of this Article and Chapters 95, 96, 97, and 105 of the General Statutes."

SECTION 1.2. G.S. 97-5.1 is repealed.

PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS

SECTION 2.1. G.S. 95-25.15(c) reads as rewritten:

"(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following:

(1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.

(2) Any employee who believes that they have been misclassified as an independent contractor by their employer may report the suspected misclassification to the Employee Classification Division.

(3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification may be reported to the Employee Classification Division."

SECTION 2.2. This section becomes effective January 1, 2016.

PART III. SANCTIONS AND OTHER REQUIREMENTS CONCERNING EMPLOYEE MISCLASSIFICATION

SECTION 3.1. G.S. 87-11 reads as rewritten:

"**§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.**

(a) The Board shall have the power to refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency, or misconduct in the practice of his or her profession, or willful violation of any provision of this ~~Article.~~Article, or if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of fraud, deceit, negligence, or misconduct against any general contractor licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses. These guidelines shall include references to the prohibition of employee misclassification under Article 81 of Chapter 143 of the General Statutes and state that engaging in employee misclassification is grounds for revocation of a license issued under this Article.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, five or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its findings in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 3.1A. G.S. 87-23 reads as rewritten:

"**§ 87-23. Revocation or suspension of license for cause.**

(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of the charges shall be in writing and investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Chapter, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee.

(d) The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes."

SECTION 3.1B. G.S. 87-42 reads as rewritten:

"**§ 87-42. Duties and powers of Board.**

In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the written examination of all applicants for certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all applications for certification as a qualified individual and all applications for licenses to be issued under this Article, shall examine all applicants to determine that each has met the requirements for certification and shall discharge all duties enumerated in this Article. Applicants for certification as a qualified individual must be at least 18 years of age and shall be required to demonstrate to the satisfaction of the Board their good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code as incorporated in the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of the installation of electrical work and equipment. Certification of qualified individuals shall be issued in the same classifications as provided in this Article for license classifications. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of qualified individuals, which may vary for the various license classifications. The Board shall issue certifications and licenses to all applicants meeting the requirements of this Article and of the Board upon the receipt of the fees prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this Article. The Board may conduct audits of the pay records and project records of licensee firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143 of the General Statutes. The Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the Chairman for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. The Board shall have the power to acquire, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. The Board shall keep minutes of all its proceedings and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public accountant, and the audit report shall be filed with the State of North Carolina in accordance with Chapter 93B of the General Statutes."

SECTION 3.1C. G.S. 87-47(a1) reads as rewritten:

"(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.

(6) Engaging in false or misleading advertising.

(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.

(8) Willfully engaging in employee misclassification in violation of G.S. 143-765(b) where there was no good-faith argument that the individual was an independent contractor."

SECTION 3.2. G.S. 143-59.2(a) reads as rewritten:

"(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business ~~entity,~~entity; within five years prior to the date of the bid solicitation, has been assessed a civil penalty pursuant to G.S. 143-765(b) that has been upheld upon final adjudication, the violation giving rise to the penalty was willful, and there was no good-faith argument that the individual was an independent contractor; or within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934."

SECTION 3.3. G.S. 153A-134 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a county under this section shall certify to the county on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.4. G.S. 160A-194 is amended by adding a new subsection to read:

"(d) An applicant subject to regulation and licensure by a city under this section shall certify to the city on the relevant application that the applicant has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.5. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the county on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

SECTION 3.6. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

(a) As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

(b) Each owner shall certify to the city on the relevant application that the owner has read and understands the employee misclassification notice required under G.S. 143-763(a)(7)."

PART IV. APPROPRIATIONS

SECTION 4.(a) There is appropriated from the General Fund to the Department of Revenue the sum of two hundred ninety-three thousand dollars ($293,000) for the 2015-2016 fiscal year and the sum of two hundred ninety-three thousand dollars ($293,000) for the 2016-2017 fiscal year to establish up to five new positions in the Employee Classification Division of the Department of Revenue to carry out the duties of the Division pursuant to G.S. 143-763. The Department of Revenue shall consult with the Industrial Commission, the Office of State Budget and Management, the Division of Employment Security of the Department of Commerce, and the Department of Labor in hiring staff for this function.

SECTION 4.(b) There is appropriated from the General Fund to the Employee Classification Division of the Department of Revenue the sum of seventeen thousand five hundred dollars ($17,500) for the 2015-2016 fiscal year for nonrecurring costs associated with the positions authorized by this section.

PART V. SEVERABILITY

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

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act becomes effective August 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 124*
Judiciary I Committee Substitute Adopted 4/28/15
Third Edition Engrossed 4/29/15

Short Title: Modernize Assumed Business Name Statutes. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW GOVERNING THE USE OF ASSUMED BUSINESS NAMES AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. ASSUMED BUSINESS NAME ACT

SECTION 1. Article 14 of Chapter 66 of the General Statutes is repealed.

SECTION 2. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 14A.
"Assumed Business Name Act."

"**§ 66-71.1. Short title.**

This Article may be cited as the "Assumed Business Name Act."

"**§ 66-71.2. Statement of purpose.**

The purpose of this Article is to afford the public a means of ascertaining the real names of persons engaging in business in this State under an assumed business name by requiring those persons to register the assumed business name as provided in this Article.

"**§ 66-71.3. Definitions.**

The following definitions apply in this Article:

(1) Assumed business name. –

a. In the case of an individual, any name other than the real name of the individual.

b. In the case of a partnership other than a limited liability partnership or limited partnership, any name other than the real names of all the general partners of the partnership.

c. In the case of a limited liability partnership, any name other than the name registered with the Secretary of State.

d. In the case of a limited partnership, any name other than the name stated in its certificate of limited partnership filed with the Secretary of State.

e. In the case of a limited liability company, any name other than the name stated in its articles of organization filed with the Secretary of State.

f. In the case of a corporation, any name other than the corporate name stated in its articles of incorporation filed with the Secretary of State.

g. In the case of a trust, any name other than the name specified in the trust instrument or, if the trust instrument does not specify a name for the trust, any name other than the name of the trustee and a designation of the trust for which the trustee is acting.

h. In the case of any other person, any name other than the real name of the person.

(2) Person. – Includes an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity.

"**§ 66-71.4. Filing of certificate; exception.**

(a) Before any person engages in business in this State under an assumed business name, the person must file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. If the person is or will be engaged in business in multiple counties, filing is required in only one of those counties.

(b) A separate assumed business name certificate must be filed for each assumed business name under which a person engages in business in this State.

"**§ 66-71.5. Contents of certificate.**

An assumed business name certificate must include:

(1) The assumed business name.

(2) The real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include the real names of five general partners or of all the general partners, whichever is fewer.

(3) The type of business.

(4) The street address of the principal place of business.

(5) Each county where the person uses or will be using the assumed business name to engage in business.

"**§ 66-71.6. Execution of certificate.**

An assumed business name certificate must be executed as follows:

(1) In the case of an individual, the certificate must be signed by the individual.

(2) In the case of a partnership or limited partnership, the certificate must be signed by a general partner.

(3) In the case of a corporation or limited liability company, the certificate must be signed in the name of the corporation or limited liability company by an individual authorized to act for the corporation or limited liability company.

(4) In the case of any other person, the certificate must be signed in the name of the person by an individual authorized to act for the person.

"**§ 66-71.7. Amendment of certificate.**

Any person that has filed an assumed business name certificate must, within 60 days after a change in any of the information required in the assumed business name certificate, file a certificate of amendment in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name and the real name of the person engaging in business under the assumed business name as stated in the original, or most recently amended, assumed business name certificate.

(2) The book and page number of the original filing.
(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).
(4) How the assumed business name certificate is to be amended.

"**§ 66-71.8. Withdrawal of assumed business name.**

Any person filing an assumed business name certificate as required by this Article may, upon ceasing to engage in business in this State under the assumed business name, withdraw the assumed business name by filing a certificate of withdrawal in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name being withdrawn.
(2) The book and page number of the original filing.
(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).
(4) The real name of the person engaging in business under the assumed business name and that person's current address.
(5) A statement that the person has ceased engaging in business under the assumed business name.
(6) The effective date of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal.

"**§ 66-71.9. Secretary of State to maintain a centralized, statewide database of assumed business name information.**

(a) The Secretary of State shall develop, implement, and maintain a searchable online database of assumed business name information reported under G.S. 66-71.10. The system must allow information to be entered and retrieved from the system by the registers of deeds and must be available for searches by the public.

(b) The Secretary of State may adopt rules to implement the statewide online database.

"**§ 66-71.10. Register of deeds to index certificates; transmission of data to central database.**

(a) The register of deeds of each county must index in accordance with Article 2 of Chapter 161 of the General Statutes every assumed business name with respect to which an assumed business name certificate, a certificate of amendment, or a certificate of withdrawal has been filed in that county.

(b) Not later than 30 days after the date a certificate under this Article is filed, the register of deeds must transmit a scanned image of the certificate to the Secretary of State and enter into the central database maintained by the Secretary of State under G.S. 66-71.9 the assumed business name, the real name of each person engaging in business under that name, the type of certificate, the county in which the certificate was filed, and, in the case of a certificate of amendment or certificate of withdrawal, the identification number assigned to the assumed business name by the Secretary of State (SOS ID).

"**§ 66-71.11. Forms.**

(a) The Land Records Management Advisory Committee established under G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this Article, but their use is not mandatory.

(b) Any person, including the registers of deeds, may make available the forms developed under subsection (a) of this section.

"**§ 66-71.12. Effect of filing certificate.**

(a) An assumed business name certificate filed under this Article is effective upon filing and remains in effect until withdrawn under G.S. 66-71.8.

(b) Compliance with this Article does not confer any exclusive rights to the use of an assumed business name in this State.

"**§ 66-71.13. Copy of certificate prima facie evidence.**

A copy of a certificate filed under this Article, duly certified by the register of deeds of the office in which it was filed, is prima facie evidence of the facts required to be stated in the certificate.

"**§ 66-71.14. Consequences of signing false certificate or violating Article.**

(a) A person signing a certificate under this Article that the person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is guilty of a Class 1 misdemeanor.

(b) A person failing to file an assumed business name certificate or a certificate of amendment as required by this Article is liable to any person injured by the failure for the reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a reasonable purpose, the information required to be stated in the assumed business name certificate or certificate of amendment. The expenses may be awarded in a civil action.

"**§ 66-71.15. Expiration of certificates filed under Article 14; transition provisions.**

(a) All certificates of assumed name filed under former Article 14 of this Chapter expire July 1, 2021, and the provisions of that former Article continue to apply to them until that date except as provided in this section. On or after that date, any person that (i) is listed as an owner of the business in a certificate of assumed name filed under that former Article and (ii) desires to continue engaging in business in this State under the assumed business name after that date must file an assumed business name certificate under this Article.

(b) At least one person listed as an owner of the business in a certificate of assumed name under former Article 14 of this Chapter must file an assumed business name certificate before the certificate of assumed name expires under subsection (a) of this section if any of the following occur:

(1) A general partnership would have been required to file a new certificate of assumed name under former G.S. 66-68(c) due to the withdrawal or addition of a partner.

(2) Any of the information in the certificate of assumed name required under former G.S. 66-68(a) has changed and the person desires to continue engaging in business in this State.

(c) No person shall file a new certificate of assumed name under former Article 14 of this Chapter on or after July 1, 2016. Any document or other record filed on or after that date to register an assumed business name is deemed to be filed under this Article, even if it is described as a certificate of assumed name rather than an assumed business name certificate or if it expressly refers to former Article 14 of this Chapter.

(d) A person that filed a certificate of assumed name that has not expired may withdraw the assumed name under the provisions of former G.S. 66-68(f). Any such withdrawal is deemed to be a withdrawal under former G.S. 66-68(f), even if it is described as a withdrawal under this Article.

(e) No person shall file a certificate of amendment under this Article to a certificate of assumed name filed under former Article 14 of this Chapter. If any such amendment is nevertheless filed, it is not effective as a certificate of amendment or as an assumed business name certificate under this Article.

(f) The register of deeds shall not transmit a scanned image to the Secretary of State, or enter any of the information required by G.S. 66-71.10 into the central database maintained by the Secretary of State, of any withdrawal or transfer of an assumed name or any amendment to a certificate of assumed name when the certificate of assumed name to which the withdrawal, transfer, or amendment relates was filed before July 1, 2016.

(g) Other than this section, this Article does not apply to a certificate of assumed name or a withdrawal of an assumed name under former Article 14 of this Chapter."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 3.(a) G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may ~~hereafter~~ sue or be sued under the name by which they are commonly known and called, or under which they are ~~doing~~ engaging in business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege ~~the specific location of the recordation required by G.S. 66-68.~~ that it has filed a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 3.(b) Effective July 1, 2021, G.S. 1-69.1(a)(3), as amended by this section, reads as rewritten:

"(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege that it has filed ~~a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or~~ an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes."

SECTION 4. G.S. 53-208.7(a) reads as rewritten:

"(a) Each application for a license under this Article shall be made in writing, under oath, and in a form prescribed by the Commissioner. For all applicants, each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any assumed ~~or trade~~ business name used by the applicant in the conduct of its business, and the location of the applicant's business records.

...."

SECTION 5. G.S. 55D-20(d) reads as rewritten:

"(d) The use of assumed business names or fictitious names, as provided for in ~~Chapter 66,~~ Chapter 66 of the General Statutes, is not affected by this Chapter or by Chapter 55, 55A, 57D, or 59 of the General Statutes."

SECTION 6. G.S. 58-70-5 reads as rewritten:

"**§ 58-70-5. Application to Commissioner for permit.**

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which ~~such~~ the person, firm, corporation or association desires to carry on the collection agency business as ~~hereinafter defined. Such~~defined in this Article. The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

~~(a)~~(1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if ~~different;~~different.

~~(b)~~(2) If the applicant is a corporation,

~~(1)~~a. A certified copy of the board of director's resolution authorizing the submission of the application;

~~(2)~~b. An authenticated copy of the Articles of Incorporation and all amendments thereto;

~~(3)~~c. An authenticated copy of the bylaws or other governing instruments;

~~(4)~~d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of ~~State;~~ State.

(3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.

(4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.

(5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.

(6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.

(7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.

(8) A statement certifying that there are no unsatisfied judgments against the applicant.

(9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.

(10) The appropriate permit fee as required by G.S. 58-70-35.

(11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.

(12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

(13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.

(14) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection

agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.

(15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b1) In addition to the information required by ~~subsection (b)~~ subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the ~~Commissioner;~~Commissioner.

~~(c) If the applicant is a partnership, an authenticated copy of the then current partnership agreement;~~

~~(d) If the trade name is used, certificates showing that the trade name has been filed as required by G.S. 66-68;~~

~~(e) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20;~~

~~(f) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings;~~

~~(g) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in North Carolina;~~

~~(h) A statement certifying that there are no unsatisfied judgments against the applicant;~~

~~(i) A list of all telephone numbers assigned to, or to be used by the applicant in the operation of the collection agency;~~

~~(j) The appropriate permit fee as required by G.S. 58-70-35;~~

~~(k) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant;~~

~~(l) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.~~

~~(m) A statement certifying that no officer, individual proprietor or partner of the applicant has been convicted of a felony involving moral turpitude, or any violation of any State or federal debt collection law.~~

~~(n) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation;~~

~~(o) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.~~

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

(1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with ~~subsection (k)~~ subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in ~~subsection (k)~~subdivision (a)(11) of this section."

SECTION 7. G.S. 59-84.1 reads as rewritten:

"**§ 59-84.1. Partnership to comply with ~~"assumed name" statute;~~Assumed Business Name Act; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of ~~Articles 14~~ Articles 14A and 15 of Chapter 66 of the General Statutes in all cases in which the ~~same~~ Articles are applicable.

…."

SECTION 8. G.S. 62-115 reads as rewritten:

"**§ 62-115. Issuance of partnership franchises.**

No franchise shall be issued under this Article to two or more persons until ~~such~~ the persons have executed a partnership agreement, filed a copy of ~~said~~ the agreement with the Commission, and indicated to the Commission, in writing, that they have complied with ~~Article~~

~~14~~ Article 14A of Chapter 66 of the General Statutes relating to ~~doing~~ engaging in business under an assumed business name."

SECTION 9. G.S. 66-262 reads as rewritten:

"**§ 66-262. Filing information.**

(a) Each filing submitted to the Secretary shall contain all of the following information:

(1) The name or names, including any assumed business names, under which the telephonic seller is doing or intends to do business in this State.

...."

PART III. EFFECTIVE DATE AND APPLICABILITY PROVISIONS

SECTION 10. This act becomes effective July 1, 2016. This act does not affect a civil action or proceeding commenced or a right accrued before July 1, 2016.

GENERAL STATUTES COMMISSION
300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: House Committee on Judiciary II
From: General Statutes Commission
Re: SB 124 (Modernize Assumed Business Name Statutes)
Date: August 3, 2015

General Comments

This bill would update the law governing the use of assumed business names by replacing current Article 14 of Chapter 66 of the General Statutes, entitled "Business Under Assumed Name Regulated," with a more modern Article 14A, entitled "Assumed Business Name Act." The bill was developed with the assistance of representatives of the North Carolina Department of the Secretary of State, the North Carolina Association of Registers of Deeds, and different sections of the North Carolina Bar Association.

Current Article 14 provides important protection to the public by requiring persons that engage in business in this State under an assumed name to make the identity of the business' true owners available to the public through filings with the registers of deeds. Generally speaking, before engaging in business in this State under an assumed name, a person must file a certificate with the register of deeds of each county in which business is to be engaged. The certificate must include the assumed name and the real name and address of each owner of the business. Failure to file is a Class 3 misdemeanor and can result in a $50.00 civil penalty payable to any person who notifies the owner of the failure if the owner then continues to fail to file.

Current Article 14 was enacted in 1913 and has not been substantially revised since then. In the intervening decades, portions have become obsolete or in conflict with more recent statutes. Business practices have changed. More businesses are operating in multiple counties in the State. As reported to the General Statutes Commission, many businesses may not be in compliance with Article 14, especially those operating statewide or in multiple counties. The penalty provisions have become ineffective. In particular, the criminal provision (i) has become disproportionate to the penalties for failing to file similar business-related documents, (ii) is only likely to be applied to individuals (not entities), and, as a result, (iii) is arguably unfair.

Proposed new Article 14A would make the following changes:

- Modernize language and style, provide guidance on "real names" for entities and partnerships, and conform outdated conflicting provisions to more recent law;
- Provide for amending certificates of assumed name;
- Eliminate a provision for transferring assumed names because it reportedly causes confusion in practice;
- Eliminate two exceptions to the filing requirement for (i) an obsolete exclusion and (ii) for licensed professions whose boards met certain requirements;
- Replace the penalty provisions with a new provision allowing for recovery of expenses incurred in locating "true owners" who fail to file;
- Remove the acknowledgement requirement but add a new Class 1 misdemeanor for filing a knowingly false certificate.

- Require the creation of a statewide database, searchable by the public, of assumed business name information, which would as a result eliminate (i) the requirement for filing with the register of deeds in each county in which a business is operated under an assumed name and (ii) the possible need to search 100 separate registers of deeds offices for an assumed name filing.

Specific Comments

Proposed **§ 66-71.1** ("Short title") states the new article's title. The title is changed to the more precise "Assumed Business Name Act" because, consistent with the current law, the filing requirements only apply to a person who "engages in business" under an assumed name (a d/b/a).

Proposed **§ 66-71.2** ("Statement of purpose") is new, although the purpose has not changed.

Proposed **§ 66-71.3** ("Definitions") defines the terms "assumed business name" and "person" as used in this Article. There is no definitions section in current Article 14, but the proposed definition of "assumed business name" is consistent with current G.S. 66-68(a) while providing greater clarity as to the "real names" of some types of entities and partnerships.

Proposed **§ 66-71.4** ("Filing of certificate; exception") continues the requirement that any person engaging in business in this State under an assumed business name must first file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. The current law requires a person that is engaged in business in multiple counties to file a certificate of assumed name in each county. Due to the provision for a searchable, state-wide data-base (see proposed §§ 66-71.9 and 66-71.10), proposed § 66-71.4 requires filing in only one of those counties. A separate certificate is still required, however, for different assumed business names used by the same person.

Proposed **§ 66-71.5** ("Contents of certificate") continues to require an assumed business name certificate to include the assumed business name, the real name of the person engaging in business under that name (the "owner or owners" in G.S. 66-68), and an address. Proposed § 66-71.5 adds requirements that the address be the street address of the principal place of business and that the person filing indicate the type of business and list each county where the person uses or will be using the assumed business name to engage in business. The last provision substitutes for the current law's requirement to file with the register of deeds in each of these counties. Because there is no requirement for d/b/a names to be unique, the new requirements should help the public distinguish between, e.g., Paul the Pieman in Buncombe and Henderson Counties, a baker, from a different Paul the Pi-man in New Hanover and Brunswick Counties, a math tutor.

In addition, proposed § 66-71.5 reduces the filing compliance burden on large partnerships by requiring that no more than five partners be listed in the assumed name certificate. Current G.S. 66-68's requirement that a partnership file a new certificate of assumed name, signed by each partner, every time a partner leaves or joins the partnership is quite burdensome for a very large partnership. The replacement requirement should give a member of the public a sufficient basis to obtain the names of all the partners.

Proposed **§ 66-71.6** ("Execution of certificate") specifies who should execute an assumed business name certificate. There are three changes from current G.S. 66-68(b). First, in the case

of a partnership, only one general partner must sign, rather than each general partner. Second, rather than specifying particular corporate officers, the new statute requires only that the person signing be authorized to act for the corporation or LLC. Third, the new statute does not continue the requirement in current G.S. 66-68(b) that the certificate be acknowledged when executed, which may better accommodate electronic filing of assumed business name certificates.

Proposed **§ 66-71.7** ("Amendment of certificate") is new. It requires the filing of a properly executed certificate of amendment within 60 days after a change in any of the information required in the assumed business name certificate. The purpose is to ensure that the information on file is kept current. The only method for updating such information in current Article 14 is the filing of a new certificate of assumed name.

Proposed **§ 66-71.8** ("Withdrawal of assumed business name") continues the provision for withdrawal of an assumed business name when it is no longer being used. There are two changes to the required contents of the certificate of withdrawal. First, where current G.S. 66-68(f) requires a certificate of withdrawal to include the date of filing of the original certificate, proposed § 66-71.8 requires the register of deeds' book and page number and the identification number assigned by the Secretary of State, both of which are needed to associate the certificate of withdrawal with the related earlier filing. Second, the new provision does not bring forward the 20-day limit on delayed effective dates.

Proposed new Article 14A does not bring forward G.S. 66-68(f)'s provisions for a transfer of an assumed name. Reportedly, small business owners can be confused under the current law as to whether they should file a certificate of withdrawal, a certificate of transfer of assumed name, or both when they sell or transfer their business to someone else. Given that the new owners must file a new certificate of assumed name in any event under the current law, the General Statutes Commission decided that both provisions were not needed.

Proposed **§ 66-71.9** ("Secretary of State to maintain a centralized, statewide database of assumed business name information") is new. It requires the Secretary of State to develop, implement, and maintain a searchable online database, available to the public, of assumed business name information reported by the registers of deeds under proposed § 66-71.10. Currently, if a search of one register of deeds' records does not produce a d/b/a registration, the searcher cannot know whether none was ever filed in any county or whether there was a filing in another, perhaps adjacent, county, until all 100 counties in the State have been checked. The centralized database will make it possible to search only one location.

Subsection (a) of proposed **§ 66-71.10** ("Register of deeds to index certificates; transmission of data to central database") effectively brings forward G.S. 66-69 but conforms it to the requirements of Article 2 of Chapter 161, on the duties of the registers of deeds.

Proposed **§ 66-71.10(b)** is new. It requires the registers of deeds, within 30 days after the date of filing, to transmit a scanned image of a certificate filed under Article 14A to the Secretary of State and to enter specified information from the certificate into the central database maintained by the Secretary of State. The 30-day time limit is the same as the time limit for indexing, and the information to be entered into the statewide database is essentially the indexing information plus the list of counties in which the assumed business name will be used and the Secretary of State's identification number, if any, from the certificate being filed.

Proposed **§ 66-71.11** ("Forms") is new. It authorizes the Land Records Management Advisory Committee established under G.S. 147-54.3 to develop forms that may be used in complying with Article 14A and authorizes any person, including the registers of deeds, to make these forms available. New forms will be needed because somewhat different information is required under new Article 14A.

Proposed **§ 66-71.12** ("Effect of filing certificate") has no express counterpart in current Article 14. It provides that an assumed business name certificate is effective upon filing and remains in effect until withdrawn and that compliance with Article 14A does not confer any exclusive rights to the use of an assumed business name in this State, consistent with current law.

Proposed **§ 66-71.13** ("Copy of certificate prima facie evidence") updates G.S. 68-69.1.

Proposed **§ 66-71-14** ("Consequences of signing false certificate or violating Article") replaces the current penalty provisions of G.S. 66-71 with two new provisions:

- Signing a certificate that a person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is a Class 1 misdemeanor. This provision is included due to the removal of the current law's requirement for an acknowledgement. It is similar to criminal provisions for other fraudulent filings.
- Failure to file a certificate as required by Article 14A makes a person liable to anyone injured by the failure for reasonable expenses, including attorneys' fees, incurred in discovering information that should have been in the certificate. The expenses may be awarded in a civil action. The intent was to remedy harm caused by the failure to file.

Proposed **§ 66-71-15** ("Expiration of certificates filed under Article 14; transition provisions") is new. Subsection (a) provides for the expiration of existing certificates of assumed name on July 1, 2021. Anyone that intends to continue engaging in business under an assumed business name must file a new certificate. The expiration and re-registration is needed to ensure that all currently active assumed business names are incorporated into the new statewide database. Subsections (b) through (g) are transitional provisions.

Please note that the following provisions in current Article 14 were not brought forward:

- **G.S. 66-71(b)**, which provides that the failure of a person to comply with Article 14 does not prevent a recovery by that person in any civil action in the courts of this State, in light of opinions of the North Carolina Court of Appeals holding that the contrary requirements of **G.S. 1-69.1** are mandatory and that the failure of an unincorporated association and partnership to satisfy them is not exonerated by **G.S. 66-71(b)**.
- **G.S. 66-68(d)**, which exempts businesses with no physical presence whose only activities in a county are calls by traveling salespersons and mail order sales. The exemption was reported to be obsolete.
- **G.S. 66-68(e)**, which exempts any partnership or limited liability company engaged in rendering professional services if the licensing board met certain conditions. The General Statutes Commission believes the exemption is not being used; it solicited comments from the affected licensing boards and did not receive any that expressed a need to retain the exemption.

The bill also makes related conforming and technical amendments to other sections of the General Statutes. The proposed effective date is July 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 3

SENATE BILL 671
Judiciary II Committee Substitute Adopted 7/21/15
Finance Committee Substitute Adopted 7/22/15

Short Title: DL Restoration/DWI Treatment Court. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO CONDITIONALLY RESTORE THE DRIVERS LICENSES OF PERSONS WHO HAVE SUCCESSFULLY COMPLETED A DRUG TREATMENT OR DWI TREATMENT COURT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19 is amended by adding a new subsection to read:

"(d1) Notwithstanding any other provision of law, when a person's license is revoked for an impaired driving offense and the person is sentenced pursuant to G.S. 20-179, the Division may conditionally restore the person's license after it has been revoked for at least one year if the person (i) provides the Division with a certificate of graduation from a Drug Treatment or Driving While Impaired (DWI) Treatment Court Program established pursuant to Article 62 of Chapter 7A of the General Statutes, (ii) provides the Division with a letter of recommendation from the presiding judge of the Drug Treatment or DWI Treatment Court, and (iii) pays, in addition to any other applicable fees, a fee of twenty-five dollars ($25.00). The twenty-five-dollar ($25.00) fee shall be deposited in the Highway Fund. If the Division restores the person's license, it shall place all of the following restrictions, requirements, and conditions on the person for the duration of the original revocation period:

(1) A requirement that all registered vehicles owned by that person be equipped with a functioning ignition interlock system in accordance with G.S. 20-17.8(c1).

(2) A restriction that the person may operate only a motor vehicle equipped with a functioning ignition interlock system of a type approved by the Commissioner that is set to prohibit driving with an alcohol concentration of greater than 0.02.

(3) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

In addition, the Division may place other reasonable restrictions, requirements, and conditions on the person for the duration of the original revocation period."

SECTION 2. This act becomes effective December 1, 2015.

SENATE BILL 671:
DL Restoration/DWI Treatment Court

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	August 4, 2015
Introduced by:	Sens. Apodaca, Van Duyn, J. Davis	**Prepared by:**	Susan Sitze*
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 671 would allow the Division of Motor Vehicles (DMV) to conditionally restore a drivers license revoked for a conviction of Driving While Impaired (DWI) after at least a one-year revocation period if the person has graduated from a Drug Treatment or a DWI Treatment Court Program.***

CURRENT LAW: Under G.S. 20-19, a person convicted of impaired driving is subject to a mandatory license revocation for a minimum of one year; the revocation can be for four years or permanent, if the person has prior DWI convictions. A person whose license is revoked for 4 years may have it conditionally restored after 2 years. A person whose license is revoked permanently may have it conditionally restored after 3 years.

BILL ANALYSIS:

Senate Bill 671 would amend G.S. 20-19 to do the following:

- Allow the DMV to conditionally restore a drivers license after a revocation for DWI if the following requirements are met:
  - The drivers license has been revoked for at least one year.
  - The person provides a certificate of graduation from a Drug Treatment or DWI Treatment Court Program.
  - The person provides a letter of recommendation from the treatment court's presiding judge.
  - The person pays a $25.00 fee, to be deposited in the Highway Fund.
- Require the DMV to impose the following conditions upon the restoration of the license, in addition to any other reasonable restrictions, requirements, and conditions imposed by the Division, for the duration of the original revocation period:
  - All vehicles owned by the individual must be equipped with ignition interlock
  - The person may only operate vehicles equipped with an approved ignition interlock system set to prevent driving the vehicle by someone with an alcohol concentration greater than 0.02.
  - The person must personally activate the ignition interlock system before driving the motor vehicle.

EFFECTIVE DATE: This act would become effective December 1, 2015.

Heather Fennell, Bill Patterson and Jennifer Bedford, staff attorneys, contributed to this summary.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

SENATE BILL 675

Short Title:	Limit Parole Review Frequency.	(Public)
Sponsors:	Senators Apodaca (Primary Sponsor); and Hartsell.	
Referred to:	Judiciary I.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE FREQUENCY OF PAROLE REVIEWS FOR INMATES CONVICTED OF SEXUALLY VIOLENT OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1371(b), repealed by Section 22 of Chapter 538 of the 1993 Session Laws, but still applicable to sentences based on offenses occurring before October 1, 1994, under Section 56 of that act, as amended by S.L. 2008-133, reads as rewritten:

"(b) Consideration for Parole. – The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:

(1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year;

(2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must give the prisoner written notice of its decision at least once a year, except as provided in ~~subdivision (4)~~subdivisions (4) and (5) of this subsection, or

(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;

b. The district attorney of the district where the prisoner was convicted;

c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision.

(4) The Commission shall review cases where the prisoner was convicted of first or second degree murder, and in its discretion, give consideration of parole and written notice of its decision once every third year; except that the Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it.

(5) The Commission shall review cases where the prisoner was convicted of a sexually violent offense as defined in G.S. 14-208.6(5), and in its discretion, give consideration of parole and written notice of its decision once every second year; except that the Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it."

SECTION 2. This act becomes effective October 1, 2015, and applies to parole reviews conducted on and after that date.

SENATE BILL 675:
Limit Parole Review Frequency

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	August 4, 2015
Introduced by:	Sen. Apodaca	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 675 would limit the frequency of parole review for inmates convicted of sexually violent offenses.***

CURRENT LAW: Inmates sentenced under criminal penalty laws prior to the Structured Sentencing Act are eligible for parole. Once an inmate becomes eligible for parole, if parole is denied, the Post-Release Supervision and Parole Commission (Commission) must reconsider its decision at least once a year except for first and second degree murder convictions, which must only be reconsidered every three years.

BILL ANALYSIS: Senate Bill 675 would amend the requirement to reconsider parole once a year to provide that inmates convicted of sexually violent offenses which will require them to register as sex offenders upon release shall only be reconsidered for parole every two years. The Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to parole reviews conducted on and after that date.

O. Walker Reagan
Director

* S 6 7 5 - S M S A - 1 0 2 E 1 - V 1 *

Research Division
(919) 733-2578

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 8-04-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: David Leighton
4. Name:
5. Name:

Senate Sgt-At Arms:

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

Tuesday, Aug 4	Room	Time
JUDICIARY II	421	15 mins after

Name	County	Sponsor
Kay Neal II	Guilford	Cecil Brockman
Madison Newton	Harnett	David R. Lewis
Alex Obiol	Wake	Brad Salmon
Christa Parrish	Pender	Chris Millis

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

8-04-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Orr	103 NORTHWOOD ROAD HENDERSON, NC. 27536 MENTAL HEALTH ADVOCATE (NO AGENCY)
Floyd M. Lewis	General Statutes Commission
B. Bay Hall	dhb
Mylle Smallwood	UNC SOG
Steven Weeks	NCDOJ
Bailey Dwayne	SOS
Ann Pratt	SOS
Frank Morris	UPS
Rick Zechini	WN
BERRY JENKINS	CAGC
Betsy Bailey	CAGC

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

8-04-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JGOODMAN	NC CHAMBER
Jake the Snake Carlson	NCC
Henry Capers	ATT
Chris Agee	DOJ
Carr McLamb	TSS
Ryan Boyce	NCIC
Bill Rowe	NCIC
[signature]	NCAOA
David Heiken	NC Center for Nonprofits
ANDY WALSH	SA
Regan Gatlin	Safran Law Offices

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

8-04-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SAM CONSTANCE	NCEC, 430 N. Salisbury St. Raleigh
Bryan Strickland	NCIC, 430 N. Salisbury St Raleigh NC
Nelson Freeman	DOR
Reed Gunter	YNN
Trent Womble	DHHS
Bubba White	New Frame
J. W JOYNER	NEW FRAME
Skye David	KLG
Amy Cagno	NMRS
Jacob Joubert	DOT - DMV
Dan Whittacre	DOT - DMV

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

8-04-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debbie Jones	DMV
Chris Brooks	DOJ - DMV
Hope Mozingo	NCDMV
Jackie Ruggiero	DMV-IT
Andy Chase	KMA
Benton Albritton	ABC Carolinas
Reston Jones	NCDOT
Tonya Horton	TSS
Henry Jones	Jordan Price
John DelGiorno	Brubaker + Assoc.
Kevin Burke	NCUC

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

8-04-2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ronni Killian	Nelson Mullins
JBussian	NCPA
Chris McClure	Brooks Pierce
Frank Wiesner	NC Licensing Board for Gen. Contractors
Margie Foreman	NCHE
Barb Jones	NCBBE

House Committee on Judiciary II
Tuesday, August 18, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on August 18, 2015 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Glazier, Hurley, Jordan, McGrady, Michaux, Queen, Ross, Salmon, and Stam attended. Susan Sitze, Brad Krehely and Tawanda Foster (Research Staff Counsel), Kevin King (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:01 PM. He introduced the Sergeants at Arms (Attachment II). The following bills were considered:

The proposed committee substitute for Senate Bill 671 and a summary are provided (Attachment III and Attachment IV)
SENATE BILL 671: AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO CONDITIONALLY RESTORE THE DRIVERS LICENSES OF PERSONS WHO HAVE SUCCESSFULLY COMPLETED A DRUG TREATMENT OR DWI TREATMENT COURT PROGRAM.

Chairman Jordan recognized Representative McGrady who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Senator Apodaca to speak on the bill.

The Proposed Committee Substitute (PCS) for Senate Bill 671 would allow the Division of Motor Vehicles (DMV) to conditionally restore a driver's license revoked for a conviction of Driving While Impaired (DWI) after at least a one-year revocation period if the person has graduated from a Drug Treatment or a DWI Treatment Court Program.

After a short discussion, the chair recognized Representative McGrady who moved to give a favorable report to the proposed committee substitute, unfavorable as to the original bill. The motion passed without dissent.

Senate Bill 675 and summary are provided (Attachment V and Attachment VI).
SENATE BILL 675: AN ACT TO LIMIT THE FREQUENCY OF PAROLE REVIEWS FOR INMATES CONVICTED OF SEXUALLY VIOLENT OFFENSES.

Chairman Jordan recognized Senator Apodaca to speak on the bill.

Senate Bill 675 would limit the frequency of parole review for inmates convicted of sexually violent offenses.

After a short discussion, the chair recognized Representative Stam who moved for a favorable report. The motion passed with some dissent.

Senate Bill 127 and summary are provided (Attachment VII and Attachment VIII).
SENATE BILL 127: AN ACT TO REQUIRE THAT INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACTS AND OTHER PERSONAL SERVICES CONTRACTS PURCHASED BY EXECUTIVE BRANCH AGENCIES BE SUBJECT TO THE SAME REQUIREMENTS AND PROCEDURES AS CONTRACTS FOR OTHER SERVICES; TO REQUIRE STATE AGENCIES TO OBTAIN THE SERVICES OF TEMPORARY EMPLOYEES THROUGH THE TEMPORARY SOLUTIONS PROGRAM OPERATED BY THE OFFICE OF STATE HUMAN RESOURCES; AND TO PROVIDE THAT INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACTS CAN ONLY BE OBTAINED UPON WRITTEN APPROVAL FROM THE OFFICE OF INFORMATION TECHNOLOGY SERVICES AND THE OFFICE OF STATE BUDGET AND MANAGEMENT.

Chairman Jordan recognized Senator Randleman to speak on the bill.

Senate Bill 127 requires that personal services contracts entered into by Executive Branch agencies be subject to the same requirements and procedures as service contracts, requires State agencies to obtain temporary employees through the Temporary Solutions Program, and codifies the requirement that information technology personal services contracts be approved in writing by the Office of Information Technology Services and the Office of State Budget and Management.

The chair recognized Representative Hurley who moved to amend the bill on page 2, lines 35-43. (Attachment IX). The amendment was adopted.

The chair recognized Representative Stam who moved to amend the bill on page 1, line 22. (Attachment X). The amendment was adopted.

The chair recognized Darlene Langsten, Budget Director of the Department of Public Safety, to speak on the bill.

The chair recognized Neal Alexander, Office of State Human Resources, to speak on the bill.

After a short discussion, the chair then recognized Representative Blust, who moved to have the amendments rolled into a new committee substitute and given a favorable report, unfavorable as to the original bill. The motion passed without dissent.

Senate Bill 661 and a summary are provided (Attachment XI and Attachment XII)
SENATE BILL 661: AN ACT TO REQUIRE THAT WHEN LOCAL LAW ENFORCEMENT AGENCIES OBTAIN DNA ANALYSES FROM ENTITIES OTHER THAN THE STATE CRIME LABORATORY THAT THOSE ENTITIES MEET THE STANDARDS APPLICABLE TO

VENDOR LABORATORIES AS SET FORTH IN FEDERAL BUREAU OF INVESTIGATION STANDARDS RELATED TO THE COMBINED DNA INDEX SYSTEM (CODIS); TO REQUIRE THE STATE CRIME LABORATORY TO MAKE AVAILABLE A LIST OF ENTITIES THAT SATISFY THAT REQUIREMENT; AND TO PROHIBIT LOCAL LAW ENFORCEMENT AGENCIES FROM USING CERTAIN DNA DATABASES.

Chairman Jordan recognized Senator Newton to speak on the bill.

Senate Bill 661 would provide that when local law enforcement agencies obtain DNA analyses from entities other than the State Crime Laboratory, those entities must meet the standards that apply to vendor laboratories as set forth in Federal Bureau of Investigation Standards related to the Combined DNA Index System (CODIS).

The chair recognized Representative Ross who moved to amend the bill on page 1, lines 6-7, page 1, lines 9-10, page 1, line 15, page 1, line 16, page 1, line 18, page 1, line 22, and page 1, line 23. (Attachment XIII). The amendment was adopted.

The chair recognized Christy Ager, State Crime Lab, to speak on the bill.

The chair recognized Fred Baggett, North Carolina Chiefs of Police, to speak on the bill.

The chair recognized Steven Williams, Greensboro Police Director of Forensics, to speak on the bill.

The chair recognized Bruce Thompson, Labcorp, to speak on the bill.

The chair recognized Brian Grejzar, Labcorp, to speak on the bill.

After a short discussion, the chair then recognized Representative Ross who moved to have the amendments rolled into a new committee substitute and given a favorable report, unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute for House Bill 799 and a summary are provided (Attachment XIV and Attachment XV)

House BILL 799: AN ACT TO ALLOW A PROPERTY OWNER TO REQUEST REMOVAL FROM A HISTORIC DISTRICT, TO MAKE AMENDMENTS TO THE PROCESS TO CREATE A HISTORICAL COMMISSION, TO MODIFY THE CONFLICT OF INTEREST RECUSAL FOR MEMBERS OF HISTORICAL COMMISSIONS, TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION, AND TO CREATE A PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

Chairman Jordan recognized Representative Bumgardner who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Representative Brody to speak on the bill.

The proposed committee substitute would allow a property owner to request removal from a historic district, make amendments to the process to create a historical commission. Also can modify conflict of interest recusal for members of historical commissions, create an arbitration process for appeals from historic preservation commissions, and to establish a renovation report to be prepared at the request of property owners or potential purchasers of historic properties.

The chair recognized Representative Glazier who moved to amend the bill on page 6, line 20. (Attachment XVI). The amendment was adopted.

The chair recognized Representative Glazier who moved to amend the bill on page 5, line 9. (Attachment XVII). The amendment was adopted.

The chair recognized Representative Ross who moved to amend the bill on page 1, lines 5-8 and page 5, lines 20-34. (Attachment XVIII). The amendment was adopted.

The chair recognized Ramona Barton, Department of Cultural Resources, to speak on the bill.

The chair recognized Myrick Howard, Preservation North Carolina, to speak on the bill.

After a short discussion, the chair then recognized Representative Bumgardner who moved to have the amendments rolled into a new committee substitute and given a favorable report, unfavorable as to the original bill. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 2:46 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Kevin King, Committee Clerk

1:01
2:46

House Committee on Judiciary II
Tuesday, August 18, 2015, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
5-	HB 799	Zoning/Changes to Hist. Preserv. Procedures. PCS	Representative Brody Representative Ager
4-	SB 661	Private Labs Must Comply with CODIS.	Senator Newton
1-	SB 671	DL Restoration/DWI Treatment Court. PCS	Senator Apodaca Senator Van Duyn Senator J. Davis
2-	SB 675	Limit Parole Review Frequency.	Senator Apodaca
3-	SB 127	Personal Services Contracts/PED.	Senator Hartsell Senator Randleman

Presentations

Other Business

Adjournment

ATTENDANCE

House Committee on Judiciary II

DATES	August 18, 2015													
Rep. Jonathan C. Jordan – Chair	X													
Rep. John M. Blust– Chair	X													
Rep. John Faircloth – Vice Chair	X													
Rep. Rick Glazier – Vice Chair	X													
Rep. Pat Hurley – Vice Chair	X													
Rep. Chuck McGrady – Vice Chair	X													
Rep. Henry Michaux Jr. – Vice Chair	X													
Rep. Paul Stam – Vice Chair	X													
Rep. Dana Bumgardner	X													
Rep. Debra Conrad	X													
Rep. Joe Queen	X													
Rep. Robert Reives, II														
Rep. Stephen Ross	X													
Rep. Jason Saine														
Rep. Brad Salmon	X													

House Committee on Judiciary II
Tuesday, August 18, 2015 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Joe Crook**
4. **Terry McCraw**

I

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

8-18-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Susanna Birdsong	ACLU-NC
Elizabeth Bis	Brooks Pierce
Judy Tarditt	no firm
Amy Fulk	30 PR
Armaliese Dolph	DL
Terry VanDuyn	Senate
Erin Wynia	NCLM
Dano Ortiz	Mental Health Advocate
Reston Jones	NCDOT
Diana P Clarke	UNC SG

VISITOR REGISTRATION SHEET

Judiciary II — 8-18-2015

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Agan	DOT
[illegible]	NMRS
Peg Dour	Conf of DAs
Tami Stilwell	SBE
Tom Murry	NC AOC
David Firnall	VB
Bill Rowe	NC Justice Center
Lucian Merwald	WM
Martha Jenkins	DCR
Ramona Barton	DCR
David Crawford	AIA NC

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

8-18-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Starnes	OST
Sakari	DST
Margaret Duke	OSHR
Neal Alexander	OSHR
Paula Woodhouse	OSHR
Charlene Shabazz	OSHR
Bruce Thompson	PAZKOZ POB
Stephen Williams	Greensboro Police Dept.
Brian Grajzar	LabCorp
Miller Nichols	Jordan Price
Ted Boggs	Police Chiefs Assn

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

8-18-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	R. [illegible] & assoc
Tony Adams	Adams and Assoc.
Myrick Howard	Preservation NC
Shelby Brandon	DPS
Joanne Rowland	DPS
Sundi Sillman	DPS
David Blue	DPS
Darlene Langston	DPS
Charlotte Massengill	DMV
Debbie Jones	DMV
Hope Mayorga	DMV
Ryan J. Minto	Governor's Office

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

8-18-2015 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NC Home Builders Assn
Kim Crouch	NC Bar Assn
Sarah Wolfe	MWC

II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 8-18-2015 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name: Terry McCraw
5. Name: _____

Senate Sgt-At Arms:

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

III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 671

Judiciary II Committee Substitute Adopted 7/21/15
Finance Committee Substitute Adopted 7/22/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S671-CSSA-93 [v.1]
8/17/2015 5:54:33 PM

Short Title: DL Restoration/DWI Treatment Court. (Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO CONDITIONALLY RESTORE THE DRIVERS LICENSES OF PERSONS WHO HAVE SUCCESSFULLY COMPLETED A DRUG TREATMENT OR DWI TREATMENT COURT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19 is amended by adding a new subsection to read:

"(d1) Notwithstanding any other provision of law, when a person's license is revoked for an impaired driving offense and the person is sentenced pursuant to G.S. 20-179, the Division may conditionally restore the person's license after it has been revoked for at least one year if the person (i) provides the Division with a certificate of graduation from a Drug Treatment or Driving While Impaired (DWI) Treatment Court Program established pursuant to Article 62 of Chapter 7A of the General Statutes, (ii) provides the Division with a letter of recommendation from the presiding judge of the Drug Treatment or DWI Treatment Court, and (iii) pays, in addition to any other applicable fees, a fee of twenty-five dollars ($25.00). The twenty-five-dollar ($25.00) fee shall be deposited in the Highway Fund. If the Division restores the person's license, it shall place all of the following restrictions, requirements, and conditions on the person for the duration of the original revocation period:

(1) A requirement that all registered vehicles owned by that person be equipped with a functioning ignition interlock system in accordance with G.S. 20-17.8(c1).

(2) A restriction that the person may operate only a motor vehicle equipped with a functioning ignition interlock system of a type approved by the Commissioner that is set to prohibit driving with an alcohol concentration of greater than 0.00.

(3) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

In addition, the Division may place other reasonable restrictions, requirements, and conditions on the person for the duration of the original revocation period."

SECTION 2. This act becomes effective December 1, 2015.

IV

SENATE BILL 671:
DL Restoration/DWI Treatment Court

2015-2016 General Assembly

Committee:	House Judiciary II, if favorable, Finance	**Date:**	August 18, 2015
Introduced by:	Sens. Apodaca, Van Duyn, J. Davis	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition S671-CSSA-93		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 671 would allow the Division of Motor Vehicles (DMV) to conditionally restore a drivers license revoked for a conviction of Driving While Impaired (DWI) after at least a one-year revocation period if the person has graduated from a Drug Treatment or a DWI Treatment Court Program.

The PCS changes the alcohol concentration requirement to 0.00 to be consistent with current law.

CURRENT LAW: Under G.S. 20-19, a person convicted of impaired driving is subject to a mandatory license revocation for a minimum of one year; the revocation can be for four years or permanent, if the person has prior DWI convictions. A person whose license is revoked for 4 years may have it conditionally restored after 2 years. A person whose license is revoked permanently may have it conditionally restored after 3 years.

BILL ANALYSIS:

The PCS for Senate Bill 671 would amend G.S. 20-19 to do the following:

- Allow the DMV to conditionally restore a drivers license after a revocation for DWI if the following requirements are met:
  - The drivers license has been revoked for at least one year.
  - The person provides a certificate of graduation from a Drug Treatment or DWI Treatment Court Program.
  - The person provides a letter of recommendation from the treatment court's presiding judge.
  - The person pays a $25.00 fee, to be deposited in the Highway Fund.
- Require the DMV to impose the following conditions upon the restoration of the license, in addition to any other reasonable restrictions, requirements, and conditions imposed by the Division, for the duration of the original revocation period:
  - All vehicles owned by the individual must be equipped with ignition interlock
  - The person may only operate vehicles equipped with an approved ignition interlock system set to prevent driving the vehicle by someone with an alcohol concentration greater than 0.00.
  - The person must personally activate the ignition interlock system before driving the motor vehicle.

EFFECTIVE DATE: This act would become effective December 1, 2015.

Heather Fennell, Bill Patterson and Jennifer Bedford, staff attorneys, contributed to this summary.

O. Walker Reagan
Director

S671-SMSA-104 CSSA-93 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 675

Short Title:	Limit Parole Review Frequency.	(Public)
Sponsors:	Senators Apodaca (Primary Sponsor); and Hartsell.	
Referred to:	Judiciary I.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE FREQUENCY OF PAROLE REVIEWS FOR INMATES CONVICTED OF SEXUALLY VIOLENT OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1371(b), repealed by Section 22 of Chapter 538 of the 1993 Session Laws, but still applicable to sentences based on offenses occurring before October 1, 1994, under Section 56 of that act, as amended by S.L. 2008-133, reads as rewritten:

"(b) Consideration for Parole. – The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:

(1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year;

(2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must give the prisoner written notice of its decision at least once a year, except as provided in ~~subdivision (4)~~subdivisions (4) and (5) of this subsection, or

(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;

b. The district attorney of the district where the prisoner was convicted;

c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision.

(4) The Commission shall review cases where the prisoner was convicted of first or second degree murder, and in its discretion, give consideration of parole and written notice of its decision once every third year; except that the Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it.

(5) The Commission shall review cases where the prisoner was convicted of a sexually violent offense as defined in G.S. 14-208.6(5), and in its discretion, give consideration of parole and written notice of its decision once every second year; except that the Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it."

SECTION 2. This act becomes effective October 1, 2015, and applies to parole reviews conducted on and after that date.

VI

SENATE BILL 675:
Limit Parole Review Frequency

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	August 4, 2015
Introduced by:	Sen. Apodaca	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 675 would limit the frequency of parole review for inmates convicted of sexually violent offenses.***

CURRENT LAW: Inmates sentenced under criminal penalty laws prior to the Structured Sentencing Act are eligible for parole. Once an inmate becomes eligible for parole, if parole is denied, the Post-Release Supervision and Parole Commission (Commission) must reconsider its decision at least once a year except for first and second degree murder convictions, which must only be reconsidered every three years.

BILL ANALYSIS: Senate Bill 675 would amend the requirement to reconsider parole once a year to provide that inmates convicted of sexually violent offenses which will require them to register as sex offenders upon release shall only be reconsidered for parole every two years. The Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to parole reviews conducted on and after that date.

O. Walker Reagan
Director

S675-SMSA-102 E1 -V1

Research Division
(919) 733-2578

VII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 127
Workforce and Economic Development Committee Substitute Adopted 4/29/15

Short Title: Personal Services Contracts/PED. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACTS AND OTHER PERSONAL SERVICES CONTRACTS PURCHASED BY EXECUTIVE BRANCH AGENCIES BE SUBJECT TO THE SAME REQUIREMENTS AND PROCEDURES AS CONTRACTS FOR OTHER SERVICES; TO REQUIRE STATE AGENCIES TO OBTAIN THE SERVICES OF TEMPORARY EMPLOYEES THROUGH THE TEMPORARY SOLUTIONS PROGRAM OPERATED BY THE OFFICE OF STATE HUMAN RESOURCES; AND TO PROVIDE THAT INFORMATION TECHNOLOGY PERSONAL SERVICES CONTRACTS CAN ONLY BE OBTAINED UPON WRITTEN APPROVAL FROM THE OFFICE OF INFORMATION TECHNOLOGY SERVICES AND THE OFFICE OF STATE BUDGET AND MANAGEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-48.6. Personal services contracts subject to Article.**

(a) Requirement. – Notwithstanding any other provision of law, personal services contracts for executive branch agencies shall be subject to the same requirements and procedures as service contracts.

(b) Personal Services Contract Defined. – For purposes of this section, the term "personal services contract" means a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis.

(c) Rules Required. – The Department of Administration shall adopt rules consistent with this section."

SECTION 2. Part 4 of Article 3D of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-33.105. Personal services contracts subject to Article.**

(a) Requirement. – Notwithstanding any other provision of law, information technology personal services contracts for executive branch agencies shall be subject to the same requirements and procedures as information technology service contracts, except as provided in this section.

(b) Certain Approvals Required. – Notwithstanding any provision of law to the contrary, no information technology personal services contract, nor any contract that provides personnel to perform information technology functions regardless of the cost of the contract, may be established or renewed without written approval from the Office of Information Technology Services and the Office of State Budget and Management. To facilitate compliance

with this requirement, the Office of Information Technology Services shall develop and document the following:

(1) Standards for determining whether it is more appropriate for an agency to hire an employee or use the services of a vendor.

(2) A process to monitor all State agency information technology personal services contracts, as well as any other State contracts providing personnel to perform information technology functions.

(3) A process for obtaining approval of contractor positions.

(c) Creation of State Positions in Certain Cases. – The Office of Information Technology Services shall review current information technology personal services contracts on an ongoing basis and determine if each contractor is performing a function that could more appropriately be performed by a State employee. Where the determination is made that a State employee should be performing the function, the Office of Information Technology Services shall work with the impacted agency and the Office of State Personnel to identify or create the position.

(d) Compliance Audits Required. – The Office of Information Technology Services shall conduct periodic audits of State agencies that are subject to this Article to determine the degree to which those agencies are complying with the rules and procedures that govern information technology personal services contracts.

(e) Reporting Required. – The Office of Information Technology Services shall report biennially to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on all of the following:

(1) Its progress toward standardizing information technology personal services contracts.

(2) The number of information technology service contractors in each State agency, the cost for each, and the comparable cost, including benefits, of a State employee serving in that capacity rather than a contractor.

(3) The results of the compliance audits conducted pursuant to subsection (d) of this section.

(f) Information Technology Personal Services Contract Defined. – For purposes of this section, the term "personal services contract" means a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis.

(g) Rules Required. – The Office of Information Technology Services shall adopt rules consistent with this section."

SECTION 3. Personal services contracts and information technology personal services contracts in effect on the effective date of this act shall be allowed to expire in accordance with the terms of the contract. A personal services contract or an information technology personal services contract that can be terminated at any time shall be reviewed within 60 days of the effective date of this act and shall only be continued if the contract complies with the requirements of G.S. 143-48.6 and G.S. 147-33.105, as enacted by Sections 1 and 2 of this act, respectively. A personal services contract or information technology personal services contract entered into after the effective date of this act shall comply with the requirements of G.S. 143-48.6 or G.S. 147-33.105, as applicable.

SECTION 4. G.S. 143-64.70 is repealed. The Office of State Budget and Management shall notify State agencies of the repeal of G.S. 143-64.70 and about the new requirements imposed by this act.

SECTION 5. Article 1 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-6.3. Temporary employment needs of State agencies shall be met through the Temporary Solutions Program.**

(a) Use of Temporary Solutions Required. – Notwithstanding G.S. 126-5 or any other provision of law, all State agencies that utilize temporary employees to perform work that is not information technology-related shall employ them through the Temporary Solutions Program administered by the Office of State Human Resources. The Director of the Office of State Human Resources may create exceptions to this requirement when doing so would be in the best interests of the State in the sole discretion of the Director. An exception shall be invalid unless it is in writing.

(b) Compliance Monitoring. – The Office of State Human Resources shall monitor the employment of temporary employees by agencies subject to this section and shall report biannually to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on agency compliance with this section and policies and rules adopted pursuant to it.

(c) State Agency Defined. – A unit of the executive branch of State government, such as a department, an institution, a division, a commission, a board, or a council, regardless of whether or not the agency is part of the Council of State."

SECTION 6. G.S. 126-4 is amended by adding a new subdivision to read:

"**§ 126-4. Powers and duties of State Human Resources Commission.**

Subject to the approval of the Governor, the State Human Resources Commission shall establish policies and rules governing each of the following:

...

(19) The implementation of G.S. 126-6.3 in a manner that is consistent across all affected State agencies."

SECTION 7. This act is effective when it becomes law.

VIII

SENATE BILL 127:
Personal Services Contracts/PED

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	August 18, 2015
Introduced by:	Sens. Hartsell, Randleman	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 127 requires that personal services contracts entered into by Executive Branch agencies be subject to the same requirements and procedures as service contracts, requires State agencies to obtain temporary employees through the Temporary Solutions Program, and codifies the requirement that information technology personal services contracts be approved in writing by the Office of Information Technology Services and the Office of State Budget and Management.

CURRENT LAW: The procurement of most contracts entered into by State agencies in North Carolina is overseen by the Division of Purchase and Contract of the Department of Administration or the Office of Information Technology Services. However, the North Carolina Administrative Code exempts personal services contracts from having to be obtained through these agencies. The most recent State budget effectively overrode this exemption with respect to information technology personal services contracts, but this exception does not apply to non-IT personal services contracts and it will expire on June 30, 2015 unless the General Assembly takes action.

On February 27, 2013, the Governor issued an executive order requiring all non-Council of State executive branch agencies that employ temporary employees, and encouraging Council of State agencies and The University of North Carolina, to employ them through the Temporary Solutions Program of the Office of State Human Resources. As a practical matter, however, most IT-related temporary staffing needs have been handled through the Office of Information Technology Services.

BILL ANALYSIS: **Section 1** amends the statutes that govern purchases and contracts by State agencies by adding a new section that requires that non-IT personal services contracts be subject to the same requirements and procedures as service contracts. The term 'personal services contract' is defined as a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis. The Department of Administration is required to adopt rules consistent with the new section.

Section 2 amends the statutes that govern the procurement of information technology for State agencies to require that IT-related personal services contracts be subject to the same requirements and procedures as IT-related service contracts. The term 'personal services contract' is defined the same way it is in Section 1 of the bill, and the Office of Information Technology Services is required to adopt rules consistent with the new section.

This section also codifies language that has appeared in recent budgets (most recently in Section 7.8 of S.L. 2013-360) providing that no information technology personal services contract be established or renewed without written approval from the Office of Information Technology Services and the Office of State Budget and Management. The Office of Information Technology Services is also required to adopt certain standards related to the procurement of information technology contracts and to work with State

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

agencies to create positions when it is determined that a State employee rather than a contractor should be performing the function.

Finally, this section requires the Office of Information Technology Services to perform compliance audits of State agencies and requires biennial reporting to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

Section 3 addresses the disposition of personal services contracts that are in existence at the time the bill becomes law. Specifically, it provides that such contracts be allowed to expire in accordance with the terms of the contract and that a personal services contract that can be terminated at any time shall be reviewed within 60 days of the effective date of the act and shall only be continued if the contract complies with the requirements of the statutes enacted by Sections 1 and 2 of the bill. Contracts entered into or renewed on or after the effective date of the act are required to comply with those requirements.

Section 4 is a conforming change that deletes a statutory section that is no longer needed. The statute in question, G.S. 143-64.70, required State agencies to annually report about their use of personal services contracts and required the Office of State Budget and Management to analyze and submit an annual report on agency and institution use of these contracts. Since those contracts will now be procured in the same manner as other service contracts, there is no longer a need to have a separate report.

Section 5 extends the requirement that executive branch agencies use the Temporary Solutions Program to acquire temporary employees for non-information technology services to all executive branch agencies, including Council of State agencies. The State Human Resources Director may create exceptions to this requirement, which must be in writing. The Office of State Human Resources is required to report biannually to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on agency compliance with these requirements.

Section 6 requires that the State Human Resources Commission establish policies and rules governing the implementation of the requirements of Section 5 of the bill in a manner that is uniform across affected State agencies.

EFFECTIVE DATE: The bill is effective when it becomes law.

BACKGROUND: Senate Bill 127 is based on the Program Evaluation Division report entitled *North Carolina Should Eliminate the Use of Personal Services Contracts in Favor of Using Existing Mechanisms*, Report Number 2015-03 (February 2015).

Ben Stanley, Staff Attorney with the Bill Drafting Division, and Greg Roney, Counsel to Senate Workforce and Economic Development, substantially contributed to this summary.

IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 127

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

S127-ARN-66 [v.2]

Amends Title [NO]
Second Edition

Date August 18 ,2015

Representative Hurley

moves to amend the bill on page 2, lines 35-43, by rewriting those lines to read:

"**SECTION 3.** Personal services contracts and information technology personal services contracts in effect on the effective date of this act shall be allowed to expire in accordance with the terms of the contract. A personal services contract or information technology personal services contract entered into on or after the effective date of this act shall comply with the requirements of G.S. 143-48.6 or G.S. 147-33.105, as applicable.".

SIGNED Pat Hurley
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 127

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

S127-ARN-65 [v.1]

Amends Title [NO]
Second Edition

Date August 18 ,2015

Representative Stam

moves to amend the bill on page 1, line 22, by rewriting that line to read:

"as an independent contractor on a temporary or occasional basis, but does not include, and nothing in this Article shall apply to, the engagement of private attorneys by the Department of Justice, the Governor, State agencies or institutions, or to engagement by them of experts or expert witnesses who are to be involved in the planning, prosecution, or defense of any litigation.".

SIGNED Stam
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

XI

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 1

SENATE BILL 661

Short Title:	Private Labs Must Comply with CODIS.	(Public)
Sponsors:	Senator Newton (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT WHEN LOCAL LAW ENFORCEMENT AGENCIES OBTAIN DNA ANALYSES FROM ENTITIES OTHER THAN THE STATE CRIME LABORATORY THAT THOSE ENTITIES MEET THE STANDARDS APPLICABLE TO VENDOR LABORATORIES AS SET FORTH IN FEDERAL BUREAU OF INVESTIGATION STANDARDS RELATED TO THE COMBINED DNA INDEX SYSTEM (CODIS); TO REQUIRE THE STATE CRIME LABORATORY TO MAKE AVAILABLE A LIST OF ENTITIES THAT SATISFY THAT REQUIREMENT; AND TO PROHIBIT LOCAL LAW ENFORCEMENT AGENCIES FROM USING CERTAIN DNA DATABASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.2. Obtaining DNA analyses from entities other than the State Crime Laboratory; use of local DNA databases prohibited.**

(a) Private Laboratories Shall Comply with CODIS Requirements. – A local law enforcement agency shall not obtain DNA analysis from an entity other than the Crime Laboratory unless that entity meets the standards applicable to vendor laboratories as set forth in the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing and Databasing Laboratories. The Crime Laboratory shall maintain a list of laboratories that meet those standards and shall make the list available on its Web site.

(b) Private DNA Databases Prohibited. – A local law enforcement agency shall not access or create any DNA Database other than those that participate in the CODIS system."

SECTION 2. This act becomes effective October 1, 2015.

XII

SENATE BILL 661:
Private Labs Must Comply with CODIS

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	August 18, 2015
Introduced by:	Sen. Newton	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 661 would provide that when local law enforcement agencies obtain DNA analyses from entities other than the State Crime Laboratory, those entities must meet the standards that apply to vendor laboratories as set forth in Federal Bureau of Investigation Standards related to the Combined DNA Index System (CODIS).***

BILL ANALYSIS: Senate Bill 661 would amend the Criminal Procedure Act to require local law enforcement agencies only use private laboratories that comply with CODIS requirements for DNA analysis and to require the State Crime Laboratory to maintain a list of laboratories meeting those standards and make the list available on its Web site. The bill would also provide that a local law enforcement agency must not access nor create any DNA database other than those that participate in CODIS.

Information on CODIS and its Quality Assurance Standards can be found on the FBI's Web site at: http://www.fbi.gov/about-us/lab/biometric-analysis/codis.

EFFECTIVE DATE: This act becomes effective October 1, 2015.

**Janice Paul, Staff Attorney, contributed substantially to this summary.*

O. Walker Reagan
Director

S661-SMSA-64 E1 -V2

Research Division
(919) 733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

XIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 661

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

S661-ASA-153 [v.1]

Amends Title [YES]
First Edition

Date August 18 ,2015

Representative Ross

moves to amend the bill on page 1, lines 6-7
by deleting "RELATED TO THE COMBINED DNA INDEX SYSTEM (CODIS);" and inserting "FOR QUALITY ASSURANCE";

and on page 1, lines 9 - 10, by rewriting those lines to read:
"TO LIMIT THE USE OF CERTAIN DNA DATABASED BY LOCAL LAW ENFORCEMENT AGENCIES.";

and on page 1, line 15, by rewriting that line to read:
"**Laboratory.**";

And on page 1, line 16, by rewriting that line to read:
"(a) Private Laboratories Shall be Audited Against the FBI Quality Assurance Standards. – A local law";

And on page 1, line 18,
By deleting "entity" and inserting "laboratory is audited to and";

And on page 1, line 22,
By deleting "Databases Prohibited." And inserting "Databases.";

And on page 1, line 23, by rewriting that line to read:
"access or create any DNA Database administered by a private laboratory unless that laboratory maintains an agreement with the State Crime Laboratory to provide profiles eligible for entry into the CODIS system.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 661

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

S661-ASA-153 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

XIV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 799
Committee Substitute Favorable 4/23/15
PROPOSED COMMITTEE SUBSTITUTE H799-CSSTf-87 [v.2]

8/17/2015 6:26:48 PM

Short Title: Zoning/Changes to Hist. Preserv. Procedures. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PROPERTY OWNER TO REQUEST REMOVAL FROM A HISTORIC DISTRICT, TO MAKE AMENDMENTS TO THE PROCESS TO CREATE A HISTORICAL COMMISSION, TO MODIFY THE CONFLICT OF INTEREST RECUSAL FOR MEMBERS OF HISTORICAL COMMISSIONS, TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION, AND TO CREATE A PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-400.4 reads as rewritten:

"**§ 160A-400.4. Designation of historic districts.**

(a) Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until:

(1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

(2) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the ~~department~~ Department to submit its written analysis and recommendations to the municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the municipality of any

responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(c) The municipal governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the preservation commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

(d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district.

(e) The owner of a property included in a historical district under this section may petition the commission for removal. Such petition shall be in writing, stating the property owner's name, location of the property, and reasons the property should be removed from the historic district, and be delivered to the clerk to the board. Within 10 days, the clerk shall notify the commission and submit the petition to the Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, for an analysis of and recommendations concerning the petition. The Department shall submit its written analysis and recommendations, if any, to the commission within 30 calendar days after receipt of a written request for such analysis. The commission shall schedule a public hearing on the matter to receive comments from the public regarding the continued inclusion of the property in the historic district, after notice for at least two successive weeks in a newspaper of general circulation in the city. After the public hearing, the commission shall make a recommendation to the municipal governing body regarding its continued inclusion after consideration of any analysis from the Department, the public hearing comments, and any other information the commission has before it regarding the property. Upon receipt of the recommendation of the commission, the municipal governing body shall proceed in accordance with this Article to amend any ordinance adopted in accordance with this Article including that property in a historic district, in the discretion of the municipal governing body. If a commission has multiple petitions before it, the commission may, in its discretion, combine the recommendations to the municipal governing board for action."

SECTION 2. G.S. 160A-400.7 reads as rewritten:

"**§ 160A-400.7. Historic Preservation Commission.**

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks ~~respectively,~~ respectively or (ii) a planning board established pursuant to this ~~Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article.~~ Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 3. G.S. 160A-400.8 reads as rewritten:

"**§ 160A-400.8. Powers of the Historic Preservation Commission.**

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

(1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

(2) Recommend to the municipal governing board areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

(4) Restore, preserve and operate historic properties;

(5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;

(6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;

(7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;

(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for ~~examination~~ preparation of a renovation report or other report to aid in review of a certificate of appropriateness application, examination, or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;

(10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and

(11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate."

SECTION 4. G.S. 160A-400.9 reads as rewritten:

"**§ 160A-400.9. Certificate of appropriateness required.**

(a) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall be required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in (b) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

(b) Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Prior to any action to enforce a landmark or historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Part for new construction, alterations, additions, moving and demolition. The ordinance may provide, subject to prior adoption by the preservation commission of detailed standards, for the review and approval by an administrative official of applications for a certificate of appropriateness or of minor works as defined by ordinance; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such steps as may be reasonably required in the ordinance and/or rules of procedure to inform the

owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the completed application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. If a completed application is not acted upon within the 180-day period, the commission shall issue the certificate of appropriateness. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. A member of the Board of Adjustment shall not vote on a matter under appeal pursuant to this subsection if that member is also a member of the commission or its equivalent. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(e1) In lieu of an appeal under subsection (e) of this section, a property owner may challenge a decision regarding one or more exterior features by submitting the dispute to binding arbitration. The property owner shall provide written notice to the Board of Adjustment within 30 days of the decision regarding the exterior feature. Unless a different method of arbitration is agreed upon by the parties, a single arbitrator shall be chosen by the parties and the property owner may choose to consolidate all disputed issues into a single claim. The cost of the arbitration proceeding shall be borne equally by the parties. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise. The arbitrator shall consider the entire record of any proceedings with the commission and the Board of Adjustment, the degree to which the exterior feature decision deviates from the guidelines or policies of the commission, and the actions of the parties with respect to the building or structure at issue in the binding arbitration. In any subsequent action to enforce the arbitrator's decision the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

(e2) The commission shall not require binding arbitration of any property owner or any other aggrieved party.

(f) All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided however ~~they~~ the provisions shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the commission shall be final and binding upon both the State and the preservation commission."

SECTION 5. Part 3C of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-400.16. Renovation report by Historic Preservation Commission.**

(a) For the purposes of this section, the term "renovation report" is defined as an informational report issued by a historic preservation commission or its designee that includes, at a minimum, all of the following:

(1) An identification and listing of all exterior features as defined in G.S. 160A-400.9 for particular buildings or structures (i) located on a particular parcel situated within a historic district or (ii) designated as a historic landmark.

(2) A reference to all applicable sections of locally adopted principles and guidelines not inconsistent with this Part and relevant to alteration or restoration of the exterior features identified and listed pursuant to subdivision (1) of this subsection.

(3) A listing of materials or substitute materials appropriate for use in alteration or restoration of the exterior features identified and listed pursuant to subdivision (1) of this subsection.

A renovation report shall not include stand-alone new construction, demolition, or the moving of a structure on the subject parcel.

(b) An owner, or a potential purchaser with the owner's consent, may request a renovation report from the commission. In preparing the report, the commission shall examine the parcel or structure in collaboration with the requesting party and shall prepare and issue the report within 60 days of request. The commission may contract with a third party to prepare the report and may establish and charge a reasonable fee to the party requesting the report not to exceed the actual cost of preparing the renovation report.

(c) A renovation report issued by the commission pursuant to this section shall be valid for a period of one year after issuance and is fully transferrable. A completed renovation report shall be considered by the commission and its administrative staff during review for a certificate of appropriateness, including for minor works, issued pursuant to this Part for the parcel or structure for which the renovation report was prepared."

SECTION 6. This act becomes effective October 1, 2015, and applies to applications for certificates of appropriateness submitted on or after that date.

XV

HOUSE BILL 799:
Zoning/Changes to Hist. Preserv. Procedures

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	August 17, 2015
Introduced by:	Reps. Brody, Ager	**Prepared by:**	R. Erika Churchill & Tawanda Foster Committee Counsel
Analysis of:	PCS to Second Edition H799-CSSTf-87		

SUMMARY: ***The proposed committee substitute would allow a property owner to request removal from a historic district, make amendments to the process to create a historical commission. Modify conflict of interest recusal for members of historical commissions, create an arbitration process for appeals from historic preservation commissions, and to establish a renovation report to be prepared at the request of property owners or potential purchasers of historic properties.***

CURRENT LAW: Part 3C of Article 19 of Chapter 160A authorizes counties and cities to safeguard the heritage of the city or county by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory and to promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city or county and the State as a whole. G.S. 160A-400.1. Historic commissions may be established for those purposes.

Establishment. – A historic commission established by a county or city must have at least three members, with terms of no more than four years. Members must reside within the zoning jurisdiction of the local government, which includes the extraterritorial jurisdiction for cities. A majority of members must have "demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields." When needed, the commission may appoint advisory bodies and committees.

Alternatively, the governing board may choose a different structure for the commission. A local government may establish separate preservation commissions for districts and landmarks, may designate the planning commission or community appearance commission as the preservation commission, or may establish a joint commission with a city (or cities) and county. When the planning commission or community appearance commission serves as the preservation commission, it must still include at least three members with the demonstrated experience in related fields.

The governing board may authorize a historic commission to carry out any of the following activities within the local government's zoning jurisdiction:

- Inventory historic and significant properties.
- Recommend historic designations (and revocations) for districts and landmarks.
- Negotiate for, acquire and sell property to promote preservation.
- Restore and operate historic properties.
- Conduct educational programs.
- Cooperate and contract with State, federal, and local governments.
- Recommend preservation elements of the local comprehensive plan.
- Review and act on certificates of appropriateness.

Certificates of Appropriateness.— After a historic district or landmark is established, a landowner may not alter the exterior portions of historic properties without obtaining a certificate of appropriateness (COA) from the preservation commission. COA's are required for any erection,

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

alteration, restoration, move, or demolition of an exterior feature of a structure; but do not regulate use. Structures include buildings, masonry walls, fences, light fixtures, steps and pavement, and other appurtenant features. Above ground utilities and outdoor advertising signs require a COA as well. Exterior features are defined to include, among other things, architectural style, size and scale of buildings, and types and styles of doors and windows. The local governing board, in its discretion, may define exterior features also to include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Generally, COA's are not required for any of the following:

- Changes to the interior features of a building
- Ordinary maintenance or repair that does not change the material or appearance
- Changes required for public safety and certified by the building inspector.

Before a preservation commission may issue or deny any COA, the commission must adopt both (i) principles and guidelines for construction and alterations and (ii) rules of procedure. A preservation commission may not deny a certificate except to prevent a project "which would be incongruous with the special character of the landmark or district." G.S. 160A-400.9(a).

The commission must act upon applications for COA's within a reasonable time, not more than 180 days from the date of the application. A COA for relocation or demolition of a historic property may be delayed up to 365 days—depending on the circumstances—for the commission to negotiate for preservation of the building or site.

BILL ANALYSIS:

Section 1. Would provide the process by which a property owner may petition the commission for removal from the historical district.

Section 2. Would delete the authority for a county or city to opt for a community appearance board to function as the historic commission.

Section 3. Would specify that the historic preservation commission's authority to enter private lands with the consent of the owner or occupant, while solely in the performance of official duties and only at reasonable times, is limited to the preparation of renovation reports or other reports to aid in the review of a COA, examination or survey.

Section 4. Would do all of the following:

- Specify that the historic preservation commission failed to act upon a completed application for a COA within 180 days, the COA must be issued. The parties may agree to an extension of time prior to the expiration of the 180 days.
- Prohibit a member of the Board of Adjustment from voting on an appealed matter from the historic preservation commission, if that Board of Adjustment member also sits on the historic preservation commission.
- Establishes an option for binding arbitration in lieu of appealing to the Superior Court.

Section 5. Would create a new duty for the historic preservation commission, allowing the commission, or a third party at the direction of the commission, to prepare a renovation report upon the request of any owner or potential buyer of a contributing property located in a historic district or a property designated as a landmark. The renovation report would identify all of the exterior features of the structure, reference the applicable principles and guidelines of the commission, and provide a list of appropriate materials for alteration or restoration of those exterior features. The renovation report would be valid for one year, transferrable, and must be considered by the commission during a review for a COA.

EFFECTIVE DATE: October 1, 2015, and applies to applications for certificates of appropriateness submitted on or after that date.

Adam Lovelady with the UNC School of Government substantially contributed to this summary.

XVI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 799

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

H799-ASA-149 [v.1]

Amends Title [NO]
H799-CSSTf-87

Date August 18 ,2015

Representative Glazier

moves to amend the bill on page 6, line 20
by deleting "60" and inserting "90".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

XVII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 799

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

H799-ASA-150 [v.1]

Amends Title [NO]
H799-CSSTf-87

Date August 18 ,2015

Representative Glazier

moves to amend the bill on page 5, line 9
by inserting between "period," and "the" the following:
"or a period of time otherwise consented to by the parties,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

XVIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 799

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

H799-ASA-152 [v.1]

Amends Title [YES]
H799-CSSTf-87

Date August 18, 2015

Representative Ross

moves to amend the bill on page 1, lines 5 – 8
by deleting the following:
"TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION,";

And on page 5, lines 20 – 34
by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

H799-ASA-152-V-1

HOUSE COMMITTEE ON JUDICIARY II
2015 – 2016 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. John M. Blust Chair	Gennie Thurlow Committee Assistant	733-5781	2208 LB	49
Rep. Jonathan C. Jordan Chair	Emma Benson Committee Assistant	733-7727	420 LOB	42
Rep. John Faircloth Vice Chair	Becky Bauerband	733-5877	613 LOB	28
Rep. Pat Hurley Vice Chair	Debbie Holder	733-5865	532 LOB	10
Rep. Chuck McGrady Vice Chair	Ed Stiles	733-5956	304 LOB	15
Rep. Henry Michaux, Jr. Vice Chair	Anita Wilder	715-2528	1227 LB	11
Rep. Paul Stam Vice Chair	Rita Beard Dorry	733-2962	612 LOB	5
Rep. Dana Bumgardner	Margie Penven	733-5809	2119 LB	40
Rep. Debra Conrad	Danielle Brinton	733-5787	606 LOB	44
Rep. Joe Sam Queen	Grayson Keating	715-3005	1017 LB	103
Rep. Robert T. Reives, II	Veronica Green	733-0057	1323 LB	104
Rep. William O. Richardson	Megan Glazier	733-5601	1021 LB	71
Rep. Stephen Ross	Laura Spratley	733-5820	2221 LB	37
Rep. Jason Saine	Stephen Wiley	733-5782	1326 LB	26
Rep. Brad Salmon	Katie Stanley	715-3026	1319 LB	107

Susan L. Sitze
Brad Krehely
Jennifer Bedford
Committee Counsel
545 LOB
Phone: 733-2578

Revised
5-23-2016

HOUSE COMMITTEE ON JUDICIARY II
2015 – 2016 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. John M. Blust Chair	Gennie Thurlow Committee Assistant	733-5781	2208 LB	49
Rep. Jonathan C. Jordan Chair	Emma Benson Committee Assistant	733-7727	420 LOB	42
Rep. John Faircloth Vice Chair	Becky Bauerband	733-5877	613 LOB	39
Rep. Pat Hurley Vice Chair	Debbie Holder	733-5865	532 LOB	10
Rep. Chuck McGrady Vice Chair	Ed Stiles	733-5956	304 LOB	28
Rep. Henry Michaux, Jr. Vice Chair	Anita Wilder	715-2528	1227 LB	11
Rep. Paul Stam Vice Chair	Rita Beard Dorry	733-2962	612 LOB	5
Rep. Dana Bumgardner	Margie Penven	733-5809	2119 LB	40
Rep. Debra Conrad	Danielle Brinton	733-5787	606 LOB	44
Rep. Joe Sam Queen	Jenny Umstead	715-3005	1017 LB	103
Rep. Robert T. Reives, II	Veronica Green	733-0057	1323 LB	104
Rep. William O. Richardson	Megan Glazier	733-5601	1021 LB	71
Rep. Stephen Ross	Laura Spratley	733-5820	2221 LB	37
Rep. Jason Saine	Stephen Wiley	733-5782	1326 LB	26
Rep. Brad Salmon	Katie Stanley	715-3026	1319 LB	107

Susan L. Sitze
Brad Krehely
Tawanda Foster
Committee Counsel
545 LOB
Phone: 733-2578

Revised
4-13-2016

HOUSE JUDICIARY II
2015-2016 SESSION



Rep. John M. Blust
Chair



Rep. Jonathan Jordan
Chair



Rep. John Faircloth
Vice Chair



Rep. Pat Hurley
Vice Chair



Rep. Chuck McGrady
Vice Chair



Rep. Henry Michaux Jr.
Vice Chair



Rep. Paul Stam
Vice Chair



Rep. Dana Bumgardner



Rep. Debra Conrad



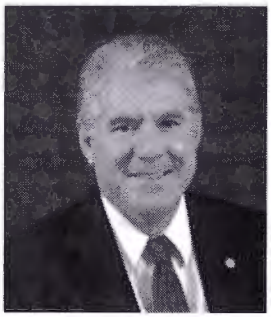
Rep. Joe Sam Queen



Rep. Robert T. Reives, II



Rep. William O. Richardson



Rep. Stephen Ross



Rep. Jason Saine



Rep. Brad Salmon

Revised
4-4-2016

ATTENDANCE

House Committee on Judiciary II

DATES	6-7-2016 1:05 PM	6-7-2016 3:17 PM	6-14-2016	6-21-2016	6-22-2016									
Rep. John M. Blust -- Chair			✓	✓	✓									
Rep. Jonathan C. Jordan – Chair	✓	✓	✓	✓	✓									
Rep. John Faircloth – Vice Chair	✓	✓	✓		✓									
Rep. Pat Hurley – Vice Chair	✓	✓	✓		✓									
Rep. Chuck McGrady – Vice Chair	✓		✓		✓									
Rep. Henry Michaux Jr. – Vice Chair	✓	✓		✓	✓									
Rep. Paul Stam – Vice Chair	✓			✓	✓									
Rep. Dana Bumgardner			✓	✓	✓									
Rep. Debra Conrad	✓	✓	✓	✓	✓									
Rep. Joe Queen	✓	✓	✓	✓										
Rep. Robert Reives, II	✓	✓		✓	✓									
Rep. William O. Richardson	✓	✓	✓	✓	✓									
Rep. Stephen Ross	✓	✓		✓	✓									
Rep. Jason Saine	✓				✓									
Rep. Brad Salmon	✓	✓		✓	✓									

House Committee on Judiciary II
Tuesday, June 7, 2016 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Doug Harris**
3. **Joe Crook**
4. **Russell Salisbury**

House Committee on Judiciary II
Tuesday, June 7, 2016 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on Tuesday June 7th in Room 421 of the Legislative Office Building. Representatives Conrad, Faircloth, Hurley, Jordan, McGrady, Michaux, Queen, Rieves, Richardson, Ross, Salmon, Saine and Stam attended. Susan Sitze, Brad Krehely and Jennifer Bedford (Research Staff Counsel), Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan C. Jordan, Chair, presided. The chair called the meeting to order at 1:05 PM. He introduced the Sergeants at Arms (attachment II). The following bills were considered:

The proposed committee substitute for House Bill 948 and a summary are provided (Attachment III and Attachment IV)
HOUSE BILL 948: AUTHORIZE APO STUDIES

Chairman Jordan recognized Representative McGrady who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized Staff member Jennifer Bradford to speak on the bill.

The Proposed Committee Substitute (PCS) would allow the Joint Legislative Administrative Procedure Oversight Committee (APO) to continue studying issues related to occupational licensing boards, and amend the law regarding the license application process for pharmacists.

After a short discussion, the chair recognized Representative Hurley who moved to give a favorable report to the proposed committee substitute, unfavorable as to the original bill. The motion passed without dissent.

The proposed committee substitute (PCS) for House Bill 949 and summary are provided (Attachment V and Attachment VI).
HOUSE BILL 949: OCCUPATIONAL LICENSING BOARD CONTACT INFO.

Chairman Jordan recognized Representative Hurley who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Chairman Jordan recognized staff member Brad Krehely to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 949 would require each occupational licensing board to provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing required reports and would make corrections in the General Statutes to accurately reflect the present name of the Legislative Analysis Division of the North Carolina General Assembly. The act is effective when it becomes law.

After a short discussion, the chair recognized Representative Michaux who moved to give a favorable report to the proposed committee substitute, unfavorable as to the original bill. The motion passed without dissent.

Proposed committee substitute (PCS) for House Bill 972 and summary are provided (Attachment VII and Attachment VIII).
HOUSE BILL 972: AN ACT TO PROVIDE THAT RECORDINGS MADE BY LAW ENFORCEMENT AGENCIES ARE NOT PUBLIC RECORDS, TO ESTABLISH WHETHER, TO WHOM, AND WHAT PORTIONS OF A RECORDING MAY BE DISCLOSED OR A COPY RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO DISCLOSE A RECORDING OR TO OBTAIN A COPY OF A RECORDING, AND TO DIRECT STATE OR LOCAL LAW ENFORCEMENT AGENCIES TO PROVIDE, UPON REQUEST, ACCESS TO A METHOD TO VIEW AND ANALYZE RECORDINGS TO THE STATE BUREAU OF INVESTIGATION AND THE NORTH CAROLINA STATE CRIME LABORATORY.

Chairman Jordan recognized Representatives McNeil and Faircloth to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 972 would provide that recordings made by law enforcement agencies are not public records, establish whether, to whom, and what portions of a recording may be disclosed or a copy released, establish the procedure for contesting a refusal to disclose a recording or to obtain a copy of a recording, and direct State or local law enforcement agencies to provide, upon request, access to a method to view and analyze recordings to the State Bureau of Investigation (SBI) and the North Carolina State Crime Laboratory (State Crime Lab).

The chair took the committee into recess at 1:57 PM to return 15 minutes after session adjourned.

Representative Jordan called the committee back to order in room 643 in the Legislative Office Building at 3:17 PM. A new sign in sheet was circulated (attachment IX)

The chair recognized Representative Stam who moved to amend the bill on page 4, lines 1-10. (Attachment X). The amendment was adopted.

The chair recognized Representative Reives who moved to amend the bill on page 3, line 16. (Attachment XI). The amendment was adopted.

The chair recognized Representative Reives who moved to amend the bill on page 2, lines 43-44 (attachment XII). The amendment was adopted.

The chair recognized Representative Richardson who moved to amend the bill on page 2 lines 10-11 (attachment XIII). The amendment failed.

The chair recognized Jonathan Jones with the NC Open Government Coalition to speak on the bill. Mr. Jones supported the idea behind the bill, but was in disagreement with the current bill.

The chair recognized Susanna Birdsong with the ACLU. Ms. Birdsong was in disagreement with the bill.

The chair recognized Mark Prak with Brooks Pierce and Press association. Mr. Prak supported the idea behind the bill, but was in disagreement with the current bill.

After a short discussion, the chair then recognized Representative Stam, who moved to have the amendments rolled into a new proposed committee substitute and given a favorable report, unfavorable as to the original bill. The motion passed.

There being no further business, Chairman Jordan adjourned the meeting at 4:42 PM.

Representative Jonathan C. Jordan, Chair
Presiding

Emma Benson, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, June 7, 2016
TIME: **15 minutes following session**
LOCATION: **643 LOB**
COMMENTS: **Continuation from 1:00 pm meeting.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 972	Body-Worn &Dashboard Cameras/No Public Record.	Representative Faircloth Representative McNeill Representative Boles Representative Hurley
HB 948	Authorize APO Studies.	Representative Jordan
HB 949	Occupational Licensing Board Contact Info.	Representative Jordan

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:58 PM on Tuesday, June 07, 2016.

___ Principal Clerk
___ Reading Clerk – House Chamber

Emma Benson (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 II** will meet as follows:

DAY & DATE: Tuesday, June 7, 2016
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative Jordan will be chairing this meeting.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 972	Law Enforcement Recordings/No Public Record.	Representative Faircloth Representative McNeill Representative Boles Representative Hurley
HB 948	Authorize APO Studies.	Representative Jordan
HB 949	Occupational Licensing Board Contact Info.	Representative Jordan

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:20 PM on Thursday, June 16, 2016.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (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 II** will meet as follows:

DAY & DATE: Tuesday, June 7, 2016
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative Jordan will be chairing this meeting.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 972	Body-Worn &Dashboard Cameras/No Public Record.	Representative Faircloth Representative McNeill Representative Boles Representative Hurley
HB 948	Authorize APO Studies.	Representative Jordan
HB 949	Occupational Licensing Board Contact Info.	Representative Jordan

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:05 PM on Thursday, June 02, 2016.

___ Principal Clerk
___ Reading Clerk – House Chamber

Emma Benson (Committee Assistant)

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **948** Authorize APO Studies.

Draft Number:	H948-PCS40648-TQf-36
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jordan

HB **949** Occupational Licensing Board Contact Info.

Draft Number:	H949-PCS30515-RO-34
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jordan

TOTAL REPORTED: 2

CMR694-V-1

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **972** Body-Worn &Dashboard Cameras/No Public Record.

Draft Number:	H972-PCS50020-SAf-111
Serial Referral:	None
Recommended Referral:	**FINANCE**
Long Title Amended:	Yes
Floor Manager:	Faircloth

TOTAL REPORTED: 1



Attachment I

VISITOR REGISTRATION SHEE

House Committee on Judiciary II — **Name of Committee**

6/07/2016 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Baggett	Police Chiefs Ass
Jay Campbell	NCBOP
Andy Elke	NCPMA
Phoebe Landa	nwe
Fernando Jimenez	New Frame LLC
J.W. JOYNER	NEW FRAME
Meghan Cook	NC DIT
Robert S. [illegible]	R. [illegible] & Assoc
Caroline Daly	[illegible]
LAURA PURYEAR	LOLLC
KELSEY BYERLY	LOLLC

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6/07/2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Muskus	BG
Trey Rabon	AT&T
E. Manny Crowther Jr	AT&T
Dominique Walker	NCFACC
Seth Palmer	NCAR
Hugh Johnson	NCAGC
GERRY COHEN	NM
Heather Englehart	Benchmarker
Charles White	NC SOS
Sarah Collins	NCLM
Doug Lassiter	NCSTA

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — **Name of Committee**

6/07/2016 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wanda Hunter	PACT - Police Accountability Community Taskforce wmicheleh@yahoo.com
Geraldine Alshamy	PACT- Police Accountability Comm. Task Force galshamy13@yahoo.com
Ellen Pleasant	PACT Police Accountability Comm. Task Force PleasantLady43@yahoo.com
Susanna Birdsong	ACLU
Paul Blest	Indy Week
Alex Fisher	Greensboro City Attorney's office
Jennifer Schneier	Greensboro, City Attorney's office

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6/07/2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kendall Bourdon	N.C Industrial Commission
David A Collins	SEANC
Rhian Merwald	WM
Welch Jones	Jordan Price
Dennis Hyatt	Nextgen YP
Jonathan Jones	NC Open Gov't Coalition
Cameron Nieters	KTS
Perry Hunt	SOG
Phil Ellis	Ramey
Mildred Spearman	NCAOC
MPRAR	PRESS ASSN

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6/07/2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phil Lucas	Ness Assoc.
Amanda Donovan	TSS
Sue Ann Forrest	NCICU
Andy Walsh	SPA
Mike Meno	ACLU-NC
Kris Parks	DRNC
Susan Vecci	Duke Energy
Chris Agnew	DOJ
[illegible]	[illegible]
Patricia A. Yancey	NCANP
Debra Howard	Raleigh Pact

Wn

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6/07/2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	FOP

Attachment II

House Committee on Judiciary II
Tuesday, June 7, 2016 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Doug Harris**
3. **Joe Crook**
4. **Russell Salisbury**

Attachment III

GENERAL ASSEMBLY OF NORTH CAR(
SESSION 2015

H D

HOUSE BILL 948
PROPOSED COMMITTEE SUBSTITUTE H948-CSTQf-36 [v.2]
05/10/2016 02:20:13 PM

Short Title: Authorize APO Studies. (Public)

Sponsors:

Referred to:

April 26, 2016

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO STUDY CERTAIN ISSUES, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AND TO ALLOW THE BOARD OF PHARMACY TO OBTAIN CRIMINAL RECORD REPORTS FROM APPROVED REPORTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Administrative Procedure Oversight Committee may continue to study issues related to occupational licensing boards. As part of this study, the Committee may consider any of the following:

(1) Oversight of occupational licensing boards, generally.
(2) Oversight of the North Carolina State Bar.
(3) Disciplinary actions and procedures of occupational licensing boards.

The Committee may report the results of this study, if any, including any legislative proposals, to the 2017 General Assembly.

SECTION 2. The Joint Legislative Administrative Procedure Oversight Committee may study whether there are certain categories of contested cases in which the burden of proof should be placed with the agency. The Committee may report the results of this study, if any, including any legislative proposals, to the 2017 General Assembly.

SECTION 3. G.S. 90-85.15 reads as rewritten:

"**§ 90-85.15. Application and examination for licensure as a pharmacist; prerequisites.**

(a) Any person who desires to be licensed as a pharmacist shall file an application with the Executive Director on the form furnished by the Board, verified under oath, setting forth the applicant's name, age, the place at which and the time that ~~he~~ the applicant has spent in the study of pharmacy, and ~~his~~ the applicant's experience in compounding and dispensing prescriptions under the supervision of a pharmacist. The applicant shall also appear at a time and place designated by the Board and submit to an examination as to ~~his~~ the appplicant's qualifications for being licensed. The applicant must demonstrate to the Board ~~his~~ the applicant's physical and mental competency to practice pharmacy.

(b) On or after July 1, 1982, all applicants shall have received an undergraduate degree from a school of pharmacy approved by the Board. Applicants shall be required to have had up to one year of experience, approved by the Board, under the supervision of a pharmacist and shall pass the required examination offered by the Board. Upon completing these requirements and upon paying the required fee, the applicant shall be licensed.

(c) The Board may require an applicant to provide the Board with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated

by the Board to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. ~~The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.~~

~~The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.~~"

SECTION 4. This act is effective when it becomes law.

Attachment IV

HOUSE BILL 948: Authorize APO Studies.

2016-2017 General Assembly

Committee:	House Judiciary II	**Date:**	June 7, 2016
Introduced by:	Rep. Jordan	**Prepared by:**	Jennifer H. Bedford Committee Co-Counsel
Analysis of:	PCS to First Edition H948-CSTQf-36		

SUMMARY: ***The Proposed Committee Substitute (PCS) would allow the Joint Legislative Administrative Procedure Oversight Committee (APO) to continue studying issues related to occupational licensing boards, and amend the law regarding the license application process for pharmacists.***

[As introduced, this bill was identical to S743, as introduced by Sen. Hartsell, which is currently in Senate Finance.]

BILL ANALYSIS:

Section 1 of the PCS would allow the APO to study the oversight of occupational licensing boards, the oversight of the North Carolina Bar, and the disciplinary actions and procedures of occupational licensing boards. The APO would be authorized to report any findings and recommendations to the 2017 General Assembly.

Section 2 of the PCS would allow the APO to study whether the burden of proof should be placed with the agency in certain contested cases, and report any findings and recommendations to the 2017 General Assembly.

Section 3 of the PCS would provide that applicants seeking licensure as a pharmacist must obtain criminal record reports from a designated reporting service. Current law allows the Department of Public Safety (DPS) to provide criminal record reports to the Board of Pharmacists. Those reports are based on fingerprints taken by DPS, and forwarded to the State and Federal Bureaus of Investigation.

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

BACKGROUND: The bill in its original form resulted from the recommendations of the APO.

Karen Cochrane-Brown
Director

H948-SMTT-39 CSTQF-36 -V-4

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment V

GENERAL ASSEMBLY OF NORTH CAF

SESSION 2015

H **D**

HOUSE BILL 949
PROPOSED COMMITTEE SUBSTITUTE H949-CSRO-34 [v.5]

06/06/2016 06:04:06 PM

Short Title: Occupational Licensing Board Contact Info. (Public)

Sponsors:

Referred to:

April 26, 2016

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO PROVIDE AND UPDATE CONTACT INFORMATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE AND TO CONFORM THE NAME OF THE GENERAL ASSEMBLY'S LEGISLATIVE ANALYSIS DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 is amended by adding a new subsection to read:

"(c1) Each occupational licensing board shall provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing the reports required by this section. Each occupational licensing board shall keep this information current and notify the Committee within 30 days of any changes in this information."

SECTION 2. G.S. 20-79.3A(c) reads as rewritten:

"(c) Report to General Assembly. – On or before March 15 of each year, the Division shall submit to the Chairs of the House and Senate Transportation Committees, the Chairs of the House and Senate Finance Committees, and the ~~Research~~ Legislative Analysis Division of the General Assembly a report that identifies each applicant that has applied for a special registration plate to be authorized in the legislative session being held that year and indicates whether the applicant met the requirements of this section. If an applicant meets the requirements of this section, then a bill may be considered during the legislative session being held that year to authorize a special registration plate for the applicant that submitted the application."

SECTION 3. G.S. 90-413.3A(b) reads as rewritten:

"(b) Any hospital, as defined in G.S. 131E-76(3) that has an electronic health record system shall connect to the HIE Network and submit individual patient demographic and clinical data on services paid for with Medicaid funds, based upon the findings set forth in subsection (a) of this section and notwithstanding the voluntary nature of the NC HIE under G.S. 90-413.2. The NC HIE shall give the Department of Health and Human Services real-time access to data and information disclosed through the HIE Network. At the request of the Director of the Fiscal Research, Bill Drafting, ~~Research,~~Legislative Analysis, or Program Evaluation Divisions of the General Assembly, the NC HIE shall provide the professional staff of these Divisions with data and information responsive to the Director's request. Prior to providing the General Assembly's staff with any data or information disclosed through the HIE Network pursuant to this subsection, the NC HIE shall redact any personal identifying information in a manner consistent with the standards specified for de-identification of health information under the HIPAA Privacy Rule, 45 C.F.R. 164.15, as amended."

SECTION 4. G.S. 90-414.5(b) reads as rewritten:

"(b) At the written request of the Director of the Fiscal Research, Bill Drafting, ~~Research,~~Legislative Analysis, or Program Evaluation Division of the General Assembly for an aggregate analysis of the data and information disclosed through the HIE Network, the Authority shall provide the professional staff of these Divisions with such aggregated analysis responsive to the Director's request. Prior to providing the Director or General Assembly's staff with any aggregate data or information submitted through the HIE Network or with any analysis of this aggregate data or information, the Authority shall redact any personal identifying information in a manner consistent with the standards specified for de-identification of health information under the HIPAA Privacy Rule, 45 C.F.R. § 164.514, as amended."

SECTION 5. G.S. 120-32 reads as rewritten:

"**§ 120-32. Commission duties.**

The Legislative Services Commission is authorized to:

(1) Determine the number, titles, classification, functions, compensation, and other conditions of employment of the joint legislative service employees of the General Assembly, including but not limited to the following departments:

a. Legislative Services Officer and personnel.
b. Electronic document writing system.
c. Proofreaders.
d. Legislative printing.
e. Enrolling clerk and personnel.
f. Library.
g. ~~Research~~ Legislative analysis and bill drafting.
h. Printed bills.
i. Disbursing and supply.
j. Program evaluation.

Temporary employees of the General Assembly are exempt from the provisions of G.S. 135-3(8)c., as to compensation earned in that status.

. . . ."

SECTION 6. G.S. 120-32.01 reads as rewritten:

"**§ 120-32.01. Information to be supplied.**

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the ~~Research,~~ Legislative Analysis, Fiscal Research, Program Evaluation, and Bill Drafting Divisions any information or records requested by them and access to any facilities and personnel requested by them. Except when accessibility is prohibited by a federal statute, federal regulation, or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and these divisions access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the BEACON/HR payroll system by the ~~Research~~ Legislative Analysis and Bill Drafting Divisions shall only be through the Fiscal Research Division and access to the system by the Program Evaluation Division shall only be through the Division Director and two employees of the Division designated by the Division Director.

. . . ."

SECTION 7. G.S. 120-30.49(a) reads as rewritten:

"**§ 120-30.49. Compiling federal mandates; annual report.**

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the ~~Research~~ Legislative Analysis and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is

conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

(1) A listing of federal laws that require the State and any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and

(3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government."

SECTION 8. G.S. 120-36.6 reads as rewritten:

"**§ 120-36.6. Legislative Fiscal Research staff participation.**

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the ~~General Research~~Legislative Analysis or Bill Drafting staff who may attend all meetings of the Council of State, unless the Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Council."

SECTION 9. Article 7B of Chapter 120 of the General Statutes reads as rewritten:

"Article 7B.

~~Research~~ Legislative Analysis Division.

§ 120-36.8. Certification of legislation required by federal law.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the ~~Research~~ Legislative Analysis Division, in consultation with the Bill Drafting and Fiscal Research Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the ~~Research~~ Legislative Analysis Division. Upon receipt of the request and the copy of the bill or resolution, the ~~Research~~ Legislative Analysis Division shall consult with the Bill Drafting and Fiscal Research Divisions, and may consult with the Office of State Budget and Management or any State agency on preparation of the certification as promptly as possible. The ~~Research~~ Legislative Analysis Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a

bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the ~~Research~~ Legislative Analysis Division and attach to the amended bill or resolution a certification as provided in this section."

SECTION 10. This act is effective when it becomes law.

Attachment VI

HOUSE BILL 949:
Occupational Licensing Board Contact Info.

2016-2017 General Assembly

Committee:	House Judiciary II	**Date:**	June 6, 2016
Introduced by:	Rep. Jordan	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H949-CSRO-34		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 949 would require each occupational licensing board to provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing required reports and would make corrections in the General Statutes to accurately reflect the present name of the Legislative Analysis Division of the North Carolina General Assembly. The act is effective when it becomes law.*** ***The PCS adds Sections 2 through 9.***

[As introduced, this bill was identical to S744, as introduced by Sen. Hartsell, which is currently in Senate Finance.]

CURRENT LAW: No later than October 31 of each year, each occupational licensing board must file an annual report and a financial report to various entities, including the Joint Legislative Administrative Procedure Oversight Committee. These reports are open to public inspection. The Joint Legislative Administrative Procedure Oversight Committee must notify any board that fails to file these reports.

Failure of a board to comply with the reporting requirements by October 31 results in a suspension of the board's authority to expend any funds until the board files the required reports. Suspension of a board's authority to expend funds does not affect the board's duty to issue and renew licenses, and it does not affect the validity of any application or license for which fees have been tendered.

BILL ANALYSIS:

Section 1 requires each occupational licensing board to provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing required reports. Each board must keep the information current and notify the Committee within 30 days of any changes in this information. This section is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

Sections 2-9 make technical corrections throughout the General Statutes to accurately reflect the present name of the Legislative Analysis Division of the North Carolina General Assembly.

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

BACKGROUND: On January 21, 2016, the Legislative Services Officer, Paul Coble, announced that he was changing the name of the Research Division of the General Assembly to the Legislative Analysis Division. He noted that the primary function of the division is to serve as committee counsel and staff and to provide legal and policy analysis of proposed or existing legislation. The change was intended to more accurately reflect the division's role and to distinguish it from other divisions and departments within the General Assembly.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment VII

GENERAL ASSEMBLY OF NORTH CAR
SESSION 2015

H D

HOUSE BILL 972
PROPOSED COMMITTEE SUBSTITUTE H972-CSSAf-111 [v.5]
06/06/2016 05:20:42 PM

Short Title: Law Enforcement Recordings/No Public Record. (Public)

Sponsors:

Referred to:

April 27, 2016

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECORDINGS MADE BY LAW ENFORCEMENT AGENCIES ARE NOT PUBLIC RECORDS, TO ESTABLISH WHETHER, TO WHOM, AND WHAT PORTIONS OF A RECORDING MAY BE DISCLOSED OR A COPY RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO DISCLOSE A RECORDING OR TO OBTAIN A COPY OF A RECORDING, AND TO DIRECT STATE OR LOCAL LAW ENFORCEMENT AGENCIES TO PROVIDE, UPON REQUEST, ACCESS TO A METHOD TO VIEW AND ANALYZE RECORDINGS TO THE STATE BUREAU OF INVESTIGATION AND THE NORTH CAROLINA STATE CRIME LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.4A. Law enforcement agency recordings.**

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

(1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.

(2) Custodial law enforcement agency. – The law enforcement agency that owns or leases, or whose personnel operates the equipment that created the recording at the time the recording was made.

(3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.

(4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.

(5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's

surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.

(6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.

(7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

(1) A person whose image or voice is in the recording.

(2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.

(3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

(4) A personal representative of a deceased person whose image or voice is in the recording.

(5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Denial of Disclosure. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may deny disclosure of the recording based on any of the following factors:

(1) The person requesting disclosure of the recording is not a person authorized to receive disclosure pursuant to subsection (c) of this section.

(2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

(3) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.

(4) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature.

(5) Disclosure may harm the reputation or jeopardize the safety of a person.

(6) Disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.

(7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

(1) Release is necessary to advance a compelling public interest.
(2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
(3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
(4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
(5) Release may harm the reputation or jeopardize the safety of a person.
(6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
(7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
(8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(g) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c) and (f) of this section, a custodial law enforcement agency may disclose or release a recording for the following purposes:

(1) To a district attorney for review of potential criminal charges, in order to comply with discovery requirements in a criminal prosecution, or any other law enforcement purpose.

(2) For law enforcement training purposes.

(3) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.

(4) To another law enforcement agency for law enforcement purposes.

(h) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources Division of Archives and Records.

(i) Agency Policy Required.– Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(j) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(k) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(l) Attorney Fees. – The court may not award attorney fees to any party in any action brought pursuant to this section."

SECTION 2.(a) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-458. SBI and State Crime Laboratory access to view, analyze recordings.**

The local law enforcement agency of any county that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

SECTION 2.(b) Article 21 of Chapter 160 of the General Statutes is amended by adding a new section to read:

"**§ 160A-490.1. SBI and State Crime Laboratory access to view, analyze recordings.**

The local law enforcement agency of any city that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

SECTION 2.(c) Article 9 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-64. SBI and State Crime Laboratory access to view, analyze recordings.**

Any State or local law enforcement agency that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

SECTION 2.(d) Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 8A.

"SBI and State Crime Laboratory Access to View and Analyze Recordings.

"**§ 15A-220. SBI and State Crime Laboratory access to view, analyze recordings.**

Any State or local law enforcement agency that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

SECTION 3. This act becomes effective October 1, 2016, and applies to all requests made on or after that date for the disclosure or release of a recording.

HOUSE BILL 972:
Law Enforcement Recordings/No Public Record.

2016-2017 General Assembly

Committee:	House Judiciary II	**Date:**	June 7, 2016
Introduced by:	Reps. Faircloth, McNeill, Boles, Hurley	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H972-CSSAf-111		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 972 would provide that recordings made by law enforcement agencies are not public records, establish whether, to whom, and what portions of a recording may be disclosed or a copy released, establish the procedure for contesting a refusal to disclose a recording or to obtain a copy of a recording, and direct State or local law enforcement agencies to provide, upon request, access to a method to view and analyze recordings to the State Bureau of Investigation (SBI) and the North Carolina State Crime Laboratory (State Crime Lab).***

BILL ANALYSIS:

Section 1 of the PCS would create a new G.S. 132-1.4A to govern the disclosure and release of video and audio recordings made by law enforcement agencies through the use of body-worn cameras, dashboard cameras, or any other video or audio recording device operated by or on behalf of a law enforcement agency when carrying out law enforcement responsibilities. The provisions would not govern video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. The recordings would not be public records or personnel records.

Disclosure – Allowing a person to view or listen to a recording

Disclosure may be provided by the custodial law enforcement agency upon a written request to the head of the law enforcement agency stating the date and approximate time of the activity captured in the recording or otherwise identifying the activity with reasonable particularity sufficient to identify the recording to which the request refers. Only those portions of the recording that are relevant to the person's request may be disclosed.

Law enforcement agencies may disclose a recording only to the following persons:

- A person whose image or voice is in the recording.
- A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- A personal representative of a minor or an adult person under lawful guardianship whose image or voice is in the recording.
- A personal representative of a deceased person whose image or voice is in the recording.
- A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The custodial law enforcement agency may deny disclosure based on any of the following factors:

- The person requesting disclosure of the recording is not a person authorized to receive disclosure pursuant to subsection (c) of this section.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- Disclosure may harm the reputation or jeopardize the safety of a person.
- Disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

A person requesting disclosure may appeal the denial of disclosure, or the agency's failure to provide disclosure more than three business days after the request, to the superior court in any county where any portion of the recording was made. The court's standard of review is abuse of discretion. The court may conduct an in camera review of the recording. Notice of any proceeding shall be given to the head of the custodial law enforcement agency, any law enforcement officer whose image or voice is in the recording and the head of their employing agency, and the District Attorney.

Release – Providing a copy of a recording

Recordings may only be released pursuant to court order. Any person may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. In determining whether to release a recording, the court shall consider the following standards:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.

The court may conduct an in camera review of the recording. Notice of any proceeding shall be given to the head of the custodial law enforcement agency, any law enforcement officer whose image or voice is in the recording and the head of their employing agency, and the District Attorney.

Additional provisions

- A custodial law enforcement agency may disclose or release a recording for the following purposes:
    - To a district attorney for review of potential criminal charges, in order to comply with discovery requirements in a criminal prosecution, or any other law enforcement purpose.
    - For law enforcement training purposes.
    - Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
    - To another law enforcement agency for law enforcement purposes.
- Recordings shall be retained for the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources Division of Archives and Records.
- Any law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.
- No civil liability shall arise from the good faith compliance with the provisions of this act.
- A fee may be charged to copy the recording for release.
- No attorney fees shall be awarded for any action pursuant to this section.

Section 2 of the PCS would require any law enforcement agency that uses the services of the SBI or the State Crime Lab to analyze a recording to, at no cost, provide access to a method to view and analyze the recording upon request of the SBI or the State Crime Lab.

EFFECTIVE DATE: October 1, 2016, and applies to all requests made on or after that date for the disclosure or release of a recording.

Attachment IX

VISITOR REGISTRATION SHEET

House Judiciary II

June 7, 2016 Room 643
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Preston Howard	NCMA
Fred Baggett	Police Chiefs Assn
Al Ripley	NLJC
Todd Barlow	NCAJ
Susanna Birdsong	ACLU
Penny Hurley	SOG
Meghan Cook	NC DIT
Sarah Collins	NCLM
Alex Fisher	Greensboro City Attorneys office
Jennifer Schneier	Greensboro City Attorney's Office
Kris Parker	DRNC
Dennis Reynolds	Nixon Gen FD
John Carr	Rep Salmon
Jeff Grant	FOP
Doug Mickey	PSG

VISITOR REGISTRATION SHEET

House Judiciary II

June 7, 2016 Room 643
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	NC Sheriffs' Assn.
David Farrell	VB
Sue Ann Forrest	NCICU
Phoebe Landon	mwe
MPRAK	Press Assn
Paul Lucey	Press Assoc
Jonathan Jones	NC Open Government Coalition
Cameron Nieters	KTS
Dominique Walker	NCACC
Hugh J...	NC ...
Fernando Jimenez	New Frame
Chris Agnew	NCDOJ
Andy Welsh	SA

Attachment X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 972

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

H972-ASA-179 [v.1]

Amends Title [NO]
H972-CSSAf-111

Date _____,2016

Representative Stam

moves to amend the bill on page 4, lines 1-10
by rewriting those lines to read:

"(g) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c) and (f) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, or (iii) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

(1) For law enforcement training purposes.

(2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.

(3) To another law enforcement agency for law enforcement purposes.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment XI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 972

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

H972-ASA-180 [v.1]

Amends Title [NO]
H972-CSSAf-111

Date _____,2016

Representative Reives

moves to amend the bill on page 3, line 16
by deleting "for immediate hearing," and inserting "for hearing as soon as practicable,";

and on page 3, line 48
by deleting "for immediate hearing," and inserting "for hearing as soon as practicable,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment XII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 972

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

H972-ASA-181 [v.1]

Amends Title [NO]
H972-CSSAf-111

Date _____ ,2016

Representative Reives

moves to amend the bill on page 2, lines 43-44
by deleting those lines, and renumbering the remaining subdivisions accordingly;

and on page 3, lines 31-32
by deleting those lines, and renumbering the remaining subdivision accordingly;

and on page 4, lines 1-10, as amended by H972-ASA-179
by rewriting those lines to read:

"(g) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c) and (f) of this section, a custodial law enforcement agency shall disclose or release a recording to (i) a district attorney for review of potential criminal charges, in order to comply with discovery requirements in a criminal prosecution, or any other law enforcement purpose, or (ii) a person requesting release for the purpose of obtaining evidence to determine legal issues in a current or potential court proceeding, and may disclose or release a recording for any of the following purposes:

(1) For law enforcement training purposes.

(2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.

(3) To another law enforcement agency for law enforcement purposes.".

disclose or

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMEN

(Please type or use ballpoint pen)

Attachment XIII

EDITION No. _____

H. B. No. H972-CSSAf-111 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Richardson
Sen.)

moves to amend the bill on page 2, lines 10-11

( ) WHICH CHANGES THE TITLE

by inserting the following between those lines:

"(8) Compelling public interest. – Any encounter portraying use of force by a law enforcement ~~officer~~ agency personnel."

SIGNED Willis A Richardson

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Committee on Judiciary II
Tuesday, June 14, 2016 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 1:00 PM on June 14, 2016 in Room 421 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Hurley, Jordan, McGrady, Queen, and Richardson attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 1:08 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

The following bill was considered:

HB 1007 Amend *Occuptational Licensing Boards* Statutes. (Representatives Jordan, Stevens, and Bryan)

Chairman Blust recognized Representative Stevens to present the bill. Representative Conrad made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Jordan was recognized to offer an amendment, and the amendment was adopted. After a brief discussion, Representative Jordan made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

The meeting adjourned at 1:22 PM.

Respectfully submitted,

John M Blust
Representative John M. Blust, Chairman
Presiding

Jennie L. Thurlow
Gennie L. Thurlow, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, June 14, 2016
TIME: **1:00 PM**
LOCATION: **421 LOB**
COMMENTS: **Representative John M. Blust will be presiding.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1007	Amend Occupational Licensing Boards Statutes.	Representative Jordan Representative Stevens Representative Bryan

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:46 PM on Thursday, June 09, 2016.

___ Principal Clerk
___ Reading Clerk – House Chamber

Gennie Thurlow (Committee Assistant)

House Committee on Judiciary II
Tuesday, June 14, 2016, 1:00 PM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 1007	Amend Occupational Licensing Boards Statutes.	Representative Jordan Representative Stevens Representative Bryan

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **1007** Amend Occupational Licensing Boards Statutes.

Draft Number:	H1007-PCS30522-TQ-35
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Stevens

TOTAL REPORTED: 1



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H D

HOUSE BILL 1007
PROPOSED COMMITTEE SUBSTITUTE H1007-CSTQ-35 [v.6]
06/13/2016 05:28:56 PM

Short Title: Amend Occupational Licensing Boards Statutes. (Public)

Sponsors:

Referred to:

April 28, 2016

A BILL TO BE ENTITLED

AN ACT TO RESPOND TO THE HOLDING IN *NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION*, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-1 reads as rewritten:

"**§ 93B-1. ~~Definitions.~~Definitions; List of occupational licensing boards.**

(a) As used in this ~~Chapter:~~Chapter, the following definitions apply:

(1) ~~"License" means any license (other than a privilege license),~~License. – Any license, other than a privilege license, certificate, or other evidence of qualification which an individual is required to obtain before he or she may engage in or represent himself or herself to be a member of a particular profession or occupation.

(2) ~~"Occupational licensing board" means any~~Occupational licensing board. – Any board, committee, commission, or other agency in North Carolina which receives no General Fund revenue and is ~~established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.~~given statutory authority to do all of the following:

a. Determine minimum qualifications required for licensure for a particular profession or occupation.

b. Issue licenses to qualified applicants.

c. Regulate the conduct of licensees within a particular profession or occupation.

d. Seek injunctive relief to prohibit unlicensed individuals or entities from engaging in certain activities as defined by statute.

e. Collect fees to support agency operations.

(b) Occupational licensing boards include only those boards specifically identified in this subsection. No additional boards or commissions shall be added to this list without first having been approved by the Joint Legislative Administrative Procedure Oversight Committee of the General Assembly as being necessary in that the profession subject to licensure affects the health, safety, or welfare of the public and that mandatory licensure is necessary to ensure minimum standards of competency so as to protect the public from unqualified persons or unprofessional

conduct by persons or entities practicing in the profession. Occupational licensing boards shall include only the following:

(1) Acupuncture Licensing Board.
(2) Alarm Systems Licensing Board.
(3) North Carolina Board of Landscape Architects.
(4) North Carolina Landscape Contractors' Licensing Board.
(5) Reserved.
(6) Board of Examiners for Speech and Language Pathologists and Audiologists.
(7) Reserved.
(8) Midwifery Joint Subcommittee.
(9) North Carolina Appraisal Board.
(10) North Carolina Auctioneers Commission.
(11) North Carolina Board for Licensing of Geologists.
(12) North Carolina Board for Licensing of Soil Scientists.
(13) North Carolina Board of Architecture.
(14) North Carolina Board of Athletic Trainer Examiners.
(15) North Carolina Board of Cosmetic Art Examiners.
(16) North Carolina Board of Dietetics/Nutrition.
(17) North Carolina Board of Electrolysis Examiners.
(18) North Carolina Board of Funeral Service.
(19) North Carolina Board of Licensed Professional Counselors.
(20) North Carolina Board of Massage and Bodywork Therapy.
(21) North Carolina Board of Nursing.
(22) North Carolina Board of Occupational Therapy.
(23) North Carolina Board of Pharmacy.
(24) North Carolina Board of Physical Therapy Examiners.
(25) North Carolina Board of Podiatry Examiners.
(26) North Carolina Board of Recreational Therapy Licensure.
(27) North Carolina Cemetery Commission.
(28) North Carolina Criminal Justice Education and Training Standards Commission.
(29) Sheriffs' Education and Training Standards Commission.
(30) Reserved.
(31) North Carolina Home Inspector Licensure Board.
(32) North Carolina Interpreter and Transliterator Licensing Board.
(33) North Carolina Irrigation Contractors' Licensing Board.
(34) North Carolina State Licensing Board for General Contractors.
(35) North Carolina Locksmith Licensing Board.
(36) North Carolina Marriage and Family Therapy Licensure Board.
(37) North Carolina Medical Board.
(38) North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
(39) North Carolina Psychology Board.
(40) North Carolina Real Estate Commission.
(41) North Carolina Respiratory Care Board.
(42) North Carolina Social Work Certification and Licensure Board.
(43) North Carolina State Board of Dental Examiners.
(44) North Carolina State Board of Examiners for Engineers and Surveyors.
(45) North Carolina State Board of Examiners for Nursing Home Administrators.
(46) North Carolina State Board of Examiners in Optometry.

(47) North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors.
(48) Reserved.
(49) North Carolina State Board of Opticians.
(50) North Carolina State Hearing Aid Dealers and Fitters Board.
(51) North Carolina Substance Abuse Professional Practice Board.
(52) North Carolina Veterinary Medical Board.
(53) Private Protective Services Board.
(54) Public Librarian Certification Commission.
(55) State Board of Barber Examiners.
(56) State Board of Certified Public Accountant Examiners.
(57) State Board of Chiropractic Examiners.
(58) Reserved.
(59) State Board of Environmental Health Specialist Examiners.
(60) State Board of Examiners of Electrical Contractors.
(61) State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.
(62) Reserved.
(63) State Board of Refrigeration Examiners.
(64) State Board of Registration for Foresters."

SECTION 2. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.**

(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the ~~Secretary of State, the Attorney General, and the~~ Joint Legislative Administrative Procedure Oversight ~~Committee~~ Committee, the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller an annual report containing all of the following information:

(1) The address of the board, and the names of its members and officers.
(1a) The total number of licensees supervised by the board.
(2) The number of persons who applied to the board for examination.
(3) The number who were refused examination.
(4) The number who took the examination.
(5) The number to whom initial licenses were issued.
(5a) The number who failed the examination.
(6) The number who applied for license by reciprocity or comity.
(7) The number who were granted licenses by reciprocity or comity.
(7a) The number of official complaints received involving licensed and unlicensed activities.
(7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.
(8) The number of licenses suspended or revoked.
(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(12) A financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.

(13) The certification of a proper system of internal control and other financial information as required by G.S. 143D-7.

(14) A report of all civil penalties, civil forfeitures, and civil fines collected and remitted to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2.

(15) The statute or rule authorizing each fee collected, the amount of the fee, the date the fee was last changed, the number of times the fee was collected during the prior reporting period, and the total receipts resulting from the fee during the prior reporting period.

(16) If the occupational licensing board has a budget of at least fifty thousand dollars ($50,000), a financial audit of its operations.

~~(b) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.~~

(c) The reports required by this section shall be open to public ~~inspection.~~inspection and shall be posted on the internet Web site of the occupational licensing board.

(d) The Joint Legislative Administrative Procedure Oversight Committee shall review the reports submitted pursuant to this section and shall notify any board that fails to file the reports required by this section. Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited."

SECTION 3. G.S. 93B-4 reads as rewritten:

"**§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

(a) The State Auditor shall audit occupational licensing boards from time to time to ensure their proper operation. The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with G.S. 147-64.7(b), the State Auditor may contract with independent professionals to meet the requirements of this section.

~~(b) Each occupational licensing board with a budget of at least fifty thousand dollars ($50,000) shall conduct an annual financial audit of its operations and provide a copy to the State Auditor.~~"

SECTION 4. G.S. 93B-5 reads as rewritten:

"**§ 93B-5. Compensation, employment, and training of board members.**

(a) ~~Board~~ Notwithstanding the provisions of G.S. 138-5, board members shall receive as compensation for their services per diem not to exceed ~~one~~ two hundred dollars ~~($100.00)~~ ($200.00) for each day during which they are engaged in the official business of the board.

...

(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board

and rules adopted by the board, as well as the following State and federal laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.
(2) Chapter 132, The Public Records Law.
(3) Article 33C of Chapter 143, The Open Meetings Act.
(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.
(5) Chapter 138A, The State Government Ethics Act.
(6) Chapter 120C, Lobbying.
(7) Antitrust law and State action immunity.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

SECTION 5.(a) Chapter 93B of the General Statutes is amended by adding six new sections to read:

"**§ 93B-17. Occupational licensing board rule making.**

(a) Each occupational licensing board shall adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.

(b) Any interpretation, clarification, or other delineation of the scope of practice of an occupational licensing board shall be adopted as a rule.

"**§ 93B-18. Unlicensed activity.**

(a) An occupational licensing board shall have the authority to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The notification shall not indicate that the occupational licensing board has made any finding of a violation but may indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation.

(b) Any occupational licensing board providing notification to unlicensed persons and entities of a possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court shall include the following statement in the notification:

> You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the occupational licensing board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide.

"**§ 93B-19. Venue for court enforcement.**

The venue for occupational licensing boards seeking court order for injunctive relief or to show cause for failure to comply with a subpoena lawfully issued by the occupational licensing board shall be in the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business.

"**§ 93B-20. Injunctive relief.**

An occupational licensing board may appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board. The superior court shall have the jurisdiction to grant these

injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the board. No board shall issue such orders independently of the superior court unless specifically authorized to do so by law.

"**§ 93B-21. Jurisdictional disputes between boards.**

It is the policy of the State that jurisdictional disputes among occupational licensing boards shall be resolved through informal procedures. If a jurisdictional dispute among occupational licensing boards cannot be resolved through informal procedures, any affected board may commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition with the Office of Administrative Hearings and serve the petition on all affected boards. Once the petition is filed and the required fee is paid, the dispute shall become a contested case and shall be conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter 150B of the General Statutes.

"**§ 93B-22. Complaint process.**

Each occupational licensing board shall develop and implement a complaint process that provides for all of the following:

(1) A description of the complaint process on the board's Web site, including the types of violations that are under the jurisdictional authority of the board.

(2) Electronic complaint submission via the board's Web site, including a prominently displayed link to a complaint form.

(3) The ability to provide complainants with a written description of the final disposition of each complaint."

SECTION 5.(b) The complaint process provided for in G.S. 93B-22 shall be implemented and active on each board's Web site no later than January 1, 2017.

SECTION 6. G.S. 115C-457.2 reads as rewritten:

"**§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year. Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual reporting obligation imposed under this section by including the information required in the occupational licensing board's annual report required pursuant to G.S. 93B-2."

SECTION 7. G.S. 143C-9-4 reads as rewritten:

"**§ 143C-9-4. Biennial fee report.**

The Office of State Budget and Management shall prepare a report biennially on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous two fiscal years. The report shall include the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year. The Office of State Budget and Management shall obtain the information required under this section for occupational licensing boards as defined in G.S. 93B-1 from the annual report filed by each occupational licensing board pursuant to G.S. 93B-2."

SECTION 8. G.S. 143D-7 reads as rewritten:

"**§ 143D-7. Agency management responsibilities.**

(a) The management of each State agency bears full responsibility for establishing and maintaining a proper system of internal control within that agency. Each principal executive officer and each principal fiscal officer shall annually certify, in a manner prescribed by the State Controller, that the agency has in place a proper system of internal control. The State Controller shall develop policies and procedures to direct agencies in their evaluation.

(b) The management of each State agency also bears the responsibility periodically to submit accurate and complete financial information to the State Controller for compilation into North Carolina State government's various financial reports and other related financial information disseminated to the public. With the submission of such periodic reports to the State Controller, each agency's principal executive officer and each agency's principal fiscal officer shall certify, in a manner prescribed by the State Controller, to the accuracy and completeness of the financial information submitted.

(c) Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual reporting obligation imposed under this section by including the information required in the occupational licensing board's annual report required pursuant to G.S. 93B-2."

SECTION 9. G.S. 150B-38(a) reads as rewritten:

"**§ 150B-38. Scope; hearing required; notice; venue.**

(a) The provisions of this Article shall apply to:

(1) Occupational licensing agencies.

(2) The State Banking Commission, the Commissioner of Banks, and the Credit Union Division of the Department of Commerce.

(3) The Department of Insurance and the Commissioner of Insurance.

(4) The State Chief Information Officer in the administration of the provisions of Article 14 of Chapter 143B of the General Statutes.

(5) The North Carolina State Building Code Council.

(6) The State Board of Elections in the administration of any investigation or audit under the provisions of Article 22A of Chapter 163 of the General Statutes.

(7) The Private Protective Services Board; the Alarm Systems Licensing Board; the North Carolina Justice Education and Training Standards Commission; and the North Carolina Sheriffs' Education and Training Standards Commission."

SECTION 10. G.S. 150B-45 reads as rewritten:

"**§ 150B-45. Procedure for seeking review; waiver.**

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

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

(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, in the county where the agency has its principal place of business, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. If a petitioner files a petition in a county other than as provided in this subdivision, the superior court may order a change of venue pursuant to G.S. 1-83; provided, however, that improper venue shall not be grounds for dismissal of the petition."

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition."

SECTION 11. The Joint Legislative Administrative Procedure Oversight Committee shall continue to monitor and study the effects of the opinion in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of occupational licensing boards.

SECTION 12. This act is effective when it becomes law.

HOUSE BILL 1007:
Amend Occupational Licensing Boards Statutes.

2016-2017 General Assembly

Committee:	House Judiciary II	**Date:**	June 13, 2016
Introduced by:	Reps. Jordan, Stevens, Bryan	**Prepared by:**	Susan Sitze*
Analysis of:	PCS to First Edition H1007-CSTQ-35		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1007 amends laws regarding occupational licensing boards in order to respond to the holding in North Carolina State Board of Dental Examiners v. Federal Trade Commission.

[As introduced, this bill was identical to S783, as introduced by Sen. Hartsell, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS: The PCS for H1007 would amend various statutes to provide more State guidance and oversight to occupational licensing boards.

Section 1 of the PCS would amend G.S. 93B-1 to modify the definition of "occupational licensing board" and list 64 specific boards or commissions that are governed by Chapter 93B. This section provides that no board or commission may be added to this list without the approval of the Joint Legislative Administrative Procedure Oversight Committee.

Section 2 of the PCS would add additional financial information requirements to the annual report filed by each occupational licensing board. **Section 3** of the PCS removes language from G.S. 93B-4 that has been relocated to the reporting requirement in Section 2 of the PCS.

Section 4 of the PCS would increase the per diem authorization for board members from $100 to $200 per day, and requires that board members' training include information on antitrust law and state action immunity.

Section 5 of the PCS would add several new statutes to Chapter 93B as follows:

- G.S. 93B-17 would require occupational licensing boards to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.
- G.S. 93B-18 would clarify occupational licensing boards' authority to investigate unlicensed activity and to notify unlicensed person of possible violations of laws and rules. This section would also provide standardized language for notifying unlicensed persons and entities of possible violations of the law. The notification would not indicate that the board has made a finding of a violation, but may indicate the board's belief or opinion that an unlicensed activity may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intent to pursue administrative remedies or court proceedings.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- G.S. 93B-19 would provide the venue for an injunctive relief sought by an occupational licensing board is the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business.
- G.S. 93B-20 would authorize an occupational licensing board to appear in its own name in actions for injunctive relief, authorizes the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has be instituted. No board shall issue orders independently of the superior court unless specifically authorized to do so by law.
- G.S. 93B-21 would encourage the resolution of jurisdictional disputes among occupational licensing boards by informal procedures, but authorizes the use of the administrative hearing process where that fails.
- G.S. 93B-22 would require each occupational licensing board to implement a complaint process, with the requirements specified, and implement that process no later than January 1, 2017.

Sections 6, 7, and 8 of the PCS would amend other statutes requiring certain information be reported by providing that the report required by G.S. 93B-2 will satisfy that requirement.

Sections 9 and 10 would amend statutes related to the administrative hearing process to ensure occupational licensing boards have access to that process and clarify venue for superior court review of an administrative final decision.

Section 11 of the PCS would provide that the Joint Legislative Administrative Procedure Oversight Committee shall continue to monitor and study the effects of *NC Dental Board v. FTC* and other issues related to the scope of practice jurisdiction of occupational licensing boards.

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

BACKGROUND: In *North Carolina State Board of Dental Examiners v. Federal Trade Commission,* 135 S. Ct. 1101 (2015), the US Supreme Court found that the NC Dental Board was not protected from antitrust actions under the doctrine of state action immunity.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1007*

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

H1007-ARO-64 [v.1]

Amends Title [NO]
H1007-CSTQ-35

Date 6-14- ,2016

Representative Jordan

moves to amend the bill on page 7, line 20, by rewriting the line to read:

"(1) Occupational licensing ~~agencies.~~ boards, as defined by G.S. 93B-1.";

And on page 7, lines 29 through 31, by deleting the lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 1007*

Short Title:	Amend Occupational Licensing Boards Statutes.	(Public)
Sponsors:	Representatives Jordan, Stevens, and Bryan (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Commerce and Job Development, if favorable, Judiciary III	

April 28, 2016

A BILL TO BE ENTITLED

AN ACT TO RESPOND TO THE HOLDING IN *NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION*, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-5(g) reads as rewritten:

"(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board and rules adopted by the board, as well as the following State and federal laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.
(2) Chapter 132, The Public Records Law.
(3) Article 33C of Chapter 143, The Open Meetings Act.
(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.
(5) Chapter 138A, The State Government Ethics Act.
(6) Chapter 120C, Lobbying.
(7) Antitrust law and State action immunity.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

SECTION 2. Chapter 93B of the General Statutes is amended by adding six new sections to read:

"**§ 93B-17. Occupational licensing board rule making.**

(a) Each occupational licensing board shall adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.

(b) Any interpretation, clarification, or other delineation of the scope of practice of an occupational licensing board shall be adopted as a rule.

"**§ 93B-18. Unlicensed activity.**

(a) An occupational licensing board shall have the authority to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The

notification shall not indicate that the occupational licensing board has made any finding of a violation but may indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation.

(b) Any occupational licensing board providing notification to unlicensed persons and entities of a possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court shall include the following statement in the notification:

> You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the occupational licensing board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide.

"**§ 93B-19. Venue for court enforcement.**

The venue for occupational licensing boards seeking court order for injunctive relief or to show cause for failure to comply with a subpoena lawfully issued by the occupational licensing board shall be in the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business.

"**§ 93B-20. Injunctive relief.**

An occupational licensing board may appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board. The superior court shall have the jurisdiction to grant these injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the board. No board shall issue such orders independently of the superior court unless specifically authorized to do so by law.

"**§ 93B-21. Jurisdictional disputes between boards.**

It is the policy of the State that jurisdictional disputes among occupational licensing boards shall be resolved through informal procedures. If a jurisdictional dispute among occupational licensing boards cannot be resolved through informal procedures, any affected board may commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition with the Office of Administrative Hearings and serve the petition on all affected boards. Once the petition is filed and the required fee is paid, the dispute shall become a contested case and shall be conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter 150B of the General Statutes.

"**§ 93B-22. Complaint process.**

Each occupational licensing board shall develop and implement a complaint process that provides for all of the following:

(1) A description of the complaint process on the board's Web site, including the types of violations that are under the jurisdictional authority of the board.

(2) Electronic complaint submission via the board's Web site, including a prominently displayed link to a complaint form.

(3) The ability to provide complainants with a written description of the final disposition of each complaint."

SECTION 3. The Joint Legislative Administrative Procedure Oversight Committee shall continue to monitor and study the effects of the opinion in *North Carolina State Board of*

Dental Examiners v. Federal Trade Commission and other issues related to the scope of practice jurisdiction of occupational licensing boards.

SECTION 4. This act is effective when it becomes law.

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-14-2016 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name: RUSSELL SALISBURY
5. Name: _____

Senate Sgt-At Arms:

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

Please admit the following House Pages to the Judiciary II committee meeting:

Mary Ann Borden, Wake County, Speaker Moore

Carmen Lyles, Halifax County, Speaker Moore

Jack Messenger, Wake County, Rep. Cleveland

Wes Whitmire, Transylvania County, Rep. Whitmire

Thank you,

Carol Waer

Substitute House Page Supervisor

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

6-14-2016
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tonya Horton	TSS
Aaron Oxendine	DACS
Adam Sholar	NCHCFA
[signature]	Nichols, Choi & Lee, PLLC
[signature]	NCREC
Peter Bolac	NC State Bar
[signature]	Atty
[signature]	NCBEEC
[signature]	NCSTA
Seth Palmer	NC REALTORS
Kelsey Beverly	Lanier Ormond PLLC

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-14-2016 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Kolbaeh	NC Board of Nursing
John McMillan	MF&S
David Crawford	AIA NC
[illegible] Christenson	Ward and Smith, PA
Chuck Greene	AT+T
Frances Messer	North Carolina Assit Living Assoc
Tony Adams	Adams and Assoc.
Sue Am Fores	NCICU
J Harrell	Bell+Harrell
D. Sipes	SVA
K. Weisaad	SVA

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-14-2016 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J.H. Gray	B&D
Ed Finlayson	BP
Trey Faber	AT&T
Saundra Wallace-Williams	AT&T NC
Cameron Nieters	KTS
Laura Puryear	LOLLC
John Patrick	NCGA
E. Ann Christian	Atty
Chris Dill	NCALB

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

6-14-2016 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	KLG
Chris Ago	NCDHHS
Hayden Baerques	FSP
Katty Kirgsburg	JP
A.P. CARLTON	FSP
Tom Fetzer	FSP
Courtney Lakamp	Randolph Cloud + Assoc
[illegible]	R. Ltd.
Madeline Hurley	Ward and Smith, P.A.
Penny Hauffman	School of Gov.

House Committee on Judiciary II
Tuesday, June 21, 2016 at 15 minutes after Session
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Joe Crook**
3. **Jim Moran**
4. **Russell Salisbury**

House Committee on Judiciary II
Tuesday, June 21, 2016 at 15 minutes after Session
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 15 minutes after session on June 21, 2016 in Room 421 of the Legislative Office Building. Representatives Jordan, Blust, Michaux, Stam, Bumgardner, Conrad, Queen, Reives, Richardson, Ross, and Salmon were in attendance. Susan Sitze, Brad Krehely and Jennifer Bedford (Research Staff Counsel), Emma Benson and Gennie Thurlow (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 2:17 PM. He introduced the Sergeants at Arms (attachment II) as well as the pages (attachment III). The following bill was considered:

The proposed house committee substitute for Senate Bill 124 and a summary are provided (Attachment IV and Attachment V)
SENATE BILL 124: ASSUMED BUS. NAME/IC CONTEMPT/PARKS

The Proposed Committee Substitute (PCS) for Senate Bill 124 contains three unrelated provisions as follows:

Would modernize the law governing the use of assumed business names and make conforming changes, as recommended by the General Statutes Commission.

Would clarify how the Industrial Commission refers matters of indirect criminal contempt to the district court.

Would remove several small tracts from the State Nature and Historic Preserve and from the State Parks System to resolve deed overlaps, to allow for minor road relocations and utility easement, and to improve park management. This provision will require that the bill be approved by a three-fifths vote of the members of each house of the General Assembly.

The PCS adds in Parts III and IV dealing with Industrial Commission contempt and changes involving tracts of the State Nature and Historic Preserve and the State Parks System. It also makes some modifications to the provisions dealing with assumed business names, as explained in the staff memorandum prepared by the General Statutes Commission (Attachment VI).

Chairman Jordan recognized Representative Michaux who moved to adopt the proposed committee substitute for discussion. The motion passed without dissent.

Representatives Queen, Stam, and Richardson proposed questions.

Kendall Bourdon spoke in support of the bill on behalf the Industrial Commission.

Haley Haynes, Office of NC Secretary of State, spoke in support of the bill.

Martha Jenkins spoke in support of the bill on behalf of Natural and Cultural Resources.

After a short discussion, the chair recognized Representative Michaux who moved to give a favorable report to the proposed house committee substitute, unfavorable as to the original bill. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 2:49 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

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 II** will meet as follows:

DAY & DATE: Tuesday, June 21, 2016
TIME: **1:00 PM**
LOCATION: **421 LOB**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 124	Modernize Assumed Business Name Statutes.	Senator Hartsell

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:06 PM on Thursday, June 16, 2016.

___ Principal Clerk
___ Reading Clerk – House Chamber

Emma Benson (Committee Assistant)

House Committee on Judiciary II
Tuesday, June 21, 2016, 15 Minutes after Session
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative Jonathan C. Jordan, Chair

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
PCS	SB 124	Modernize Assumed Business Name Statutes.	Senator Hartsell

Presentations

Other Business

Adjournment

ATTENDANCE

House Committee on Judiciary II

DATES	6/21/2016														
Rep. Jonathan C. Jordan – Chair	X														
Rep. John M. Blust– Chair	X														
Rep. John Faircloth – Vice Chair															
Rep. Pat Hurley – Vice Chair															
Rep. Chuck McGrady – Vice Chair															
Rep. Henry Michaux Jr. – Vice Chair	X														
Rep. Paul Stam – Vice Chair	X														
	X														
Rep. Dana Bumgardner	X														
Rep. Debra Conrad	X														
Rep. Joe Queen	X														
Rep. Robert Reives, II	X														
Rep. Stephen Ross	X														
Rep. Jason Saine															
Rep. Brad Salmon	X														

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT
Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB AND RE-REFERRED

SB **124** **(CS#1)** Modernize Assumed Business Name Statutes.

Draft Number:	S124-PCS45534-RNxr-50
Serial Referral:	**RULES, CALENDAR, AND OPERATIONS OF THE HOUSE**
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Jordan

TOTAL REPORTED: 1

CMR769-V-1

Attachment I

VISITOR REGISTRATION SHEE

House Committee on Judiciary II — 6-21-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Aaron Oxendine	DPCS
Tom Hart	NCICU
David Ferrell	VB
[illegible]	SOG
Wilson Jones	[illegible]
Paul Sherman	NCFB
Davis H. Brinson	NC Assoc. of Registers of Deeds
Wayne L. Rash	NC ARD
[illegible]	[illegible]
Susan Vick	Duke Energy
Ted Pandi	NC IC.
Kendall Bourdon	NC IC
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-21-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelley Hay Koos	SOS
W. Chad Oakley	SOS
Ty Hutts	SOS
Andy Chase	KMA

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-21-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ASHLEY HOEKSTRA	NCACC
Cameron Nieters	KTS
Caroline Miller	AMGA
[illegible]	NCHBA
Andy Cole	NCRMA
Geneva Holmes	NC Center for Nonprofits
Breanna Zamora	USMC
Nathan Batts	NCBA
David Heinen	NC Center for Nonprofits
ARMAND PERRY	NCBA
Martha Jenkins	DNCR

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-21-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rian Menard	WM
Katy Kingsbury	BP
Chris Broughton	MWC

Attachment II

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-21-2016 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Joe Crook
3. Name: Jim Moran
4. Name: Russell Salisbury
5. Name: _____

Senate Sgt-At Arms:

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

Attachment III

HOUSE PAGES
(JUDICIARY II)

Week of June 20-23, 2016

Name:	County:	Sponsor:
JULIA ELLEN	WAKE	REP. MALONE
NATHAN GRAHAM	MOORE	REP. BOLES
NOEL TURLINGTON	SAMPSON	REP. DAUGHTRY
NICOLE TRIPP	WAKE	REP. REIVES

Attachment IV

GENERAL ASSEMBLY OF NORTH CARC
SESSION 2015

S D

SENATE BILL 124
Judiciary I Committee Substitute Adopted 4/28/15
Third Edition Engrossed 4/29/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S124-CSRNxr-50 [v.8]
06/20/2016 06:45:51 PM

Short Title: Assumed Bus. Name/IC Contempt/Parks. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW GOVERNING THE USE OF ASSUMED BUSINESS NAMES AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO CLARIFY HOW THE INDUSTRIAL COMMISSION REFERS MATTERS OF INDIRECT CRIMINAL CONTEMPT TO THE DISTRICT COURT, TO REMOVE CERTAIN PROPERTY FROM THE STATE NATURE AND HISTORIC PRESERVE, AND TO AUTHORIZE THE DELETION OF VARIOUS PROPERTIES FROM THE STATE PARKS SYSTEM.

The General Assembly of North Carolina enacts:

PART I. ASSUMED BUSINESS NAME ACT

SECTION 1. Article 14 of Chapter 66 of the General Statutes is repealed.

SECTION 2. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 14A.
"Assumed Business Name Act."

"**§ 66-71.1. Short title.**

This Article may be cited as the "Assumed Business Name Act."

"**§ 66-71.2. Statement of purpose.**

The purpose of this Article is to afford the public a means of ascertaining the real name of persons engaging in business in this State under an assumed business name by requiring those persons to register the assumed business name as provided in this Article.

"**§ 66-71.3. Definitions.**

The following definitions apply in this Article:

(1) Assumed business name. –

a. In the case of an individual, any name other than a real name of the individual.

b. In the case of a partnership other than a limited liability partnership or limited partnership, any name other than a real name of each of the general partners of the partnership.

c. In the case of a limited liability partnership, any name other than the name registered with the Secretary of State.

d. In the case of a limited partnership, any name other than the name stated in its certificate of limited partnership filed with the Secretary of State.

e. In the case of a limited liability company, any name other than the name stated in its articles of organization filed with the Secretary of State.

f. In the case of a corporation, any name other than the corporate name stated in its articles of incorporation filed with the Secretary of State.

g. In the case of a trust, any name other than the name specified in the trust instrument or, if the trust instrument does not specify a name for the trust, any name other than the name of the trustee and a designation of the trust for which the trustee is acting.

h. In the case of any other person, any name other than a real name of the person.

(2) Person. – Includes an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity.

"**§ 66-71.4. Filing of certificate; exception.**

(a) Before any person engages in business in this State under an assumed business name, the person must file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. If the person is or will be engaged in business in multiple counties, filing is required in only one of those counties.

(b) A person who engages in business in this State under more than one assumed business name must file an assumed business name certificate for each assumed business name. The person may, however, include no more than five assumed business names in one assumed business name certificate if that same person is or will be engaging in business under each of the assumed business names listed in the certificate.

(c) This Article does not apply to a political committee or a referendum committee that has filed a statement of organization with the State Board of Elections or a county board of elections as required by G.S. 163-278.7 or G.S. 163-278.9A, as applicable.

"**§ 66-71.5. Contents of certificate.**

An assumed business name certificate must include:

(1) The assumed business name.

(2) A real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include a real name of five general partners or of each general partner, whichever is fewer.

(3) The nature of the business.

(4) The street address of the principal place of business.

(5) Each county where the person uses or will be using the assumed business name to engage in business.

"**§ 66-71.6. Execution of certificate.**

An assumed business name certificate must be executed as follows:

(1) In the case of an individual, the certificate must be signed by the individual.

(2) In the case of a partnership or limited partnership, the certificate must be signed by a general partner.

(3) In the case of a corporation or limited liability company, the certificate must be signed in the name of the corporation or limited liability company by an officer of the corporation or a manager of the limited liability company or by another individual authorized by law to act for the corporation or limited liability company.

(4) In the case of any other person, the certificate must be signed in the name of the person by an individual authorized to act for the person.

"**§ 66-71.7. Amendment of certificate.**

Any person that has filed an assumed business name certificate must, within 60 days after a change in any of the information required in the assumed business name certificate, file a certificate of amendment in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name and a real name of the person engaging in business under the assumed business name as stated in the original, or most recently amended, assumed business name certificate.

(2) The book and page number of the original filing.

(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).

(4) How the assumed business name certificate is to be amended.

"**§ 66-71.8. Withdrawal of assumed business name.**

Any person filing an assumed business name certificate as required by this Article may, upon ceasing to engage in business in this State under the assumed business name, withdraw the assumed business name by filing a certificate of withdrawal in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name being withdrawn.

(2) The book and page number of the original filing.

(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).

(4) A real name of the person engaging in business under the assumed business name and that person's current address.

(5) A statement that the person has ceased engaging in business under the assumed business name.

(6) The effective date of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal.

"**§ 66-71.9. Secretary of State to maintain a centralized, statewide database of assumed business name information.**

(a) The Secretary of State shall develop, implement, and maintain a searchable online database of assumed business name information reported under G.S. 66-71.10. The system must allow information to be entered and retrieved from the system by the registers of deeds and must be available for searches by the public.

(b) The Secretary of State may adopt rules to implement the statewide online database.

"**§ 66-71.10. Register of deeds to index certificates; transmission of data to central database.**

(a) The register of deeds of each county must index in accordance with Article 2 of Chapter 161 of the General Statutes every assumed business name with respect to which an assumed business name certificate, a certificate of amendment, or a certificate of withdrawal has been filed in that county.

(b) Not later than 30 days after the date a certificate under this Article is filed, the register of deeds must transmit a scanned image of the certificate to the Secretary of State and enter into the central database maintained by the Secretary of State under G.S. 66-71.9 the assumed business name, the real name of each person engaging in business under that name, the type of certificate, the county in which the certificate was filed, and, in the case of a certificate of amendment or

certificate of withdrawal, the identification number assigned to the assumed business name by the Secretary of State (SOS ID).

"**§ 66-71.11. Forms.**

(a) The Land Records Management Advisory Committee established under G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this Article, but their use is not mandatory.

(b) Any person, including the registers of deeds, may make available the forms developed under subsection (a) of this section.

"**§ 66-71.12. Effect of filing certificate.**

(a) An assumed business name certificate filed under this Article is effective upon filing and remains in effect until withdrawn under G.S. 66-71.8.

(b) Compliance with this Article does not confer any exclusive rights to the use of an assumed business name in this State.

"**§ 66-71.13. Copy of certificate prima facie evidence.**

A copy of a certificate filed under this Article, duly certified by the register of deeds of the office in which it was filed, is prima facie evidence of the facts required to be stated in the certificate.

"**§ 66-71.14. Consequences of signing false certificate or violating Article.**

(a) A person signing a certificate under this Article that the person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is guilty of a Class 1 misdemeanor.

(b) A person failing to file an assumed business name certificate or a certificate of amendment as required by this Article is liable to any person injured by the failure for the reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a reasonable purpose, the information required to be stated in the assumed business name certificate or certificate of amendment. Notwithstanding this subsection, a person is not liable for expenses caused by an error or ambiguity in describing the nature of the business in an assumed business name certificate under G.S. 66-71.5 or a certificate of amendment under G.S. 71.7.

"**§ 66-71.15. Expiration of certificates filed under Article 14; transition provisions.**

(a) All certificates of assumed name filed under former Article 14 of this Chapter expire July 1, 2022, and the provisions of that former Article continue to apply to them until that date except as provided in this section. On or after that date, any person that (i) is listed as an owner of the business in a certificate of assumed name filed under that former Article and (ii) desires to continue engaging in business in this State under the assumed business name after that date must file an assumed business name certificate under this Article.

(b) At least one person listed as an owner of the business in a certificate of assumed name under former Article 14 of this Chapter must file an assumed business name certificate before the certificate of assumed name expires under subsection (a) of this section if any of the following occur:

(1) A general partnership would have been required to file a new certificate of assumed name under former G.S. 66-68(c) due to the withdrawal or addition of a partner.

(2) Any of the information in the certificate of assumed name required under former G.S. 66-68(a) has changed and the person desires to continue engaging in business in this State.

(c) No person shall file a new certificate of assumed name under former Article 14 of this Chapter on or after July 1, 2017. Any document or other record filed on or after that date to register an assumed business name is deemed to be filed under this Article, even if it is described as a certificate of assumed name rather than an assumed business name certificate or if it expressly refers to former Article 14 of this Chapter.

(d) A person that filed a certificate of assumed name that has not expired may withdraw the assumed name under the provisions of former G.S. 66-68(f). Any such withdrawal is deemed to be a withdrawal under former G.S. 66-68(f), even if it is described as a withdrawal under this Article.

(e) No person shall file a certificate of amendment under this Article to a certificate of assumed name filed under former Article 14 of this Chapter. If any such amendment is nevertheless filed, it is not effective as a certificate of amendment or as an assumed business name certificate under this Article.

(f) The register of deeds shall not transmit a scanned image to the Secretary of State, or enter any of the information required by G.S. 66-71.10 into the central database maintained by the Secretary of State, of any withdrawal or transfer of an assumed name or any amendment to a certificate of assumed name when the certificate of assumed name to which the withdrawal, transfer, or amendment relates was filed before July 1, 2017.

(g) Other than this section, this Article does not apply to a certificate of assumed name or a withdrawal of an assumed name under former Article 14 of this Chapter."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 3.(a) G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may ~~hereafter~~ sue or be sued under the name by which they are commonly known and called, or under which they are ~~doing~~ engaging in business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege ~~the specific location of the recordation required by G.S. 66-68.~~ that it has filed a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 3.(b) Effective July 1, 2021, G.S. 1-69.1(a)(3), as amended by this section, reads as rewritten:

"(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege that it has filed ~~a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or~~ an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes."

SECTION 4. G.S. 53-208.7(a) reads as rewritten:

"(a) Each application for a license under this Article shall be made in writing, under oath, and in a form prescribed by the Commissioner. For all applicants, each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any assumed ~~or trade~~ business name used by the applicant in the conduct of its business, and the location of the applicant's business records.

...."

SECTION 5. G.S. 55D-20(d) reads as rewritten:

"(d) The use of assumed business names or fictitious names, as provided for in ~~Chapter 66,~~ Chapter 66 of the General Statutes, is not affected by this Chapter or by Chapter 55, 55A, 57D, or 59 of the General Statutes."

SECTION 6. G.S. 58-70-5 reads as rewritten:

"**§ 58-70-5. Application to Commissioner for permit.**

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which ~~such~~ the person, firm, corporation or association desires to carry on the collection agency business as ~~hereinafter defined. Such~~defined in this Article. The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

~~(a)~~(1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if ~~different;~~different.

~~(b)~~(2) If the applicant is a corporation,

~~(1)~~a. A certified copy of the board of director's resolution authorizing the submission of the application;

~~(2)~~b. An authenticated copy of the Articles of Incorporation and all amendments thereto;

~~(3)~~c. An authenticated copy of the bylaws or other governing instruments;

~~(4)~~d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of ~~State;~~ State.

(3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.

(4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.

(5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.

(6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.

(7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.

(8) A statement certifying that there are no unsatisfied judgments against the applicant.

(9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.

(10) The appropriate permit fee as required by G.S. 58-70-35.

(11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or

proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.

(12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

(13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.

(14) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.

(15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b1) In addition to the information required by ~~subsection (b)~~ subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the ~~Commissioner;~~Commissioner.

~~(c) If the applicant is a partnership, an authenticated copy of the then current partnership agreement;~~

~~(d) If the trade name is used, certificates showing that the trade name has been filed as required by G.S. 66-68;~~

~~(e) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20;~~

~~(f) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings;~~

~~(g) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in North Carolina;~~

~~(h) A statement certifying that there are no unsatisfied judgments against the applicant;~~
~~(i) A list of all telephone numbers assigned to, or to be used by the applicant in the operation of the collection agency;~~
~~(j) The appropriate permit fee as required by G.S. 58-70-35;~~
~~(k) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant;~~
~~(l) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.~~
~~(m) A statement certifying that no officer, individual proprietor or partner of the applicant has been convicted of a felony involving moral turpitude, or any violation of any State or federal debt collection law.~~
~~(n) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation;~~
~~(o) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.~~

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

(1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with ~~subsection (k)~~ subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in ~~subsection (k)~~subdivision (a)(11) of this section."

SECTION 7. G.S. 59-84.1 reads as rewritten:

"**§ 59-84.1. Partnership to comply with ~~"assumed name" statute;~~Assumed Business Name Act; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of ~~Articles 14~~ Articles 14A and 15 of Chapter 66 of the General Statutes in all cases in which the ~~same~~ Articles are applicable.

...."

SECTION 8. G.S. 62-115 reads as rewritten:

"**§ 62-115. Issuance of partnership franchises.**

No franchise shall be issued under this Article to two or more persons until ~~such~~ the persons have executed a partnership agreement, filed a copy of ~~said~~ the agreement with the Commission, and indicated to the Commission, in writing, that they have complied with ~~Article 14~~ Article 14A of Chapter 66 of the General Statutes relating to ~~doing~~ engaging in business under an assumed business name."

SECTION 9. G.S. 66-262 reads as rewritten:

"**§ 66-262. Filing information.**

(a) Each filing submitted to the Secretary shall contain all of the following information:

(1) The name or names, including any assumed business names, under which the telephonic seller is doing or intends to do business in this State.

...."

PART III. CLARIFY INDUSTRIAL COMMISSION REFERRAL OF INDIRECT CONTEMPT

SECTION 10. G.S. 97-80(h) reads as rewritten:

"(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for willful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. To initiate plenary proceedings in district court for indirect criminal contempt, the Commission shall issue and file with the clerk of court an order to appear and show cause pursuant to G.S. 5A-15(a) and, if appropriate, an order for arrest pursuant to G.S. 5A-16(b) and G.S. 15A-305. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge."

PART IV. REMOVE PROPERTY FROM STATE NATURE AND HISTORIC PRESERVE AND AUTHORIZE DELETION OF PROPERTIES FROM STATE PARK SYSTEM

SECTION 11.(a) Article 25B of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

"**§ 143-260.10H. Removal of land in Gorges State Park from the State Nature and Historic Preserve.**

(a) Notwithstanding the provisions of G.S. 143-260.10(23), the portion of that certain tract or parcel of property at Gorges State Park in Transylvania County, described in Deed Book 153, Page 083, and containing approximately 4.2 acres as shown as Tract "A" in a survey by E. Roger Raxter, Inc., entitled State of North Carolina and Blue Ridge Mountains RV Resort Property

Owners' Association, Inc., and dated March 20, 2016, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of this section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Gorges State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land.

"**§ 143-260.10I. Removal of land in Jockey's Ridge State Park from the State Nature and Historic Preserve.**

Notwithstanding the provisions of G.S. 143-260.10(15), the portion of that certain tract or parcel of property at Jockey's Ridge State Park in Dare County, described in Deed Book 222, Page 732, and Deed Book 227, Page 501, and containing 0.6 acres as shown in a survey by Timmons Group entitled Plat Showing a Proposed Dominion North Carolina Power Easement Across the Properties of the State of North Carolina (Jockey's Ridge State Park) and dated December 18, 2014, is removed from the State Nature and Historic Preserve.

"**§ 143-260.10J. Removal of land in Mitchell's Millpond State Natural Area from the State Nature and Historic Preserve.**

(a) Notwithstanding the provisions of G.S. 143-260.10(26), the portion of that certain tract or parcel of property at Mitchell's Millpond State Natural Area in Wake County, described in Deed Book 4186, Page 756, and containing 0.08 acres as shown in a survey by the North Carolina Department of Transportation, Right-of-Way Branch, entitled State of North Carolina, Parcel 002, and dated March 11, 2015, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of this section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Mitchell's Millpond State Natural Area or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land."

SECTION 11.(b) Pursuant to G.S. 143B-135.54, the General Assembly authorizes the deletion of the following property from the State Parks System:

The portion of that certain tract or parcel of property at Hanging Rock State Park in Stokes County, described in Deed Book 267, Page 159, and containing approximately 1.5 acres as shown in a survey by C.E. Robertson & Associates, P.C. entitled Plat of Survey for North Carolina Division of Parks and Recreation showing "Camp Sertoma Tracts," Sheet 7 of 7, and dated June 18, 2015, and revised April 6, 2016; and the portion shown as Deed Overlap in a survey by C.E. Robertson & Associates, P.C. entitled Plat of Survey for North Carolina Division of Parks and Recreation showing "Camp Sertoma Tracts," Sheet 2 of 7, and dated June 18, 2015; and the portion of that certain tract or parcel of property in Stokes County described in Deed Book 368, Page 415, and containing approximately 1.058 acres shown as Deed Overlap in a survey by C.E. Robertson & Associates, P.C. entitled Plat of Survey for North Carolina Division of Parks and Recreation showing "Camp Sertoma Tracts," Sheet 5 of 7, and dated June 18, 2015. The State may only exchange this property for other property for the expansion of Hanging Rock State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land.

PART V. EFFECTIVE DATE AND APPLICABILITY PROVISIONS

SECTION 12. Sections 1-9 become effective July 1, 2017, and do not affect a civil action or proceeding commenced or a right accrued before July 1, 2017. Sections 1-9 become effective only if funds are appropriated by the 2015 General Assembly, 2016 Regular Session, to implement the provisions of G.S. 66-71.9, as enacted by Section 2 of this act. Section 10 of this act becomes effective October 1, 2016, and applies to proceedings for indirect criminal contempt filed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 124:
Assumed Bus. Name/IC Contempt/Parks.

2016-2017 General Assembly

Committee:	House Judiciary II	**Date:**	June 20, 2016
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition S124-CSRNxr-50		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 124 contains three unrelated provisions as follows:***

- ***Would modernize the law governing the use of assumed business names and make conforming changes, as recommended by the General Statutes Commission.***
- ***Would clarify how the Industrial Commission refers matters of indirect criminal contempt to the district court.***
- ***Would remove several small tracts from the State Nature and Historic Preserve and from the State Parks System to resolve deed overlaps, to allow for minor road relocations and utility easements, and to improve park management. This provision will require that the bill be approved by a three-fifths vote of the members of each house of the General Assembly.***

The PCS adds in Parts III and IV dealing with Industrial Commission contempt and changes involving tracts of the State Nature and Historic Preserve and the State Parks System. It also makes some modifications to the provisions dealing with assumed business names, as explained in the staff memorandum prepared by the General Statutes Commission.

Parts I and II. Assumed Business Name Act and Related Changes

Parts I and II address the Assumed Business Name Act and related conforming and technical amendments to other sections of the General Statutes. These provisions are explained in the memorandum prepared by the General Statutes Commission. They become effective July 1, 2017, do not affect a right accrued before July 1, 2017, and only become effective if funds are appropriated to implement them.

Part III. Clarify Industrial Commission Referral of Indirect Contempt

CURRENT LAW: Under current law, the Industrial Commission has the same power as a judicial officer to punish for criminal contempt for: (1) willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (2) willful disobedience of a lawful order of the Commission or a member or deputy of the Commission; or (3) for willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

answer any legal and proper question when refusal is not legally justified. The Commission, a member, or deputy commissioner may issue an order of arrest and take the person into custody to assure the person's presence for summary proceedings or notice of plenary proceedings.

If the commissioner or deputy commissioner does not proceed summarily (i.e. impose measures to restore order and when measures are imposed at the same time of the contempt), the proceedings are before a district court judge in the district where the order was issued and directed the charged person to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge.

Section 10 would provide that to initiate plenary proceedings, the Commission must issue and file with the clerk of court an order to appear and show cause. This is an order directing the person to appear before the judge and show cause why the person should not be held in contempt of court. Section 10 would also provide that, if appropriate, the Commission must enter an order for arrest if it believes that the person ordered to appear will not appear in response to the order.

EFFECTIVE DATE: This section would become effective October 1, 2016, and would apply to proceedings for indirect criminal contempt filed on or after that date.

Part IV. DELETIONS FROM STATE NATURE AND HISTORIC PRESERVE/STATE PARKS

CURRENT LAW: Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. G.S. 143-260.10 lists the current components of the Preserve.

G.S. 143B-135.54 provides conditions and procedures for additions to, and deletions from, the State Parks System that must be authorized by the General Assembly. The State Parks Act requires a majority vote of the General Assembly to remove a park or any part from the State Parks System. Most of the land within the State Parks System is included in the State Nature and Historic Preserve.

BILL ANALYSIS: Section 11 would delete several small tracts from the State Nature and Historic Preserve and/ or delete these small tracts from the State Parks System. The proposed deletions will resolve deed overlaps, allow for minor road relocations and utility easements, and improve park management. Specifically, the PCS would:

- Delete a 4.2 acre parcel from **Gorges State Park** from the Preserve and the State Parks System to facilitate an exchange of land with an adjacent property owner.
- Delete a .6 acre parcel from **Jockey's Ridge State Park** from the Preserve to allow a buried power transmission cable that crosses Jockey's Ridge and provides a power source between Nags Head and Roanoke Island to remain permanently.
- Delete a .08 acre parcel from **Mitchell's Mill State Natural Area** from the Preserve and the State Parks System to provide the Department of Transportation a right-of-way needed for a bridge replacement project over Cedar Fork Creek in eastern Wake County.

- Delete a 2.63 acre parcel from **Hanging Rock State Park** to correct several issues revealed by a boundary survey.

EFFECTIVE DATE: This section would become effective when the act becomes law.

Trina Griffin, Attorney with the Legislative Analysis Division, contributed substantially to this summary.

GENERAL STATUTES COMMISSION
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Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

Attachment VI

To: House Committee on Judiciary II
From: General Statutes Commission
Re: SB 124 (Modernize Assumed Business Name Statutes)
Date: June 20, 2016 (updated)

General Comments

The proposed committee substitute for this bill would update the law governing the use of assumed business names by replacing current Article 14 of Chapter 66 of the General Statutes, entitled "Business Under Assumed Name Regulated," with a more modern Article 14A, entitled "Assumed Business Name Act." The bill was developed with the assistance of representatives of the North Carolina Department of the Secretary of State, the North Carolina Association of Registers of Deeds, and different sections of the North Carolina Bar Association.

Current Article 14 provides important protection to the public by requiring persons that engage in business in this State under an assumed name to make the identity of the business' true owners available to the public through filings with the registers of deeds. Generally speaking, before engaging in business in this State under an assumed name, a person must file a certificate with the register of deeds of each county in which business is to be engaged. The certificate must include the assumed name and the real name and address of each owner of the business. Failure to file is a Class 3 misdemeanor and can result in a $50.00 civil penalty payable to any person who notifies the owner of the failure if the owner then continues to fail to file.

Current Article 14 was enacted in 1913 and has not been substantially revised since then. In the intervening decades, portions have become obsolete or in conflict with more recent statutes. Business practices have changed. More businesses are operating in multiple counties in the State. As reported to the General Statutes Commission, many businesses may not be in compliance with Article 14, especially those operating statewide or in multiple counties. The penalty provisions have become ineffective. In particular, the criminal provision (i) has become disproportionate to the penalties for failing to file similar business-related documents, (ii) is only likely to be applied to individuals (not entities), and, as a result, (iii) is arguably unfair.

Proposed new Article 14A would make the following changes:

- Modernize language and style, provide guidance on "real names" for entities and partnerships, and conform outdated conflicting provisions to more recent law;
- Provide for amending certificates of assumed name;
- Eliminate a provision for transferring assumed names because it reportedly causes confusion in practice;
- Eliminate two exceptions to the filing requirement for (i) an obsolete exclusion and (ii) for licensed professions whose boards met certain requirements;
- Replace the penalty provisions with a new provision allowing for recovery of expenses incurred in locating "true owners" who fail to file;
- Remove the acknowledgement requirement but add a new Class 1 misdemeanor for filing a knowingly false certificate.

- Require the creation of a statewide database, searchable by the public, of assumed business name information, which would as a result eliminate (i) the requirement for filing with the register of deeds in each county in which a business is operated under an assumed name and (ii) the possible need to search 100 separate registers of deeds offices for an assumed name filing.

Changes Made by the Proposed Committee Substitute

The proposed committee substitute for this bill makes the following changes to Parts I and III of the 3rd edition:

- In places where an individual is being required to provide his or her "real name," the phrase "the real name" is changed to "a real name" to account for the fact that people actually use different forms of their "real name."
- Proposed new G.S. 66-71.4 is amended by:
  - Allowing a person who engages in business under more than one assumed business name to include no more than five assumed business names in one certificate if the same person is the one engaging in business under each;
  - Exempting political committees and referendum committees that have filed a statement of organization with the proper board of elections.
- Proposed new G.S. 66-71.5(3) is amended by changing "type of business" to "nature of the business" and by adding a new sentence to proposed G.S. 66-71.14 providing that an error or ambiguity in describing the nature of the business will not subject the filer to damages.
- Proposed G.S. 66-71.6(3) is amended by changing the description of the persons who can execute a certificate for a corporation or limited liability company to require a corporate officer, an LLC manager, or another individual authorized by law to act for the corporation or LLC.
- Proposed new G.S. 66-71.14(b) is also amended by deleting as unnecessary the former last sentence, "The expenses may be awarded in a civil action."
- The dates in proposed new G.S. 66-71.15 (transition provisions) and the effective dates have been extended by one year.
- Part III of the 3rd edition provided for the effective date and applicability provisions. These are now contained in Part V, and Parts I and II have been made contingent on appropriation.
- Parts III and IV of the proposed committee substitute are new additions.

Specific Comments to the Third Edition

Proposed **§ 66-71.1** ("Short title") states the new article's title. The title is changed to the more precise "Assumed Business Name Act" because, consistent with the current law, the filing requirements only apply to a person who "engages in business" under an assumed name (a d/b/a).

Proposed **§ 66-71.2** ("Statement of purpose") is new, although the purpose has not changed.

Proposed **§ 66-71.3** ("Definitions") defines the terms "assumed business name" and "person" as used in this Article. There is no definitions section in current Article 14, but the proposed definition of "assumed business name" is consistent with current G.S. 66-68(a) while providing greater clarity as to the "real names" of some types of entities and partnerships.

Proposed **§ 66-71.4** ("Filing of certificate; exception") continues the requirement that any person engaging in business in this State under an assumed business name must first file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. The current law requires a person that is engaged in business in multiple counties to file a certificate of assumed name in each county. Due to the provision for a searchable, state-wide data-base (see proposed §§ 66-71.9 and 66-71.10), proposed § 66-71.4 requires filing in only one of those counties. A separate certificate is still required, however, for different assumed business names used by the same person.

Proposed **§ 66-71.5** ("Contents of certificate") continues to require an assumed business name certificate to include the assumed business name, the real name of the person engaging in business under that name (the "owner or owners" in G.S. 66-68), and an address. Proposed § 66-71.5 adds requirements that the address be the street address of the principal place of business and that the person filing indicate the type of business and list each county where the person uses or will be using the assumed business name to engage in business. The last provision substitutes for the current law's requirement to file with the register of deeds in each of these counties. Because there is no requirement for d/b/a names to be unique, the new requirements should help the public distinguish between, e.g., Paul the Pieman in Buncombe and Henderson Counties, a baker, from a different Paul the Pi-man in New Hanover and Brunswick Counties, a math tutor.

In addition, proposed § 66-71.5 reduces the filing compliance burden on large partnerships by requiring that no more than five partners be listed in the assumed name certificate. Current G.S. 66-68's requirement that a partnership file a new certificate of assumed name, signed by each partner, every time a partner leaves or joins the partnership is quite burdensome for a very large partnership. The replacement requirement should give a member of the public a sufficient basis to obtain the names of all the partners.

Proposed **§ 66-71.6** ("Execution of certificate") specifies who should execute an assumed business name certificate. There are three changes from current G.S. 66-68(b). First, in the case of a partnership, only one general partner must sign, rather than each general partner. Second, rather than specifying particular corporate officers, the new statute requires only that the person signing be authorized to act for the corporation or LLC. Third, the new statute does not continue the requirement in current G.S. 66-68(b) that the certificate be acknowledged when executed, which may better accommodate electronic filing of assumed business name certificates.

Proposed **§ 66-71.7** ("Amendment of certificate") is new. It requires the filing of a properly executed certificate of amendment within 60 days after a change in any of the information required in the assumed business name certificate. The purpose is to ensure that the information on file is kept current. The only method for updating such information in current Article 14 is the filing of a new certificate of assumed name.

Proposed **§ 66-71.8** ("Withdrawal of assumed business name") continues the provision for withdrawal of an assumed business name when it is no longer being used. There are two changes to the required contents of the certificate of withdrawal. First, where current G.S. 66-68(f) requires a certificate of withdrawal to include the date of filing of the original certificate, proposed § 66-71.8 requires the register of deeds' book and page number and the identification number assigned by the Secretary of State, both of which are needed to associate the certificate of withdrawal with the related earlier filing. Second, the new provision does not bring forward the 20-day limit on delayed effective dates.

Proposed new Article 14A does not bring forward G.S. 66-68(f)'s provisions for a transfer of an assumed name. Reportedly, small business owners can be confused under the current law as to whether they should file a certificate of withdrawal, a certificate of transfer of assumed name, or both when they sell or transfer their business to someone else. Given that the new owners must file a new certificate of assumed name in any event under the current law, the General Statutes Commission decided that both provisions were not needed.

Proposed **§ 66-71.9** ("Secretary of State to maintain a centralized, statewide database of assumed business name information") is new. It requires the Secretary of State to develop, implement, and maintain a searchable online database, available to the public, of assumed business name information reported by the registers of deeds under proposed § 66-71.10. Currently, if a search of one register of deeds' records does not produce a d/b/a registration, the searcher cannot know whether none was ever filed in any county or whether there was a filing in another, perhaps adjacent, county, until all 100 counties in the State have been checked. The centralized database will make it possible to search only one location.

Subsection (a) of proposed **§ 66-71.10** ("Register of deeds to index certificates; transmission of data to central database") effectively brings forward G.S. 66-69 but conforms it to the requirements of Article 2 of Chapter 161, on the duties of the registers of deeds.

Proposed **§ 66-71.10(b)** is new. It requires the registers of deeds, within 30 days after the date of filing, to transmit a scanned image of a certificate filed under Article 14A to the Secretary of State and to enter specified information from the certificate into the central database maintained by the Secretary of State. The 30-day time limit is the same as the time limit for indexing, and the information to be entered into the statewide database is essentially the indexing information plus the list of counties in which the assumed business name will be used and the Secretary of State's identification number, if any, from the certificate being filed.

Proposed **§ 66-71.11** ("Forms") is new. It authorizes the Land Records Management Advisory Committee established under G.S. 147-54.3 to develop forms that may be used in complying with Article 14A and authorizes any person, including the registers of deeds, to make these forms available. New forms will be needed because somewhat different information is required under new Article 14A.

Proposed **§ 66-71.12** ("Effect of filing certificate") has no express counterpart in current Article 14. It provides that an assumed business name certificate is effective upon filing and remains in effect until withdrawn and that compliance with Article 14A does not confer any exclusive rights to the use of an assumed business name in this State, consistent with current law.

Proposed **§ 66-71.13** ("Copy of certificate prima facie evidence") updates G.S. 68-69.1.

Proposed **§ 66-71-14** ("Consequences of signing false certificate or violating Article") replaces the current penalty provisions of G.S. 66-71 with two new provisions:

- Signing a certificate that a person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is a Class 1 misdemeanor. This provision is included due to the removal of the current law's requirement for an acknowledgement. It is similar to criminal provisions for other fraudulent filings.

- Failure to file a certificate as required by Article 14A makes a person liable to anyone injured by the failure for reasonable expenses, including attorneys' fees, incurred in discovering information that should have been in the certificate. The expenses may be awarded in a civil action. The intent was to remedy harm caused by the failure to file.

Proposed **§ 66-71-15** ("Expiration of certificates filed under Article 14; transition provisions") is new. Subsection (a) provides for the expiration of existing certificates of assumed name on July 1, 2021. Anyone that intends to continue engaging in business under an assumed business name must file a new certificate. The expiration and re-registration is needed to ensure that all currently active assumed business names are incorporated into the new statewide database. Subsections (b) through (g) are transitional provisions.

Please note that the following provisions in current Article 14 were not brought forward:

- **G.S. 66-71(b)**, which provides that the failure of a person to comply with Article 14 does not prevent a recovery by that person in any civil action in the courts of this State, in light of opinions of the North Carolina Court of Appeals holding that the contrary requirements of **G.S. 1-69.1** are mandatory and that the failure of an unincorporated association and partnership to satisfy them is not exonerated by **G.S. 66-71(b)**.
- **G.S. 66-68(d)**, which exempts businesses with no physical presence whose only activities in a county are calls by traveling salespersons and mail order sales. The exemption was reported to be obsolete.
- **G.S. 66-68(e)**, which exempts any partnership or limited liability company engaged in rendering professional services if the licensing board met certain conditions. The General Statutes Commission believes the exemption is not being used; it solicited comments from the affected licensing boards and did not receive any that expressed a need to retain the exemption.

The bill also makes related conforming and technical amendments to other sections of the General Statutes. The proposed effective date is July 1, 2016.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 124
Judiciary I Committee Substitute Adopted 4/28/15
Third Edition Engrossed 4/29/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S124-PCS45534-RNxr-50

Short Title: Assumed Bus. Name/IC Contempt/Parks. (Public)

Sponsors:

Referred to:

February 27, 2015

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW GOVERNING THE USE OF ASSUMED BUSINESS NAMES AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; TO CLARIFY HOW THE INDUSTRIAL COMMISSION REFERS MATTERS OF INDIRECT CRIMINAL CONTEMPT TO THE DISTRICT COURT; TO REMOVE CERTAIN PROPERTY FROM THE STATE NATURE AND HISTORIC PRESERVE; AND TO AUTHORIZE THE DELETION OF VARIOUS PROPERTIES FROM THE STATE PARKS SYSTEM.

The General Assembly of North Carolina enacts:

PART I. ASSUMED BUSINESS NAME ACT

SECTION 1. Article 14 of Chapter 66 of the General Statutes is repealed.

SECTION 2. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 14A.
"Assumed Business Name Act.

"**§ 66-71.1. Short title.**

This Article may be cited as the "Assumed Business Name Act."

"**§ 66-71.2. Statement of purpose.**

The purpose of this Article is to afford the public a means of ascertaining the real name of persons engaging in business in this State under an assumed business name by requiring those persons to register the assumed business name as provided in this Article.

"**§ 66-71.3. Definitions.**

The following definitions apply in this Article:

(1) Assumed business name. –

a. In the case of an individual, any name other than a real name of the individual.

b. In the case of a partnership other than a limited liability partnership or limited partnership, any name other than a real name of each of the general partners of the partnership.

c. In the case of a limited liability partnership, any name other than the name registered with the Secretary of State.

d. In the case of a limited partnership, any name other than the name stated in its certificate of limited partnership filed with the Secretary of State.

e. In the case of a limited liability company, any name other than the name stated in its articles of organization filed with the Secretary of State.

f. In the case of a corporation, any name other than the corporate name stated in its articles of incorporation filed with the Secretary of State.

g. In the case of a trust, any name other than the name specified in the trust instrument or, if the trust instrument does not specify a name for the trust, any name other than the name of the trustee and a designation of the trust for which the trustee is acting.

h. In the case of any other person, any name other than a real name of the person.

(2) Person. – Includes an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity.

"**§ 66-71.4. Filing of certificate; exception.**

(a) Before any person engages in business in this State under an assumed business name, the person must file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. If the person is or will be engaged in business in multiple counties, filing is required in only one of those counties.

(b) A person who engages in business in this State under more than one assumed business name must file an assumed business name certificate for each assumed business name. The person may, however, include no more than five assumed business names in one assumed business name certificate if that same person is or will be engaging in business under each of the assumed business names listed in the certificate.

(c) This Article does not apply to a political committee or a referendum committee that has filed a statement of organization with the State Board of Elections or a county board of elections as required by G.S. 163-278.7 or G.S. 163-278.9A, as applicable.

"**§ 66-71.5. Contents of certificate.**

An assumed business name certificate must include:

(1) The assumed business name.

(2) A real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include a real name of five general partners or of each general partner, whichever is fewer.

(3) The nature of the business.

(4) The street address of the principal place of business.

(5) Each county where the person uses or will be using the assumed business name to engage in business.

"**§ 66-71.6. Execution of certificate.**

An assumed business name certificate must be executed as follows:

(1) In the case of an individual, the certificate must be signed by the individual.

(2) In the case of a partnership or limited partnership, the certificate must be signed by a general partner.

(3) In the case of a corporation or limited liability company, the certificate must be signed in the name of the corporation or limited liability company by an officer of the corporation or a manager of the limited liability company or by another individual authorized by law to act for the corporation or limited liability company.

(4) In the case of any other person, the certificate must be signed in the name of the person by an individual authorized to act for the person.

"**§ 66-71.7. Amendment of certificate.**

Any person that has filed an assumed business name certificate must, within 60 days after a change in any of the information required in the assumed business name certificate, file a certificate of amendment in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name and a real name of the person engaging in business under the assumed business name as stated in the original, or most recently amended, assumed business name certificate.

(2) The book and page number of the original filing.

(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).

(4) How the assumed business name certificate is to be amended.

"**§ 66-71.8. Withdrawal of assumed business name.**

Any person filing an assumed business name certificate as required by this Article may, upon ceasing to engage in business in this State under the assumed business name, withdraw the assumed business name by filing a certificate of withdrawal in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name being withdrawn.

(2) The book and page number of the original filing.

(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).

(4) A real name of the person engaging in business under the assumed business name and that person's current address.

(5) A statement that the person has ceased engaging in business under the assumed business name.

(6) The effective date of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal.

"**§ 66-71.9. Secretary of State to maintain a centralized, statewide database of assumed business name information.**

(a) The Secretary of State shall develop, implement, and maintain a searchable online database of assumed business name information reported under G.S. 66-71.10. The system must allow information to be entered and retrieved from the system by the registers of deeds and must be available for searches by the public.

(b) The Secretary of State may adopt rules to implement the statewide online database.

"**§ 66-71.10. Register of deeds to index certificates; transmission of data to central database.**

(a) The register of deeds of each county must index in accordance with Article 2 of Chapter 161 of the General Statutes every assumed business name with respect to which an assumed business name certificate, a certificate of amendment, or a certificate of withdrawal has been filed in that county.

(b) Not later than 30 days after the date a certificate under this Article is filed, the register of deeds must transmit a scanned image of the certificate to the Secretary of State and enter into the central database maintained by the Secretary of State under G.S. 66-71.9 the assumed business name, the real name of each person engaging in business under that name, the type of certificate, the county in which the certificate was filed, and, in the case of a certificate of amendment or

certificate of withdrawal, the identification number assigned to the assumed business name by the Secretary of State (SOS ID).

"**§ 66-71.11. Forms.**

(a) The Land Records Management Advisory Committee established under G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this Article, but their use is not mandatory.

(b) Any person, including the registers of deeds, may make available the forms developed under subsection (a) of this section.

"**§ 66-71.12. Effect of filing certificate.**

(a) An assumed business name certificate filed under this Article is effective upon filing and remains in effect until withdrawn under G.S. 66-71.8.

(b) Compliance with this Article does not confer any exclusive rights to the use of an assumed business name in this State.

"**§ 66-71.13. Copy of certificate prima facie evidence.**

A copy of a certificate filed under this Article, duly certified by the register of deeds of the office in which it was filed, is prima facie evidence of the facts required to be stated in the certificate.

"**§ 66-71.14. Consequences of signing false certificate or violating Article.**

(a) A person signing a certificate under this Article that the person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is guilty of a Class 1 misdemeanor.

(b) A person failing to file an assumed business name certificate or a certificate of amendment as required by this Article is liable to any person injured by the failure for the reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a reasonable purpose, the information required to be stated in the assumed business name certificate or certificate of amendment. Notwithstanding this subsection, a person is not liable for expenses caused by an error or ambiguity in describing the nature of the business in an assumed business name certificate under G.S. 66-71.5 or a certificate of amendment under G.S. 71.7.

"**§ 66-71.15. Expiration of certificates filed under Article 14; transition provisions.**

(a) All certificates of assumed name filed under former Article 14 of this Chapter expire July 1, 2022, and the provisions of that former Article continue to apply to them until that date except as provided in this section. On or after that date, any person that (i) is listed as an owner of the business in a certificate of assumed name filed under that former Article and (ii) desires to continue engaging in business in this State under the assumed business name after that date must file an assumed business name certificate under this Article.

(b) At least one person listed as an owner of the business in a certificate of assumed name under former Article 14 of this Chapter must file an assumed business name certificate before the certificate of assumed name expires under subsection (a) of this section if any of the following occur:

(1) A general partnership would have been required to file a new certificate of assumed name under former G.S. 66-68(c) due to the withdrawal or addition of a partner.

(2) Any of the information in the certificate of assumed name required under former G.S. 66-68(a) has changed, and the person desires to continue engaging in business in this State.

(c) No person shall file a new certificate of assumed name under former Article 14 of this Chapter on or after July 1, 2017. Any document or other record filed on or after that date to register an assumed business name is deemed to be filed under this Article, even if it is described as a certificate of assumed name rather than an assumed business name certificate, or if it expressly refers to former Article 14 of this Chapter.

(d) A person that filed a certificate of assumed name that has not expired may withdraw the assumed name under the provisions of former G.S. 66-68(f). Any such withdrawal is deemed to be a withdrawal under former G.S. 66-68(f), even if it is described as a withdrawal under this Article.

(e) No person shall file a certificate of amendment under this Article to a certificate of assumed name filed under former Article 14 of this Chapter. If any such amendment is nevertheless filed, it is not effective as a certificate of amendment or as an assumed business name certificate under this Article.

(f) The register of deeds shall not transmit a scanned image to the Secretary of State, or enter any of the information required by G.S. 66-71.10 into the central database maintained by the Secretary of State, of any withdrawal or transfer of an assumed name or any amendment to a certificate of assumed name when the certificate of assumed name to which the withdrawal, transfer, or amendment relates was filed before July 1, 2017.

(g) Other than this section, this Article does not apply to a certificate of assumed name or a withdrawal of an assumed name under former Article 14 of this Chapter."

PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES

SECTION 3.(a) G.S. 1-69.1 reads as rewritten:

"**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may ~~hereafter~~ sue or be sued under the name by which they are commonly known and called, or under which they are ~~doing~~ engaging in business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege ~~the specific location of the recordation required by G.S. 66-68.~~that it has filed a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 3.(b) Effective July 1, 2021, G.S. 1-69.1(a)(3), as amended by this section, reads as rewritten:

"(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege that it has filed ~~a certificate of assumed name under former Article 14 of Chapter 66 of the General Statutes or~~ an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes."

SECTION 4. G.S. 53-208.7(a) reads as rewritten:

"(a) Each application for a license under this Article shall be made in writing, under oath, and in a form prescribed by the Commissioner. For all applicants, each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any assumed ~~or trade~~ business name used by the applicant in the conduct of its business, and the location of the applicant's business records.

...."

SECTION 5. G.S. 55D-20(d) reads as rewritten:

"(d) The use of assumed business names or fictitious names, as provided for in ~~Chapter 66,~~ Chapter 66 of the General Statutes, is not affected by this Chapter or by Chapter 55, 55A, 57D, or 59 of the General Statutes."

SECTION 6. G.S. 58-70-5 reads as rewritten:

"**§ 58-70-5. Application to Commissioner for permit.**

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which ~~such~~ the person, firm, corporation or association desires to carry on the collection agency business as ~~hereinafter defined. Such~~defined in this Article. The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

~~(a)~~(1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if ~~different;~~different.

~~(b)~~(2) If the applicant is a corporation,

~~(1)~~a. A certified copy of the board of director's resolution authorizing the submission of the application;

~~(2)~~b. An authenticated copy of the Articles of Incorporation and all amendments thereto;

~~(3)~~c. An authenticated copy of the bylaws or other governing instruments;

~~(4)~~d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of ~~State;~~State.

(3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.

(4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.

(5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.

(6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.

(7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.

(8) A statement certifying that there are no unsatisfied judgments against the applicant.

(9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.

(10) The appropriate permit fee as required by G.S. 58-70-35.

(11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or

proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.

(12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

(13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.

(14) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his or her inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.

(15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b1) In addition to the information required by ~~subsection (b)~~ subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the ~~Commissioner;~~Commissioner.

~~(c) If the applicant is a partnership, an authenticated copy of the then current partnership agreement;~~

~~(d) If the trade name is used, certificates showing that the trade name has been filed as required by G.S. 66-68;~~

~~(e) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20;~~

~~(f) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings;~~

~~(g) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in North Carolina;~~

~~(h) A statement certifying that there are no unsatisfied judgments against the applicant;~~

~~(i) A list of all telephone numbers assigned to, or to be used by the applicant in the operation of the collection agency;~~

~~(j) The appropriate permit fee as required by G.S. 58-70-35;~~

~~(k) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant;~~

~~(l) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.~~

~~(m) A statement certifying that no officer, individual proprietor or partner of the applicant has been convicted of a felony involving moral turpitude, or any violation of any State or federal debt collection law.~~

~~(n) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation;~~

~~(o) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.~~

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

(1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with ~~subsection (k)~~ subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in ~~subsection (k)~~subdivision (a)(11) of this section."

SECTION 7. G.S. 59-84.1 reads as rewritten:

"**§ 59-84.1. Partnership to comply with ~~"assumed name" statute;~~Assumed Business Name Act; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of ~~Articles 14~~ Articles 14A and 15 of Chapter 66 of the General Statutes in all cases in which the ~~same~~ Articles are applicable.

...."

SECTION 8. G.S. 62-115 reads as rewritten:

"**§ 62-115. Issuance of partnership franchises.**

No franchise shall be issued under this Article to two or more persons until ~~such~~ the persons have executed a partnership agreement, filed a copy of ~~said~~ the agreement with the Commission, and indicated to the Commission, in writing, that they have complied with ~~Article 14~~ Article 14A of Chapter 66 of the General Statutes relating to ~~doing~~ engaging in business under an assumed business name."

SECTION 9. G.S. 66-262 reads as rewritten:

"**§ 66-262. Filing information.**

(a) Each filing submitted to the Secretary shall contain all of the following information:

(1) The name or names, including any assumed business names, under which the telephonic seller is doing or intends to do business in this State.

...."

PART III. CLARIFY INDUSTRIAL COMMISSION REFERRAL OF INDIRECT CONTEMPT

SECTION 10. G.S. 97-80(h) reads as rewritten:

"(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for willful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. To initiate plenary proceedings in district court for indirect criminal contempt, the Commission shall issue and file with the clerk of court an order to appear and show cause pursuant to G.S. 5A-15(a) and, if appropriate, an order for arrest pursuant to G.S. 5A-16(b) and G.S. 15A-305. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge."

PART IV. REMOVE PROPERTY FROM STATE NATURE AND HISTORIC PRESERVE AND AUTHORIZE DELETION OF PROPERTIES FROM STATE PARK SYSTEM

SECTION 11.(a) Article 25B of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

"**§ 143-260.10H. Removal of land in Gorges State Park from the State Nature and Historic Preserve.**

(a) Notwithstanding the provisions of G.S. 143-260.10(23), the portion of that certain tract or parcel of property at Gorges State Park in Transylvania County, described in Deed Book 153, Page 083, and containing approximately 4.2 acres as shown as Tract "A" in a survey by E. Roger Raxter, Inc., entitled State of North Carolina and Blue Ridge Mountains RV Resort Property

Owners' Association, Inc., and dated March 20, 2016, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of this section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Gorges State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land.

"**§ 143-260.10I. Removal of land in Jockey's Ridge State Park from the State Nature and Historic Preserve.**

Notwithstanding the provisions of G.S. 143-260.10(15), the portion of that certain tract or parcel of property at Jockey's Ridge State Park in Dare County, described in Deed Book 222, Page 732, and Deed Book 227, Page 501, and containing 0.6 acres as shown in a survey by Timmons Group entitled Plat Showing a Proposed Dominion North Carolina Power Easement Across the Properties of the State of North Carolina (Jockey's Ridge State Park) and dated December 18, 2014, is removed from the State Nature and Historic Preserve.

"**§ 143-260.10J. Removal of land in Mitchell's Millpond State Natural Area from the State Nature and Historic Preserve.**

(a) Notwithstanding the provisions of G.S. 143-260.10(26), the portion of that certain tract or parcel of property at Mitchell's Millpond State Natural Area in Wake County, described in Deed Book 4186, Page 756, and containing 0.08 acres as shown in a survey by the North Carolina Department of Transportation, Right-of-Way Branch, entitled State of North Carolina, Parcel 002, and dated March 11, 2015, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of this section is deleted from the State Parks System pursuant to G.S. 143B-135.54.

(c) The State may only exchange this property for other property for the expansion of Mitchell's Millpond State Natural Area or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land."

SECTION 11.(b) Pursuant to G.S. 143B-135.54, the General Assembly authorizes the deletion of the following property from the State Parks System:

The portion of that certain tract or parcel of property at Hanging Rock State Park in Stokes County, described in Deed Book 267, Page 159, and containing approximately 1.5 acres as shown in a survey by C.E. Robertson & Associates, P.C. entitled Plat of Survey for North Carolina Division of Parks and Recreation showing "Camp Sertoma Tracts," Sheet 7 of 7, and dated June 18, 2015, and revised April 6, 2016; and the portion shown as Deed Overlap in a survey by C.E. Robertson & Associates, P.C. entitled Plat of Survey for North Carolina Division of Parks and Recreation showing "Camp Sertoma Tracts," Sheet 2 of 7, and dated June 18, 2015; and the portion of that certain tract or parcel of property in Stokes County described in Deed Book 368, Page 415, and containing approximately 1.058 acres shown as Deed Overlap in a survey by C.E. Robertson & Associates, P.C. entitled Plat of Survey for North Carolina Division of Parks and Recreation showing "Camp Sertoma Tracts," Sheet 5 of 7, and dated June 18, 2015. The State may only exchange this property for other property for the expansion of Hanging Rock State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land.

PART V. EFFECTIVE DATE AND APPLICABILITY PROVISIONS

SECTION 12. Sections 1 through 9 of this act become effective July 1, 2017, and do not affect a civil action or proceeding commenced or a right accrued before July 1, 2017. Sections 1 through 9 of this act become effective only if funds are appropriated by the 2015 General Assembly, 2016 Regular Session, to implement the provisions of G.S. 66-71.9, as enacted by Section 2 of this act. Section 10 of this act becomes effective October 1, 2016, and applies to

proceedings for indirect criminal contempt filed on or after that date. The remainder of this act is effective when it becomes law.

House Committee on Judiciary II
Wednesday, June 22, 2016 at 15 Minutes after House Finance
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Judiciary II met at 15 Minutes After House Finance on June 22, 2016 in Room 643 of the Legislative Office Building. Representatives Blust, Bumgardner, Conrad, Faircloth, Hurley, Jordan, McGrady, Michaux, Reives, Richardson, Ross, Saine, Salmon, and Stam attended.

Representative John M. Blust presided. Chairman Blust called the meeting to order at 4:07 PM. The Chairman recognized the Sergeants-at-Arms and introduced the Pages.

The following bill was considered:

SB 792 State IT Contracts/Contractor Liability. (Senators Tarte and Hise)

Chairman Blust recognized Representative Saine to present the bill. Representative Richardson made the motion to bring the Proposed Committee Substitute before the committee, and the motion passed. Representative Saine was recognized to explain the bill. After a brief discussion, Representative Richardson was recognized to offer an amendment, and the amendment was adopted. Further discussion followed. Mr. Ed Turlington, Brooks Pierce, representing the NC Technology Association, and Ms. Meghan Cook, NC Department of Information Technology, spoke in support of the bill. Representative Bumgardner made the motion for a favorable report for the Proposed Committee Substitute as amended, with an unfavorable report for the original bill. The motion carried, and the Proposed Committee Substitute received a favorable report as amended.

The meeting adjourned at 4:30 PM.

Respectfully submitted,

Representative John M. Blust, Chairman
Presiding

Gennie L. Thurlow, Committee Clerk

Corrected #1: Room 643 LOB

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 II** will meet as follows:

DAY & DATE: Wednesday, June 22, 2016
TIME: **15 Minutes After House Finance**
LOCATION: **643 LOB**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 792	State IT Contracts/Contractor Liability.	Senator Tarte Senator Hise

Respectfully,

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:32 AM on Wednesday, June 22, 2016.

___ Principal Clerk
___ Reading Clerk – House Chamber

Emma Benson (Committee Assistant)

House Committee on Judiciary II
Wednesday, June 22, 2016, 15 Minutes after House Finance
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative John M. Blust, Chairman

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 792	State IT Contracts/Contractor Liability.	Senator Tarte Senator Hise

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY II COMMITTEE REPORT

Representative John M. Blust, Co-Chair
Representative Jonathan C. Jordan, Co-Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB **792** **(CS#1)** State IT Contracts/Contractor Liability.

Draft Number:	S792-PCS35373-ST-111
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Saine

TOTAL REPORTED: 1



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S D

SENATE BILL 792
Information Technology Committee Substitute Adopted 5/25/16
PROPOSED HOUSE COMMITTEE SUBSTITUTE S792-CSST-111 [v.6]
06/21/2016 07:08:41 PM

Short Title: State IT Contracts/Contractor Liability. (Public)

Sponsors:

Referred to:

May 2, 2016

A BILL TO BE ENTITLED

AN ACT SETTING THE LIMITS OF CONTRACTOR LIABILITY UNDER STATE INFORMATION TECHNOLOGY PROCUREMENT CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-1350 is amended by adding a new subsection to read:

"(h1) All contracts subject to the provisions of this Part shall include a limitation on the contractor's liability to the State for damages. Except as otherwise provided in this subsection, the limitation of liability shall be for damages arising from any cause whatsoever, regardless of the form of action. The amount of liability shall be determined based on the nature of the goods or services covered by the contract; however, there shall be a presumptive limitation of no more than two times the value of the contract. Limitation of liability pursuant to this subsection shall specifically include, but not be limited to, the contractor's liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data.

The amount of liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data may be raised to no more than three times the value of the contract if all of the following apply:

(1) The State CIO completes a risk assessment prior to the bid solicitation or request for proposal.

(2) The risk assessment determines that an increase in the liability amount is necessary to protect the State's best interests.

(3) The bid solicitation or request for proposal indicates that increased liability will be required for the resulting contract.

The State CIO shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology no later than March 1 regarding the contracts containing liability amounts of more than two times the value of the contract.

Prior to entering into any contract subject to the provisions of this Part, the Department or the separate agency, as applicable, shall reasonably determine that the contractor possesses sufficient financial resources, either independently or through third-party sources such as insurance, to satisfy the agreed upon limitation of liability. The limitation of liability required by this subsection shall not be required to apply to liability of the contractor for intentional or willful misconduct, damage to tangible personal property, physical injuries to persons, or any notification costs resulting from compliance with G.S. 132-1.10(c1). Nothing in this subsection (i) limits the contractor's liability directly to third parties or (ii) affects the rights and obligations related to

contribution among joint tortfeasors established by Chapter 1B of the General Statutes and other applicable law."

SECTION 2. This act is effective when it becomes law and applies to contracts entered into, extended via the exercise of options or otherwise, renewed, or amended on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. S 792-CSST-111 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Richardson
Sen.)

moves to amend the bill on page 1, line 31

( ) WHICH CHANGES THE TITLE

by deleting "be required to".

SIGNED William D. Richardson

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 792:
State IT Contracts/Contractor Liability.

2016-2017 General Assembly

Committee:	House Judiciary II	**Date:**	June 22, 2016
Introduced by:	Sens. Tarte, Hise	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition S792-CSST-111		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 792 would set limits of contractor liability under State information technology procurement contracts.***

BILL ANALYSIS: The PCS for Senate Bill 792 would require that all information technology procurement contracts subject to the policies and procedures established by the State CIO for information technology procurement include a limitation on the contractor's liability for damages arising from any cause whatsoever, regardless of the form of action. The amount of liability shall be presumed to be no more than two times the value of the contract. The limitation must include the contractor's liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data.

The amount of liability for damages related to data breaches may be raised to no more than three times the value of the contract if the State CIO does a risk assessment prior to the bid solicitation or request for proposal (RFP) that determines that an increase in the liability amount is necessary to protect the State's best interests and indicates in the bid solicitation or RFP that increased liability will be required for the resulting contract. The State CIO must report annually to Governmental Operations and IT Oversight on any contracts containing increased liability amounts.

The liability limitation is not required to apply to liability of the contractor for intentional or willful misconduct, damage to tangible personal property, physical injuries to persons, or any notification costs resulting from compliance with G.S. 132-1.10(c1). Nothing in the act limits liability to third parties or affects rights of contribution among joint tortfeasors.

EFFECTIVE DATE: This act is effective when it becomes law and applies to contracts entered into, extended via the exercise of options or otherwise, renewed, or amended on or after that date.

Karen Cochrane-Brown
Director

S792-SMSA-146 CSST-111 -V-1

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S 2

SENATE BILL 792*
Information Technology Committee Substitute Adopted 5/25/16

Short Title: State IT Contracts/Contractor Liability. (Public)

Sponsors:

Referred to:

May 2, 2016

A BILL TO BE ENTITLED

AN ACT SETTING THE LIMITS OF CONTRACTOR LIABILITY UNDER STATE INFORMATION TECHNOLOGY PROCUREMENT CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-1350 is amended by adding a new subsection to read:

"(h1) All contracts subject to the provisions of this Part shall include a limitation on the contractor's liability to the State for damages. Except as otherwise provided in this subsection, the limitation of liability shall be for damages arising from any cause whatsoever, regardless of the form of action. The amount of liability shall be determined based on the nature of the goods or services covered by the contract; however, there shall be a presumptive limitation of no more than two times the value of the contract. Limitation of liability pursuant to this subsection shall specifically include, but not be limited to, the contractor's liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data.

The amount of liability for damages and any other losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data may be raised to no more than five times the value of the contract if all of the following apply:

(1) The State CIO completes a risk assessment prior to the bid solicitation or request for proposal.

(2) The risk assessment determines that an increase in the liability amount is necessary to protect the State's best interests.

(3) The bid solicitation or request for proposal indicates that increased liability will be required for the resulting contract.

The State CIO shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology no later than March 1 regarding the contracts containing liability amounts of more than two times the value of the contract.

Prior to entering into any contract subject to the provisions of this Part, the Department or the separate agency, as applicable, shall reasonably determine that the contractor possesses sufficient financial resources, either independently or through third-party sources such as insurance, to satisfy the agreed upon limitation of liability. The limitation of liability required by this subsection shall not be required to apply to liability of the contractor for intentional or willful misconduct, damage to tangible personal property, or physical injuries to persons. Nothing in this subsection (i) limits the contractor's liability directly to third parties or (ii) affects the rights and obligations related to contribution among joint tortfeasors established by Chapter 1B of the General Statutes and other applicable law."

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

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary II

DATE: 6-22-2016 Room: 643

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Joe Crook
4. Name: Russell Salisbury
5. Name: _____

Senate Sgt-At Arms:

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

HOUSE PAGES
(JUDICIARY II)

Week of June 20-23, 2016

Name:	County:	Sponsor:
ASHLEY KING	NASH	REP. BOBBIE RICHARDSON
PARIS PUGH	JOHNSTON	REP. JAMES LANGDON

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-22-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Sevier	NIRA
Perry Newell	SOG
Doug Mistrow	PSG
Sarah Hardin	CTR
Steve Brewer	CTR
Meghan Cook	NC DIT
Susanna Birdsong	ACLU-NC
Mia Bailey	Electricities
Lori Ann Harris	~~LAHA~~
David Ferrell	VB
Lisa Martin	Cap. Adv.

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-22-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRape
Lex Arthur	NCRape
Elizabeth Robin	NCPA
Madeline Hurley	Ward and Smith, P.A.
[illegible]	[illegible]
Frank Gray	NCRLA
Jabi Cox	NCC
Meaghan Innis	NCC
Phoebe Landon	NWC
Katy Kingsbury	SP
Wendy [illegible]	Justice Fuse

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-22-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom West	NCICA
Brian Maldwyn	NCSBA
Brian Perkins	DHHS
Ed Thrash	BP
John Bosnell	SAS
Don McCord	SAS
DANIEL BALM	TROUTMAN SANDERS
caroline miller	AMGA
Bailey Trantham	NCDPI
Arianna Allen	NCDPI
Rachel Bowman	NCDPI
Chris J	NCDP

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-22-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carrie Hung	MCA

VISITOR REGISTRATION SHEET

House Committee on Judiciary II — 6-22-2016

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Stevens	SA
[signature]	SA
Breeanna Zamora	VSMC