

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 141
Judiciary II Committee Substitute Adopted 4/13/11
House Committee Substitute Favorable 6/19/12

Short Title: Law Enforcement/Various Other Changes.

(Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE NEW FELONY FIRST-DEGREE TRESPASS OFFENSES, TO MAKE VARIOUS CHANGES REGARDING THE PROCEDURES FOR A MOTION FOR APPROPRIATE RELIEF, TO AMEND THE PROCEDURE FOR IMMEDIATE LICENSE REVOCATIONS FOR PROVISIONAL LICENSEES CHARGED WITH CERTAIN CRIMINAL MOVING VIOLATIONS, TO INCREASE THE BENCHMARK FOR PUBLICLY BIDDING LOTTERY COMMISSION CONTRACTS, TO MODIFY THE LOTTERY COMMISSION CONFLICT OF INTEREST PROVISIONS, AND TO CLARIFY THAT CERTAIN CHANGES TO PAYABLE ON DEATH CONTRACTS DID NOT CHANGE THE PROCEDURES FOR CREATING THOSE CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-159.12 reads as rewritten:

"§ 14-159.12. First degree trespass.

(a) Offense. – A person commits the offense of first degree trespass if, without authorization, he enters or remains:

- (1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
- (2) In a building of another.

(b) Misdemeanor Classification. – First degree trespass is a Class 2 ~~misdemeanor~~ misdemeanor except as provided otherwise by subsection (c) of this section.

(c) Felony Classification. – An offense under subsection (a) of this section is punishable as a felony in the following circumstances:

- (1) Except as provided otherwise in subdivision (2) of this subsection, the offense is a Class I felony if it is committed on the premises of any of the following:

- a. A facility that is owned or operated by an electric power supplier as defined in G.S. 62-133.8(a)(3) and that is either an electric generation facility, a transmission substation, a transmission switching station, a transmission switching structure, or a control center used to manage transmission operations or electrical power generating at multiple plant locations.
- b. A dam or reservoir that is used by an electric power supplier as defined in G.S. 62-138(a)(3) to generate hydroelectric power.



1 c. Any facility used or available for use in the collection, treatment,
2 testing, storing, pumping, or distribution of water for a public water
3 system.

4 d. Any facility, including any liquefied natural gas storage facility or
5 propane-air facility, that is owned or operated by a natural gas local
6 distribution company, natural gas pipeline carrier operating under a
7 certificate of public convenience and necessity from the Utilities
8 Commission, municipal corporation operating a municipally owned
9 gas distribution system, or regional natural gas district organized and
10 operated pursuant to Article 28 of Chapter 160A of the General
11 Statutes used for transmission, distribution, measurement, testing,
12 regulating, compression, control, or storage of natural gas.

13 (2) If, in addition to the circumstances set out in subdivision (1) of this
14 subsection, the offense also includes any of the following elements, then the
15 offense is a Class H felony:

16 a. The offense is committed with the intent to disrupt the normal
17 operation of any of the facilities, dams, or reservoirs described in
18 subdivision (1) of this subsection.

19 b. The offense involves an act that places either the offender or others
20 on the premises at risk of serious bodily injury.

21 c. The offense is committed by three or more persons acting in
22 concert."

23 **SECTION 2.(a)** G.S. 15A-1413 reads as rewritten:

24 "**§ 15A-1413. Trial judges empowered to act.**

25 (a) A motion for appropriate relief made pursuant to G.S. 15A-1415 may be heard and
26 determined in the trial division by any judge ~~who~~who (i) is empowered to act in criminal
27 matters in the district court district as defined in G.S. 7A-133 or superior court district or set of
28 districts as defined in G.S. 7A-41.1, as the case may be, in which the judgment was
29 ~~entered~~entered and (ii) is assigned pursuant to this section to review the motion for appropriate
30 relief and take the appropriate administrative action to dispense with the motion.

31 (b) The judge who presided at the trial is empowered to act upon a motion for
32 appropriate relief made pursuant to G.S. 15A-1414. ~~He~~The judge may act even though ~~he~~the
33 judge is in another district or even though his~~the judge's commission has expired.~~ expired;
34 however, if the judge who presided at the trial is still unavailable to act, the senior resident
35 superior court judge or the chief district court judge, as appropriate, shall assign a judge who is
36 empowered to act under subsection (a) of this section.

37 ~~(e) When a motion for appropriate relief may be made before a judge who did not hear~~
38 ~~the case, he may, if it is practicable to do so, refer all or a part of the matter for decision to the~~
39 ~~judge who heard the case.~~

40 (d) All motions for appropriate relief filed in superior court shall, when filed, be
41 referred to the senior resident superior court judge, who shall assign the motion as provided by
42 this section for review and administrative action, including, as may be appropriate, dismissal,
43 calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other
44 appropriate actions.

45 All motions for appropriate relief filed in district court shall, when filed, be referred to the
46 chief district court judge, who shall assign the motion as provided by this section for review
47 and administrative action, including, as may be appropriate, dismissal, calendaring for hearing,
48 entry of a scheduling order for subsequent events in the case, or other appropriate actions.

49 (e) The assignment of a motion for appropriate relief filed under G.S. 15A-1415 is in
50 the discretion of the senior resident superior court judge or chief district court judge as
51 appropriate. However, when practicable, a motion for appropriate relief filed under

1 G.S. 15A-1415 shall be assigned for review and administrative action to the judge who
2 presided at the trial, accepted the guilty plea, or imposed the sentence depending on the nature
3 of the relief sought."

4 **SECTION 2.(b)** G.S. 15A-1420 reads as rewritten:

5 **"§ 15A-1420. Motion for appropriate relief; procedure.**

6 (a) Form, Service, Filing.

7 (1) A motion for appropriate relief must:

8 a. Be made in writing unless it is made:

9 1. In open court;

10 2. Before the judge who presided at trial;

11 3. Before the end of the session if made in superior court; and

12 4. Within 10 days after entry of judgment;

13 b. State the grounds for the motion;

14 c. Set forth the relief sought;

15 c1. If the motion for appropriate relief is being made in superior court
16 and is being made by an attorney, the attorney must certify in writing
17 that there is a sound legal basis for the motion and that it is being
18 made in good faith; and that the attorney has notified both the district
19 attorney's office and the attorney who initially represented the
20 defendant of the motion; and further, that the attorney has reviewed
21 the trial transcript or made a good-faith determination that the nature
22 of the relief sought in the motion does not require that the trial
23 transcript be read in its entirety. In the event that the trial transcript is
24 unavailable, instead of certifying that the attorney has read the trial
25 transcript, the attorney shall set forth in writing what efforts were
26 undertaken to locate the transcript; and

27 d. Be timely filed.

28 (2) A written motion for appropriate relief must be served in the manner
29 provided in G.S. 15A-951(b). When the written motion is made more than
30 10 days after entry of judgment, service of the motion and a notice of
31 hearing must be made not less than five working days prior to the date of the
32 hearing. When a motion for appropriate relief is permitted to be made orally
33 the court must determine whether the matter may be heard immediately or at
34 a later time. If the opposing party, or his counsel if he is represented, is not
35 present, the court must provide for the giving of adequate notice of the
36 motion and the date of hearing to the opposing party, or his counsel if he is
37 represented by counsel.

38 (3) A written motion for appropriate relief must be filed in the manner provided
39 in G.S. 15A-951(c).

40 (4) An oral or written motion for appropriate relief may not be granted in district
41 court without the signature of the district attorney, indicating that the State
42 has had an opportunity to consent or object to the motion. However, the
43 court may grant a motion for appropriate relief without the district attorney's
44 signature 10 business days after the district attorney has been notified in
45 open court of the motion, or served with the motion pursuant to
46 G.S. 15A-951(c).

47 (5) An oral or written motion for appropriate relief made in superior court and
48 made by an attorney may not be granted by the court unless the attorney has
49 complied with the requirements of sub-subdivision c1. of subdivision (1) of
50 this subsection.

51 (b) Supporting Affidavits.

- 1 (1) A motion for appropriate relief made after the entry of judgment must be
2 supported by affidavit or other documentary evidence if based upon the
3 existence or occurrence of facts which are not ascertainable from the records
4 and any transcript of the case or which are not within the knowledge of the
5 judge who hears the motion.
- 6 (2) The opposing party may file affidavits or other documentary evidence.
- 7 (b1) Filing Motion With Clerk; Review of Motion by Judge-Clerk.
- 8 (1) The proceeding shall be commenced by filing with the clerk of superior
9 court of the district wherein the defendant was indicted a motion, with
10 service on the district attorney in noncapital cases, and service on both the
11 district attorney and Attorney General in capital cases.
- 12 (2) The clerk, upon receipt of the motion, shall place the motion on the criminal
13 docket. ~~The clerk shall promptly bring the motion, or a copy of the motion,~~
14 ~~to the attention of the resident judge or any judge holding court in the county~~
15 ~~or district. When a motion is placed on the criminal docket, the clerk shall~~
16 promptly bring the motion, or a copy of the motion, to the attention of the
17 senior resident superior court judge or chief district court judge, as
18 appropriate, for assignment to the appropriate judge pursuant to
19 G.S. 15A-1413.
- 20 (b2) Noncapital Cases. – Assignment of Motion for Review; Initial Review of Motion;
21 Time Frame for Hearings and Ruling on Motion.
- 22 (1) ~~In noncapital cases, the judge shall review the motion and enter an order~~
23 ~~whether the defendant should be allowed to proceed without the payment of~~
24 ~~costs, with respect to the appointment of counsel, and directing the State, if~~
25 ~~necessary, to file an answer. In noncapital cases, the resident superior court~~
26 judge or chief district court judge, as appropriate, shall, within 30 days of the
27 filing of the motion, assign the motion for initial review to the appropriate
28 judge as provided in G.S. 15A-1413.
- 29 (2) The assigned judge, no later than 30 working days after the assignment,
30 shall review the motion and issue a written initial review order that
31 concludes the initial review of the motion in one of the following manners:
32 (i) by dismissing the motion for lack of merit on its face, (ii) by directing
33 the State, if necessary, to file an answer within 30 days of the date of the
34 initial review order, or (iii) by dispensing with the requirement that the State
35 file an answer and instead order a hearing. Unless the motion is dismissed,
36 the initial review order shall also indicate whether the defendant shall be
37 allowed to proceed without the payment of costs; indicate whether counsel
38 shall be appointed; and calendar a hearing on the motion within the
39 appropriate time period as set out in subdivision (3) of this subsection.
- 40 (3) Unless provided otherwise by this subsection, if the court determines that an
41 evidentiary hearing is required, then the hearing must be held within 90 days
42 from the date on which the initial review order was issued; if no evidentiary
43 hearing is required, then the hearing must be held within 60 days from the
44 date on which the initial review order was issued. If, in the initial review
45 order, the court orders the State to file an answer and the court determines
46 that an evidentiary hearing is required, then the evidentiary hearing must be
47 held within 150 days from the date on which the initial review order was
48 issued; if the court determines that the hearing is not an evidentiary hearing,
49 then the hearing must be held within 120 days from the date on which the
50 initial review order was issued. A notice of hearing must be made not less
51 than five working days prior to the date of any hearing. The court, except for

1 good cause shown as provided in subdivision (4) of this subsection, must
2 rule on a motion within 60 days from the date that the hearing concludes.

3 (4) Notwithstanding any other provision of this subsection, the court may, upon
4 request of a party to the motion, grant an extension of time to comply with
5 any deadline under this subsection, not to exceed 30 days. No subsequent
6 request by the party to extend this deadline shall be granted unless the court
7 enters a written order containing detailed findings of fact of extraordinary
8 circumstances. Notwithstanding any other provision of this subsection, the
9 senior resident superior court judge or chief district court judge, as
10 appropriate, may, upon request of a judge assigned to review a motion for
11 appropriate relief, grant to the assigned judge an extension of time to comply
12 with any deadline under this subsection, not to exceed 30 days. No
13 subsequent request by the assigned judge to extend this deadline shall be
14 granted unless the senior resident superior court judge or the chief district
15 court judge, as appropriate, enters a written order containing detailed
16 findings of fact of extraordinary circumstances. The failure of the court to
17 comply with the deadlines under this subsection is grounds for any party to
18 petition the senior resident superior court judge or the chief district court
19 judge, as appropriate, to reassign the motion of appropriate relief to a
20 different judge empowered to act upon a motion for appropriate relief. The
21 failure of the court to comply with the deadlines under this subsection also
22 entitles any party to the motion for appropriate relief to seek a writ of
23 mandamus to obtain compliance with the deadline.

24 (5) Notwithstanding any other provision of this subsection, failure to meet a
25 deadline under this subsection is not a ground for the summary granting of a
26 motion for appropriate relief or other summary relief, including without
27 limitation, ordering the release of the prisoner.

28 (b3) Capital Cases. – Review and Calendaring of Motion. – In capital cases, the judge
29 shall review the motion and enter an order directing the State to file its answer within 60 days
30 of the date of the order. If a hearing is necessary, the judge shall calendar the case for hearing
31 without unnecessary delay.

32 In capital cases, the judge shall review the motion and enter an order directing the State to
33 file its answer within 60 days of the date of the order. If a hearing is necessary, the judge shall
34 calendar the case for hearing without unnecessary delay.

35 (c) Hearings, Showing of Prejudice; Findings.

36 (1) Any party is entitled to a hearing on questions of law or fact arising from the
37 motion and any supporting or opposing information presented unless the
38 court determines that the motion is without merit. The court must determine,
39 on the basis of these materials and the requirements of this subsection,
40 whether an evidentiary hearing is required to resolve questions of fact. Upon
41 the motion of either party, the judge may direct the attorneys for the parties
42 to appear before him for a conference on any prehearing matter in the case.

43 (2) An evidentiary hearing is not required when the motion is made in the trial
44 court pursuant to G.S. 15A-1414, but the court may hold an evidentiary
45 hearing if it is appropriate to resolve questions of fact.

46 (3) The court must determine the motion without an evidentiary hearing when
47 the motion and supporting and opposing information present only questions
48 of law. The defendant has no right to be present at such a hearing where only
49 questions of law are to be argued.

50 (4) If the court cannot rule upon the motion without the hearing of evidence, it
51 must conduct a hearing for the taking of evidence, and must make findings

1 of fact. The defendant has a right to be present at the evidentiary hearing and
2 to be represented by counsel. A waiver of the right to be present must be in
3 writing.

4 (5) If an evidentiary hearing is held, the moving party has the burden of proving
5 by a preponderance of the evidence every fact essential to support the
6 motion.

7 (6) A defendant who seeks relief by motion for appropriate relief must show the
8 existence of the asserted ground for relief. Relief must be denied unless
9 prejudice appears, in accordance with G.S. 15A-1443.

10 (7) The court must rule upon the motion and enter its order accordingly. When
11 the motion is based upon an asserted violation of the rights of the defendant
12 under the Constitution or laws or treaties of the United States, the court must
13 make and enter conclusions of law and a statement of the reasons for its
14 determination to the extent required, when taken with other records and
15 transcripts in the case, to indicate whether the defendant has had a full and
16 fair hearing on the merits of the grounds so asserted.

17 (d) Action on Court's Own Motion. — At any time that a defendant would be entitled to
18 relief by motion for appropriate relief, the court may grant such relief upon its own motion. The
19 court must cause appropriate notice to be given to the parties.

20 (e) Nothing in this section shall prevent the parties to the action from entering into an
21 agreement for appropriate relief, including an agreement as to any aspect, procedural or
22 otherwise, of a motion for appropriate relief."

23 **SECTION 3.** G.S. 20-13.3 reads as rewritten:

24 "**§ 20-13.3. Immediate civil license revocation for provisional licensees charged with**
25 **certain offenses.**

26 (a) Definitions. — As used in this section, the following words and phrases have the
27 following meanings:

28 (1) Clerk. — As defined in G.S. 15A-101(2).

29 (2) Criminal moving violation. — A violation of Part 9 or 10 of Article 3 of this
30 Chapter which is punishable as a misdemeanor or a felony offense. This
31 term does not include the offenses listed in the third paragraph of
32 G.S. 20-16(c) for which no points are assessed, nor does it include
33 equipment violations specified in Part 9 of Article 3 of this Chapter.

34 (3) Judicial official. — As defined in G.S. 15A-101(5).

35 (4) Provisional licensee. — A person under the age of 18 who has a limited
36 learner's permit, a limited provisional license, or a full provisional license
37 issued pursuant to G.S. 20-11.

38 (5) Revocation report. — A sworn statement by a law enforcement officer
39 containing facts indicating that the conditions of subsection (b) of this
40 section have been met.

41 (b) Revocations for Provisional Licensees Charged With Criminal Moving Violation.
42 — A provisional licensee's permit or license is subject to revocation under this section if a law
43 enforcement officer has reasonable grounds to believe that the provisional licensee has
44 committed a criminal moving violation, the provisional licensee is charged with that offense,
45 and the provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5.

46 (c) Duty of Law Enforcement Officers to Notify Provisional Licensee and Report to
47 Judicial Officials. — If a provisional licensee's permit or license is subject to revocation under
48 this section, the law enforcement officer must execute a revocation report ~~and must take the~~
49 ~~provisional licensee before a judicial official for an initial appearance report.~~ It is the specific
50 duty of the law enforcement officer to make sure that the report is expeditiously filed with a
51 judicial official as required by this section. If no initial appearance is required on the underlying

1 criminal moving violation at the time of the issuance of the citation, the law enforcement
2 officer must verbally notify the provisional licensee that the provisional licensee's permit or
3 license is subject to revocation pursuant to this section and must provide the provisional
4 licensee with written notice of the process for revocation and hearing under this section.

5 (c1) Which Judicial Official Must Receive Report. – The judicial official with whom the
6 revocation report must be filed is:

7 (1) The judicial official conducting the initial appearance on the underlying
8 criminal moving violation.

9 (2) The clerk of superior court in the county in which the underlying criminal
10 charge has been brought if no initial appearance is required.

11 ~~(d) Judicial Official Must Receive Report; Procedure Upon Receipt of~~
12 ~~Report.~~ Procedure If Report Filed With Judicial Official When Provisional Licensee Is Present.

13 – The If an initial appearance is required, the law enforcement officer must file the revocation
14 report with the judicial official conducting the initial appearance on the underlying criminal
15 moving violation. If a properly executed revocation report concerning a provisional licensee is
16 filed with a judicial official when the person is present before that official, the judicial official
17 shall, after completing any other proceedings involving the provisional licensee, determine
18 whether there is probable cause to believe that the conditions of subsection (b) of this section
19 have been met. If the judicial official determines there is such probable cause, the judicial
20 official shall enter an order revoking the provisional licensee's permit or license. In addition to
21 setting it out in the order, the judicial official shall personally inform the provisional licensee of
22 the right to a hearing as specified in subsection (d2) of this section and that the provisional
23 licensee's permit or license remains revoked pending the hearing. The period of revocation is
24 for 30 days and begins at the time the revocation order is issued and continues for 30 additional
25 calendar days. The judicial official shall give the provisional licensee a copy of the revocation
26 order, which shall include the beginning date of the revocation and shall clearly state the final
27 day of the revocation period and the date on which the provisional licensee's permit or license
28 will again become valid. The provisional licensee shall not be required to surrender the
29 provisional licensee's permit or license; however, the provisional licensee shall not be
30 authorized to drive at any time or for any purpose during the period of revocation.

31 (d1) Procedure If Report Filed With Clerk of Court When Provisional Licensee Not
32 Present. – When a clerk receives a properly executed report under subdivision (2) of subsection
33 (c1) of this section and the provisional licensee named in the revocation report is not present
34 before the clerk, the clerk shall determine whether there is probable cause to believe that the
35 conditions of subsection (b) of this section have been met. If the clerk determines there is such
36 probable cause, the clerk shall mail to the provisional licensee a revocation order by first-class
37 mail. The order shall inform the provisional licensee that the period of revocation is for 30
38 days, that the revocation becomes effective on the fourth day after the order is deposited in the
39 United States mail and continues for 30 additional calendar days, of the right to a hearing as
40 specified in subsection (d2) of this section, and that the revocation remains in effect pending
41 the hearing. The provisional licensee shall not be required to surrender the provisional
42 licensee's permit or license; however, the provisional licensee shall not be authorized to drive at
43 any time or for any purpose during the period of revocation.

44 (d2) Hearing Before Magistrate or Judge If Provisional Licensee Contests Validity of
45 Revocation. – A provisional licensee whose permit or license is revoked under this section may
46 request in writing a hearing to contest the validity of the revocation. The request may be made
47 at the time of the person's initial appearance, or within 10 days of the effective date of the
48 revocation to the clerk or a magistrate designated by the clerk, and may specifically request that
49 the hearing be conducted by a district court judge. The Administrative Office of the Courts
50 must develop a hearing request form for any provisional licensee requesting a hearing. Unless a
51 district court judge is requested, the hearing must be conducted within the county by a

1 magistrate assigned by the chief district court judge to conduct such hearings. If the provisional
2 licensee requests that a district court judge hold the hearing, the hearing must be conducted
3 within the district court district as defined in G.S. 7A-133 by a district court judge assigned to
4 conduct such hearings. The revocation remains in effect pending the hearing, but the hearing
5 must be held within three working days following the request if the hearing is before a
6 magistrate or within five working days if the hearing is before a district court judge. The
7 request for the hearing must specify the grounds upon which the validity of the revocation is
8 challenged, and the hearing must be limited to the grounds specified in the request. A witness
9 may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who
10 appears and testifies is subject to questioning by the judicial official conducting the hearing,
11 and the judicial official may adjourn the hearing to seek additional evidence if he is not
12 satisfied with the accuracy or completeness of evidence. The provisional licensee contesting the
13 validity of the revocation may, but is not required to, testify in his own behalf. Unless contested
14 by the person requesting the hearing, the judicial official may accept as true any matter stated
15 in the revocation report. If any relevant condition under subsection (b) of this section is
16 contested, the judicial official must find by the greater weight of the evidence that the condition
17 was met in order to sustain the revocation. At the conclusion of the hearing, the judicial official
18 must enter an order sustaining or rescinding the revocation. The judicial official's findings are
19 without prejudice to the provisional licensee contesting the revocation and to any other
20 potential party as to any other proceedings, civil or criminal, that may involve facts bearing
21 upon the conditions in subsection (b) of this section considered by the judicial official. The
22 decision of the judicial official is final and may not be appealed in the General Court of Justice.
23 If the hearing is not held and completed within three working days of the written request for a
24 hearing before a magistrate or within five working days of the written request for a hearing
25 before a district court judge, the judicial official must enter an order rescinding the revocation,
26 unless the provisional licensee contesting the revocation contributed to the delay in completing
27 the hearing. If the provisional licensee requesting the hearing fails to appear at the hearing or
28 any rescheduling thereof after having been properly notified, the provisional licensee forfeits
29 his right to a hearing.

30 (e) Report to Division. — The clerk shall notify the Division of the issuance of a
31 revocation order pursuant to this section within two business days of the issuance of the
32 revocation order. The notification shall identify the person whose provisional license has been
33 revoked and specify the beginning and end date of the revocation period.

34 (f) Effect of Revocations. — A revocation under this section revokes a provisional
35 licensee's privilege to drive in North Carolina. Revocations under this section are independent
36 of and run concurrently with any other revocations, except for a revocation pursuant to
37 G.S. 20-16.5. Any civil revocation issued pursuant to G.S. 20-16.5 for the same underlying
38 conduct as a revocation under this section shall have the effect of terminating a revocation
39 pursuant to this section. No court imposing a period of revocation following conviction for an
40 offense involving impaired driving may give credit for any period of revocation imposed under
41 this section. A person whose license is revoked pursuant to this section is not eligible to receive
42 a limited driving privilege.

43 (g) Designation of Proceedings. — Proceedings under this section are civil actions and
44 must be identified by the caption "In the Matter of _____" and filed as directed by the
45 Administrative Office of the Courts.

46 (h) No drivers license points or insurance surcharge shall be assessed for a revocation
47 pursuant to this section. Possession of a drivers license revoked pursuant to this section shall
48 not be a violation of G.S. 20-30.

49 (i) The Administrative Office of the Courts shall adopt forms to implement this
50 section."

51 **SECTION 4.** G.S. 18C-151 reads as rewritten:

1 **"§ 18C-151. Contracts.**

2 (a) Except as otherwise specifically provided in this subsection for contracts for the
3 purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of
4 the General Statutes, including the provisions relating to minority participation goals, shall
5 apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter
6 143 are in conflict, the provisions of this subsection shall control. In recognition of the
7 particularly sensitive nature of the Lottery and the competence, quality of product, experience,
8 and timeliness, fairness, and integrity in the operation and administration of the Lottery and
9 maximization of the objective of raising revenues, a contract for the purchase of services,
10 apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of
11 ~~ninety thousand dollars (\$90,000)~~ three hundred thousand dollars (\$300,000) or more may be
12 awarded by the Commission only after the following have occurred:

- 13 (1) The Commission has invited proposals to be submitted by advertisement by
14 electronic means or advertisement in a newspaper having general circulation
15 in the State of North Carolina and containing the following information:
16 a. The time and place where a complete description of the services,
17 apparatus, supplies, materials, or equipment may be had.
18 b. The time and place for opening of the proposals.
19 c. A statement reserving to the Commission the right to reject any or all
20 proposals.
21 (2) Proposals may be rejected for any reason determined by the Commission to
22 be in the best interest of the Lottery.
23 (3) All proposals shall be accompanied by a bond or letter of credit in an amount
24 equal to not less than five percent (5%) of the proposal and the fee to cover
25 the cost of the criminal record check conducted under G.S. 114-19.6.
26 (4) The Commission has complied with the minority participation goals of
27 G.S. 143-128.2 and G.S. 143-128.3.
28 (5) The Commission may not award a contract to a lottery potential contractor
29 who has been convicted of a felony or any gambling offense in any state or
30 federal court of the United States within 10 years of entering into the
31 contract, or employs officers and directors who have been convicted of a
32 felony or any gambling offense in any state or federal court of the United
33 States within 10 years of entering into the contract.
34 (6) The Commission shall investigate and compare the overall business
35 practices, ethical reputation, criminal record, civil litigation, competence,
36 integrity, background, and regulatory compliance record of lottery potential
37 contractors.
38 (7) The Commission may engage an independent firm experienced in evaluating
39 government procurement proposals to aid in evaluating proposals for a major
40 procurement.
41 (8) The Commission shall award the contract to the responsible lottery potential
42 contractor or lottery supplier who submits the best proposal that maximizes
43 the benefits to the State.

44 (b) Upon the completion of the bidding process, a contract may be awarded to a lottery
45 contractor or lottery supplier with whom the Commission has previously contracted for the
46 same purposes.

47 (c) Before a contract is awarded, the Director shall conduct a thorough background
48 investigation of all of the following:

- 49 (1) The potential contractor to whom the contract is to be awarded.
50 (2) Any parent or subsidiary corporation of the potential contractor to whom the
51 contract is to be awarded.

1 (3) All shareholders with a five percent (5%) or more interest in the potential
2 contractor or parent or subsidiary corporation of the potential contractor to
3 whom the contract is to be awarded. For purposes of this subdivision,
4 shareholders shall mean any natural person or those individuals with
5 capabilities to make operating decisions for the potential contractor or parent
6 or subsidiary corporation of the potential contractor to whom the contract is
7 to be awarded.

8 (4) All officers and directors of the potential contractor or parent or subsidiary
9 corporation of the potential contractor to whom the contract is to be
10 awarded.

11 (d) The Commission may terminate the contract, without penalty, of a lottery contractor
12 that fails to comply with the Commission's instruction to implement the recommendations of
13 the State Auditor or an independent auditor in an audit conducted of Lottery security or
14 operations.

15 (e) After entering into a contract with a lottery contractor, the Commission shall require
16 the lottery contractor to periodically update the information required to be disclosed under
17 G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the
18 required disclosures may be terminated by the Commission.

19 (f) No lottery contractor, potential contractor, or lottery supplier may pay, give, or
20 make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or
21 service, excluding food and beverages having an aggregate value not exceeding one hundred
22 dollars (\$100.00) in any calendar year, to the Director, any member or employee of the
23 corporation, or a member of the immediate family residing in the same household as any of
24 these individuals."

25 **SECTION 5.** Section 5 of S.L. 2011-236 reads as rewritten:

26 "**SECTION 5.** This act becomes effective October 1, 2011, and applies to agreements
27 executed on or after that date. Agreements executed prior to October 1, 2011, remain subject to
28 the laws in effect at the time the parties executed the ~~agreement~~agreement; differences in
29 wording between procedures authorized to establish agreements under the laws repealed by this
30 act and under the superseding laws enacted by this act clarify the permitted procedures under
31 the repealed laws."

32 **SECTION 6.** Section 1 of this act becomes effective September 1, 2012, and
33 applies to offenses committed on or after that date. Section 2 of this act becomes effective
34 December 1, 2012, and applies to motions for appropriate relief filed on or after that date.
35 Section 3 of this act becomes effective December 1, 2012, and applies to offenses committed
36 on or after that date. The remainder of this act is effective when it becomes law.