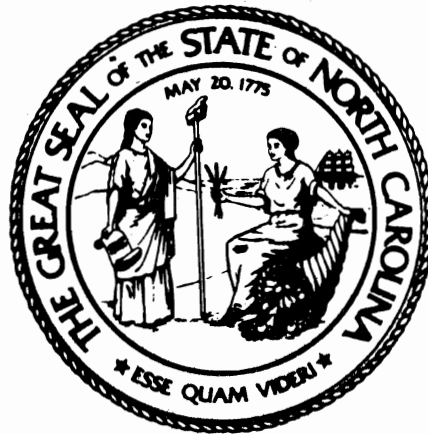


**LEGISLATIVE  
RESEARCH COMMISSION**

**REPORT  
TO THE  
1977**

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**SEX DISCRIMINATION**

**RALEIGH, NORTH CAROLINA**

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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



December 16, 1976

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1977 General Assembly the findings and recommendations of its Committee on Sex Discrimination. This study report was authorized by Section 5 of 1975 Session laws Chapter 851.

Respectfully submitted,

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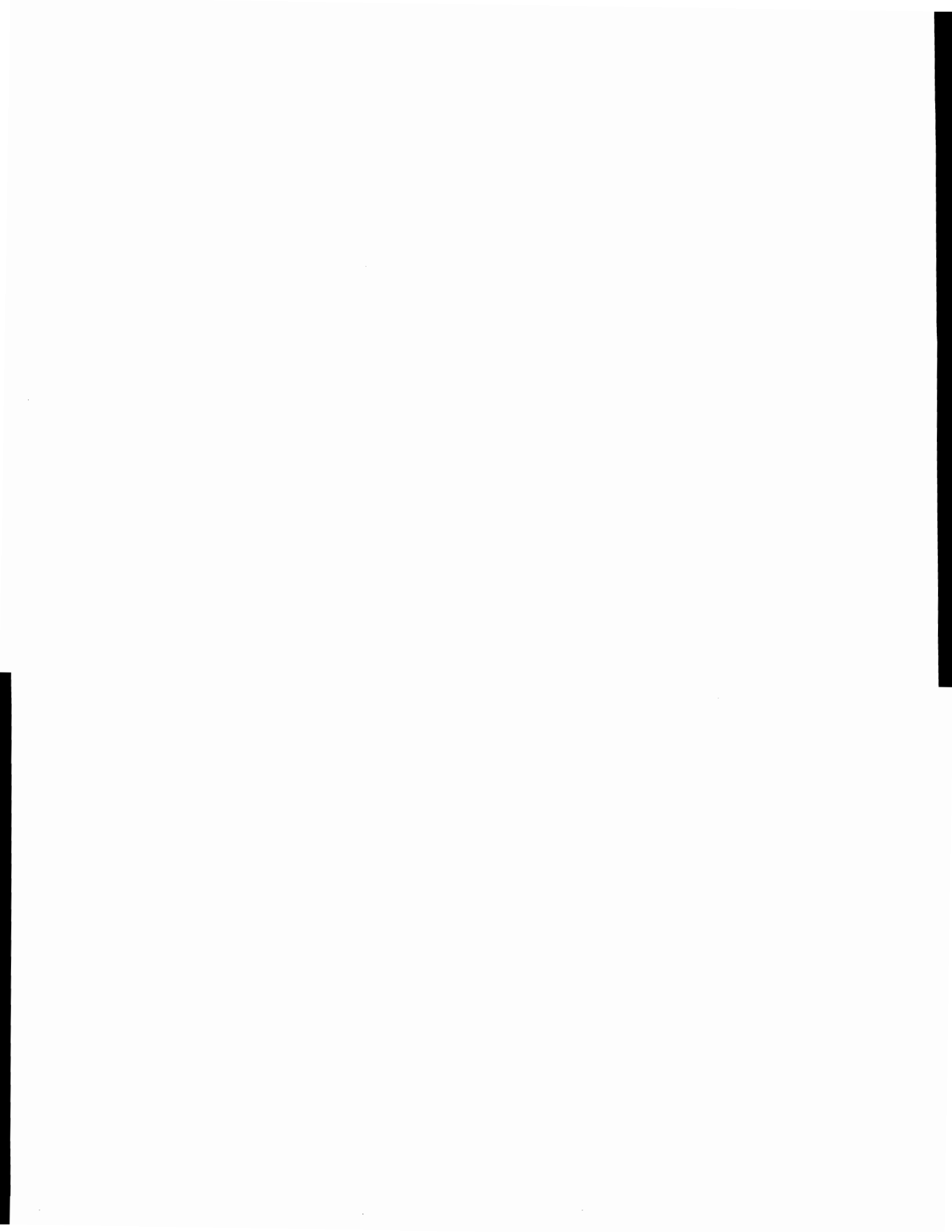
John T. Henley

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James C. Green

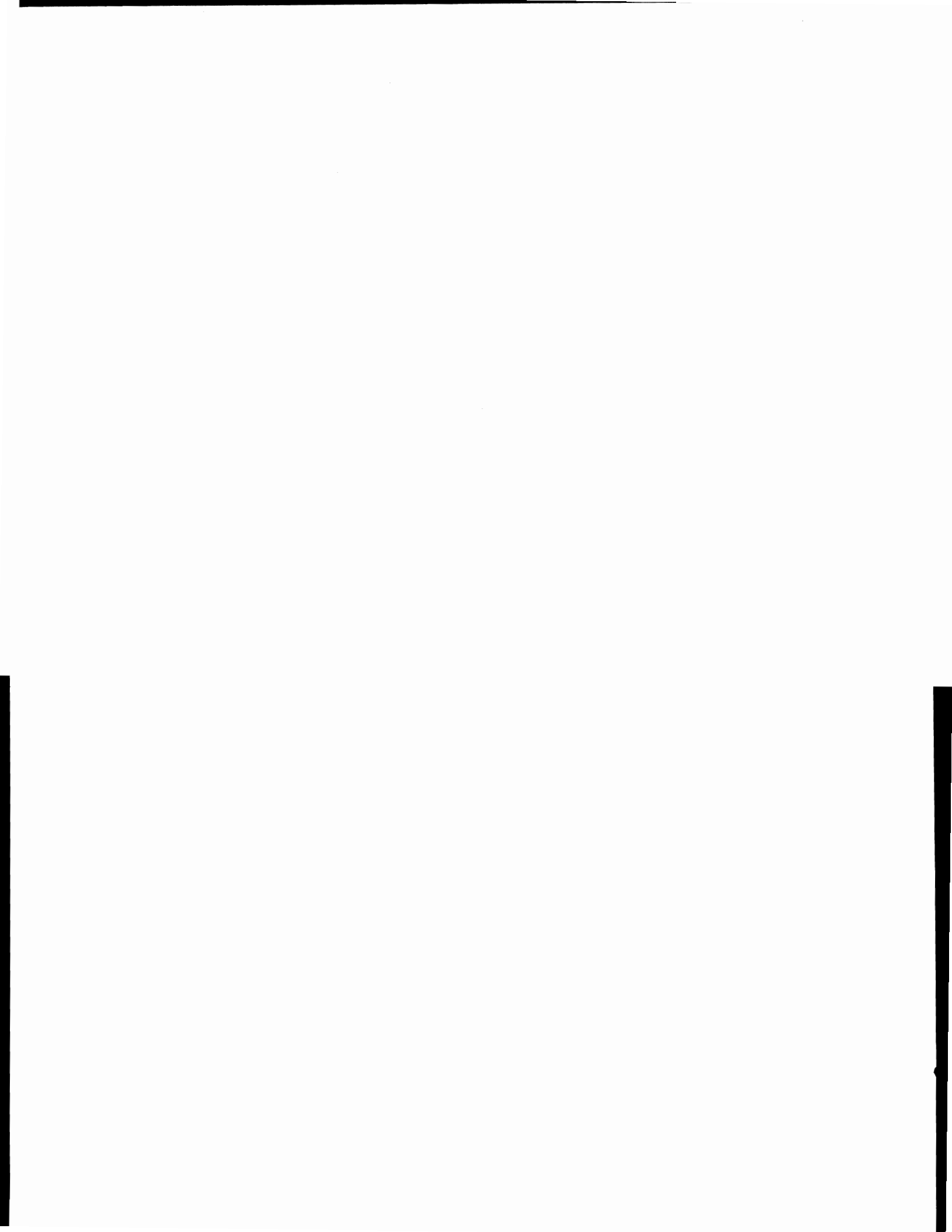
Co-Chairmen

LEGISLATIVE RESEARCH COMMISSION



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## INTRODUCTION

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes of North Carolina, is a general purpose study group composed of legislators. The 1975 North Carolina General Assembly directed the Legislative Research Commission to study several issues of concern, including the problem of sex discrimination.

Senator William D. Mills, a member of the Legislative Research Commission, was appointed Chairman of the sex discrimination study (at the same time, he was appointed Chairman of a related Legislative Research Commission study dealing with the problem of sexual assaults). Under the authority of G.S. 120-30.10(b), several additional legislators were selected to perform this study. Representative Bob Jones and Senator Katherine Sebo were appointed Co-Chairmen of the Committee on Sex Discrimination. Also chosen to the Committee were Representatives Ruth Cook, H. M. Michaux, Jr., Frances Setzer, and Allen Ward; and Senators Luther Britt, Jr., Donald Kincaid, and Edward Renfrow.

Chapter 851 of the 1975 Session Laws, First Session 1975, Section 5, contains directions for the sex discrimination study:

"Sec. 5. In its study of sexual discrimination in North Carolina laws and practices the Legislative Research Commission shall examine North Carolina laws and practices, including the General Statutes, case law, customs and regulations of the various branches of State government; the studies shall examine these laws and practices as they relate to a specific sex, as they may deny equality of rights under the laws of this State, and as they might be modified by the possible passage of the Equal Rights Amendment to the Constitution of the United States. The Legislative Research Commission shall also study the desirability of enacting the legislation contained in Senate Bill 813 from the 1975 Session, or the enactment of similar legislation that would establish a fair employment opportunity commission in North Carolina with powers and duties designed to eliminate discrimination based upon race, color, religion, national origin, ancestry, age, or sex."

The Committee received staff assistance from Clay Tee Knight and Durward Gunnells of the Legislative Services office. Additionally,

professional services were rendered by Michael Crowell and Michael Brough, both faculty members at the Institute of Government, University of North Carolina at Chapel Hill, and Ann Reed, an Assistant Attorney General with the State Department of Justice. Wanna Frazier served as Committee Clerk. Appendix I contains a list of committee members.

## BACKGROUND

This report summarizes the Committee's work on behalf of the Legislative Research Commission. Ten meetings were conducted during an eight-month time period - from October 29, 1975 to June 23, 1976 - to consider problems of sex discrimination in North Carolina. At the first meeting committee members realized that because the scope of the subject matter was broad and because budget and time restrictions existed, it was necessary to narrow the focus of the study. They decided to concentrate their examination first on potentially sex discriminatory provisions in the Constitution of North Carolina and in the General Statutes of North Carolina. Most legislation of state-wide importance enacted by the General Assembly is codified in the General Statutes, so it appeared appropriate to identify statutory problems in an effort to "clean our own house first." The General Statutes comprise 13 volumes and more than 10,000 pages; in the Committee's decision to focus on the statutes, it was necessary to postpone consideration of common law, case law and administrative regulations except in limited instances. The report primarily recommends changing or repealing certain sections of statutory law that create or promote sex discrimination.

The Committee has performed this study largely without considering the proposed Equal Rights Amendment to the United States Constitution. Committee members believe that the 1975 North Carolina General Assembly created this study to identify instances of unwarranted sex discrimination in the laws of the State and to recommend action which would begin to eliminate such discrimination. In order to accomplish these objectives, the members have avoided debating the "pro" and "con" aspects of the proposed ERA (this discussion would likely have spent all of the resources available for the study). The recommendations that emerge in this report have been developed independently of individual feelings about the ERA, and they suggest changes that are warranted regardless of whether the ERA is ratified. The Committee hopes the report will be examined by the 1977 General Assembly in this spirit.

Additionally, the Committee has designed specific legislative proposals only in response to sex discriminatory laws or practices. A wide variety of laws and practices were examined during the course of the study, and members frequently noted that weaknesses, inconsistencies, or other potential problems - not of a sex discriminatory nature - existed. However, they believed it was beyond the scope of this study to correct these possible defects except in connection with altering sex discriminatory language. Throughout the report use of the term "discrimination" is intended to refer to sex discrimination. An exception to this general observation occurs in the Committee recommendation for a Fair Employment Practices Act, because of the directive issued by the 1975 General Assembly in House Bill 296, S. 5, to consider legislation "that would establish a fair employment opportunity commission in North Carolina with powers and duties designed to eliminate discrimination based upon race, color, religion, national origin, ancestry, age, or sex."

In fashioning its recommendations for removing unwarranted discrimination, the Committee has developed certain general principles. If the provision under consideration appears to offer a benefit to one sex only, and the benefit can reasonably be extended to include both sexes this result is proposed. If the provision appears to burden one sex only, and the burden can reasonably be removed altogether this result is proposed. Because these proposals are aimed solely at removing sex discrimination, a complete rewrite or outright repeal of a provision is suggested only when a more limited alteration appears inadequate.

The first several meetings were primarily spent examining the General Statutes in order to identify potentially discriminatory sections and determine whether their repeal or modification was warranted. (A summary of meeting dates, subjects considered, and speakers is contained in Appendix 2).

One information source used by the study group was the document, "The North Carolina General Statutes and the Equal Rights Amendment," which presented a list of statutes that might be considered sex discriminatory if the ERA was ratified. This document was compiled by



the Legislative Services Office in January, 1975, and copies are available through the Legislative Library. Other sources included officials from several agencies of State Government who were asked to comment about the existence of sex discriminatory laws or practices related to their fields of expertise. For example, three employees with the State Department of Revenue testified about possibly discriminatory tax laws and the effect their repeal or change would have on tax revenues. Also, representatives from the State Department of Insurance discussed a recent task force survey conducted by it dealing with sex discriminatory practices in the insurance industry.

The Committee also sought input from professionals trained in the law. Faculty members from each law school in North Carolina were contacted about working with the study; three professors participated in Committee deliberations, contributing significantly to the members' understanding of a variety of legal principles. Two faculty members from the Institute of Government, University of North Carolina at Chapel Hill, provided substantial information and drafted proposed legislation, especially in the areas of criminal law and fair employment practices.

At the Co-Chairmen's written request, the State Attorney General assigned an Assistant Attorney General to review the Committee's tentative proposals and alert it about possible conflicts with other provisions of law.

At more recent meetings the committee - pursuant to the directions given by the 1975 General Assembly - considered the enactment of legislation to establish a fair employment opportunity commission in North Carolina. The starting point for this portion of the study was Senate Bill 813 (House Bill 1085) introduced during the 1975 Session. The Committee's findings are detailed under the subject heading "EMPLOYMENT". At these later meetings the study group also examined legislation drafted by the staff to implement the tentative recommendations which were made during earlier deliberations.

The remainder of the report is divided into several subject matter categories in order to present the Committee's findings and

recommendations in an organized, readable form. Within each individual subject category, there is a discussion of the current discriminatory law or practice which has been identified and the proposed change to remove the discriminatory feature. These comments are followed by the draft legislation intended to effect the necessary change and then (in certain instances) by the current statutory provision.

CONSTITUTION  
of the  
STATE  
of  
NORTH CAROLINA

## CONSTITUTION OF THE STATE OF NORTH CAROLINA

The Committee recommends that the 1977 General Assembly propose two constitutional amendments to the people of the State for their ratification or rejection. One of the constitutional provisions which should be amended deals with the homestead exemption; the other one deals with the insurance exemption. Note that Appendix \_\_\_\_\_ contains the current version of the constitutional and statutory provisions under discussion here.

### Homestead exemption.

Article X, Section 2 of the Constitution of North Carolina contains the homestead exemption. Subsection (3) provides:

If the owner of a homestead dies, leaving a widow but no children, the homestead shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she is the owner of a homestead in her own right.

The Committee's proposal makes three substantive changes in Article X, Section 2. First, it rewrites subsection (3) to make the homestead exemption applicable to a surviving married partner of either sex whose spouse dies owning a homestead. Second, also as part of the rewrite of subsection (3), it entitles the surviving spouse to receive the homestead exemption provided no minor children are in existence. The present language is more restrictive: the widow can enjoy the benefit only if the owner dies survived by no children which includes children who have reached the age of majority. Note that present Article X, s.2(2), which contains the exemption for the benefit of children, provides the exemption lasts "during the minority of the owner's children, or any of them." Thus, the children's right to receive the exemption will not be affected by this second change. The third substantive change is to rewrite subsection (4) to require that when the owner of a homestead disposes of it by deed, the signature and acknowledgement of the owner's spouse must be obtained. The present wording requires the signature and acknowledgement of the owner's "wife".

G. S. Chapter 1, Subchapter XI, Article 32 contains the statutory sections relating to homestead and exemptions. One of these sections,

G. S. 1-389, will need to be modified if Article X, s. 2 of the Constitution is amended as proposed. G. S. 1-389 currently allows the widow or children to petition to have the homestead laid off, if the owner dies, without the homestead having been set apart. This statute should be amended to make its language sex neutral and to permit the surviving spouse to proceed unless a minor child or minor children are living. The statutory amendment is intended as a "companion" bill to the proposed constitutional amendment and is designed to become effective only after the constitutional amendment is approved by the voters of the State.

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PERMIT A SURVIVING SPOUSE OF EITHER SEX TO RECEIVE THE BENEFIT OF THE HOMESTEAD EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Article X, Section 2(3) of the Constitution of North Carolina is rewritten to read as follows:

"Sec. 2(3) Exemption for benefit of surviving spouse. If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead."

Sec. 2. Article X, Section 2(4) of the Constitution of North Carolina is rewritten to read as follows:

"Sec. 2(4) Conveyance of homestead. Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by the owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse."

Sec. 3. The amendment set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the next general election or at the next statewide election, whichever is earlier. That election shall be conducted under the laws then governing elections in this State.

Sec. 4. At that election, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

FOR constitutional amendment extending to a married man the right to receive the homestead exemption, so that the homestead exemption is available to the surviving spouse of the owner of a homestead, if the owner dies leaving no minor children and the surviving spouse does not own a separate homestead.

AGAINST constitutional amendment extending to a married man the right to receive the homestead exemption, so that the homestead exemption is available to the surviving spouse of the owner of a homestead, if the owner dies leaving no minor children and the surviving spouse does not own a separate homestead."

Those qualified voters favoring the amendment set out in Sections 1 and 2 of this act shall vote by making an X or a check mark in the square beside the statement beginning "FOR", and those qualified voters opposing the amendment shall vote by making an X or a check mark in the square beside the statement beginning "AGAINST".

Notwithstanding the foregoing provisions of this Section, voting machines may be used in accordance with rules and regulations prescribed by the State Board of Elections.

Sec. 5. If a majority of votes cast thereon are in favor of the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of his office, and the amendment shall become effective upon such certification.

Sec. 6. This act shall become effective upon ratification.

A BILL TO BE ENTITLED

AN ACT TO PERMIT A SURVIVING SPOUSE OF EITHER SEX TO RECEIVE THE  
BENEFIT OF THE HOMESTEAD EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-389 as it appears in the 1974 Cumulative Supplement to 1969 Replacement Volume 1A of the General Statutes is rewritten to read as follows:

"§1-389. Allotted to surviving spouse or minor children on death of homesteader.--If a person entitled to a homestead exemption dies without the homestead having been set apart, the surviving spouse, if the decedent leaves no children under the age of 18 years, or the decedent's child or children under the age of 18 years, may proceed to have the homestead exemption laid off by petition. If the surviving spouse or children have failed to have the exemption set apart in the manner provided, then in an action brought by the personal representatives of the decedent to subject the realty of the decedent to the payment of debts and charges of administration, it is the duty of the court to appoint three disinterested persons to set apart to such surviving spouse, child or children a homestead exemption under metes and bounds in the land of the decedent. The three persons so appointed shall under their hands and seals make return of the same to the court, which shall be registered in the same manner as homestead exemptions."

Sec. 2. This act shall become effective upon certification by the State Board of Elections that an amendment to the Constitution of North Carolina permitting a surviving spouse of either sex to receive the benefit of the homestead exemption unless the owner left surviving a minor child or children has been approved by the people of the State.



Insurance exemption.

Article X, Section 5 of the Constitution of North Carolina provides in part that:

The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid to or for the benefit of the wife or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his estate.

The committee draft proposes amending Article X, s. 5 of the Constitution by rewriting it to extend to the wife the right to insure her life for the benefit of her husband or children or both and to receive the same exemptions available to the husband under current Article X, s. 5. The proposed rewrite leaves the first sentence of Section 5 in its present form; inserts a new second sentence which extends to the wife the right presently granted to the husband; and alters the language of the last sentence of Section 5 to make the conforming changes. The remainder of the proposal sets out the procedure for voting on the amendment and explains when it can become effective.

G. S. 58-205 is the statutory provision that relates to Article X, s. 5. If the constitutional amendment is approved, the statute should also be amended by adding a new sentence at the end of the section to extend to the husband as beneficiary of a life insurance policy the same right presently afforded to the wife as beneficiary. Again, the recommended statutory change is designed to become effective after the voters have approved the proposed constitutional amendment.

**DRAFT**  
**FOR REVIEW ONLY**

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO EXTEND TO  
A MARRIED WOMAN THE RIGHT TO INSURE HER LIFE FOR THE  
BENEFIT OF HER HUSBAND OR CHILDREN OR BOTH.

The General Assembly of North Carolina enacts:

Section 1. Article X, Section 5 of the Constitution of  
North Carolina is rewritten to read as follows:

"Sec. 5. Insurance. The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid to or for the benefit of the wife or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his estate. The wife may insure her own life for the sole use and benefit of her husband or children or both, and upon her death the proceeds from the insurance shall be paid to or for the benefit of the husband or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or her estate. Any insurance policy which insures the life of a married person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured."

DRAFT  
FOR REVIEW ONLY

Sec. 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the next general election or at the next statewide election, whichever is earlier. That election shall be conducted under the laws then governing elections in this State.

Sec. 3. At that election, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

"  FOR constitutional amendment extending to a married woman the right to insure her life for the benefit of her husband or children or both, so that every married person is permitted to insure his or her own life for the benefit of the spouse or children or both free from all claims of the representatives or creditors of the insured or his or her estate.

AGAINST constitutional amendment extending to a married woman the right to insure her life for the benefit of her husband or children or both, so that every married person is permitted to insure his or her own life for the benefit of the spouse or children or both free from all claims of the representatives or creditors of the insured or his or her estate."

Those qualified voters favoring the amendment set out in Section 1 of this act shall vote by making an X or a check mark in the square beside the statement beginning "FOR", and those qualified voters opposing the amendment shall vote by making an X or a check mark in the square beside the statement beginning "AGAINST".

Sec. 4. If a majority of votes cast thereon are in favor of the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of his office, and the amendment shall become effective upon such certification.

Sec. 5. This act shall become effective upon ratification.

# DRAFT FOR REVIEW ONLY

A BILL TO BE ENTITLED

AN ACT TO PERMIT A MARRIED WOMAN'S LIFE TO BE INSURED FOR THE  
BENEFIT OF HER HUSBAND OR CHILDREN OR BOTH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-205 is amended by adding a new sentence at the end of that section to read as follows:

"Every policy of life insurance made payable to or for the benefit of a married man, or after its issue assigned, transferred, or in any way made payable to a married man or to any person in trust for him or for his benefit, whether procured by himself, his wife, or by any other person, and whether the assignment or transfer is made by his wife or by any other person inures to his separate use and benefit and to that of his children, if he dies in her lifetime."

Sec. 2. This act shall become effective upon certification by the State Board of Elections that an amendment to the Constitution of North Carolina permitting a married person's life to be insured for the benefit of his or her spouse, or children or both has been approved by the people of the State.

Present Constitutional  
Provisions

**CONSTITUTION**  
of the  
**STATE OF NORTH CAROLINA**

**ARTICLE X**  
**Homesteads and Exemptions**

**Sec. 2. Homestead exemptions.**

(3) *Exemption for benefit of widow.* If the owner of a homestead dies, leaving a widow but no children, the homestead shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she is the owner of a homestead in her own right.

(4) *Conveyance of homestead.* Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by the owner of a homestead shall be valid without the signature and acknowledgment of his wife.

**Sec. 5. Insurance.** The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid to or for the benefit of the wife or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his estate. Any insurance policy which insures the life of a husband for the sole use and benefit of his wife or children or both shall not be subject to the claims of creditors of the insured during his life-time, whether or not the policy reserves to the insured during his lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

Present Statutory  
Provisions

**§ 1-389. Allotted to widow or minor children on death of homesteader.** — If a person entitled to a homestead exemption dies without the homestead having been set apart, his widow, if he leaves no children, or his child or children under the age of 18 years, if he leaves such, may proceed to have the homestead exemption laid off by petition. If the widow or children have failed to have the exemption set apart in the manner provided, then in an action brought by his personal representatives to subject the realty of the decedent to the payment of debts and charges of administration, it is the duty of the court to appoint three disinterested freeholders to set apart to such widow, child or children a homestead exemption under metes and bounds in the lands of the decedent. The freeholders shall under their hands and seals make return of the same to the court, which shall be registered in the same manner as homestead exemptions. (1868-9, c. 187, s. 10; Code, s. 514; 1898, c. 382; Rev., s. 707; C. S., s. 748; 1971, c. 1231, s. 1.)

**§ 58-205. Rights of beneficiaries.**—When a policy of insurance is effected by any person on his own life, or on another life in favor of some person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance. The person to whom a policy of life insurance is made payable may maintain an action thereon in his own name. Every policy of life insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred, or in any way made payable to a married woman, or to any person in trust for her or for her benefit, whether procured by herself, her husband, or by any other person, and whether the assignment or transfer is made by her husband or by any other person, inures to her separate use and benefit and to that of her children, if she dies in his lifetime. (Const., Art. X, s. 7; 1899, c. 54, s. 59; Rev., ss. 4771, 4772; C. S., s. 6464.)

CRIMINAL LAW

## CRIMINAL LAW

Criminal nonsupport. The present criminal law contains a variety of offenses concerned with failure to support one's relatives. It is a misdemeanor for a man to abandon his wife and fail to support her; it is a misdemeanor for either parent to fail to support a child, whether abandoned or not; it is a misdemeanor for a man to fail to support his wife or their natural children while he is still living with her; it is a misdemeanor for either parent to fail to support an illegitimate child; it is a felony for either parent to abandon a child for six months without support and attempt to conceal his or her whereabouts; it is a misdemeanor for a mother to abandon a child under 16, whether legitimate or illegitimate; it is a misdemeanor for a man or woman to fail to support a parent; and so forth.

In the course of its deliberations the committee found that a consolidation and general editorial revision of several sections of the criminal nonsupport statutes was the easiest way to proceed, although the substantive changes that are recommended are few. The most important of those is to have the obligation of support of a spouse treated the same as in the civil law. That is, instead of a husband being criminally liable for failing to support his wife, a "supporting spouse" would be liable for failing to support a "dependent spouse," with the quoted terms being defined the same as in G.S. 50-16.1, the civil nonsupport statute (part of the divorce and alimony law). This change would add an additional burden to the prosecutor in the criminal proceeding of first proving that the defendant is indeed a supporting spouse; otherwise, the substantive offenses would remain essentially unchanged. It would be a misdemeanor for a supporting spouse to abandon and fail to support a dependent spouse, or to fail to support the dependent spouse while still

living together. It would still be a misdemeanor for either parent to fail to support a child, either legitimate or illegitimate. (The committee could find no reason for retaining the present scheme of separate but overlapping statutes concerning support of natural and adopted children; thus the proposed bill treats all nonsupport of children in one subsection.) Abandonment of a child for six months, and failure to support parents or handicapped dependents, are left unchanged since they already place the burden evenly on both sexes.

The other substantial change recommended by the committee is to allow garnishment of wages as part of the criminal nonsupport proceeding. The 1975 General Assembly enacted G.S. 110-136, allowing garnishment of up to 20 percent of take-home pay to enforce a court order or written agreement for child support. The garnishment order may be issued by a district court judge upon a finding that the parent is delinquent or erratic in support payments. The proposed legislation of this committee would make that garnishment remedy available as part of the criminal nonsupport proceeding, allowing the order to be issued upon a determination of guilt of the criminal offense. Notice of the proposed garnishment would have to be made to the defendant and to his employer; if the notice requirement were satisfied before the nonsupport trial, the garnishment hearing could be held immediately after the trial and garnishment could be ordered as part of the criminal sentence, otherwise it would have to be made later following a brief hearing. The same sort of garnishment remedy would be provided in a prosecution for nonsupport of an illegitimate child (G.S. 49-2 and 49-8).

In making these revisions to the nonsupport statutes the committee eliminated certain outdated and repetitive language. To assist in



understanding and locating the substantive changes made by the committee's bill the following chart is offered:

<u>Present offense</u>	<u>Present statute</u>	<u>New offense</u>	<u>New statute</u>
Husband abandon wife and not support	14-322	Supporting spouse abandon dependent spouse and not support	14-322(b)
Parent not support child	14-322	Same	14-322(d)
Parent abandon child for six months and not support	14-322.1	Same	Same
Parent not support handicapped dependent	14-322.2	Same	Same
Husband not support wife while living together	14-325	Supporting spouse not support dependent spouse while living together	14-322(c)
Father not support natural children while living with wife	14-325	Parent not support child	14-322(d)
Mother abandon child under 16	14-326	None	None
Man or woman fail to support parent	14-326.1	Same	Same
Parent fail to support illegitimate child	49-2	Same	Same

1 A BILL TO BE ENTITLED

2 AN ACT TO REWRITE THE CRIMINAL ABANDONMENT AND NONSUPPORT AND BASTARDY  
3 STATUTES TO ELIMINATE SEX DISCRIMINATION IN THE DUTY OF SUPPORT, TO  
4 ALLOW GARNISHMENT PROCEEDINGS AS PART OF THE CRIMINAL PROSECUTION,  
5 AND TO CONSOLIDATE REPETITIVE STATUTES AND REMOVE SURPLUSAGE.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 14-322 is rewritten to read as follows:

8 "§ 14-322. Abandonment and failure to support spouse and  
9 children.--

10 (a) For purposes of this Article:

11 (1) 'Supporting spouse' means a spouse, whether husband or  
12 wife, upon whom the other spouse is actually substantially  
13 dependent or from whom such other spouse is substantially  
14 in need of maintenance and support.

15 (2) 'Dependent spouse' means a spouse, whether husband or  
16 wife, who is actually substantially dependent upon the  
17 other spouse for his or her maintenance and support or is  
18 substantially in need of maintenance and support from the  
19 other spouse.

20 (b) Any supporting spouse who shall willfully abandon a dependent  
21 spouse without providing that spouse with adequate support shall be  
22 guilty of a misdemeanor and upon conviction shall be punished according  
23 to subsection (g).

24 (c) Any supporting spouse who, while living with a dependent  
25 spouse, shall willfully neglect to provide adequate support for that  
26 dependent spouse shall be guilty of a misdemeanor and upon conviction  
27 shall be punished according to subsection (g).

1 (d) Any parent who shall willfully neglect or refuse to provide  
2 adequate support for that parent's child, whether natural or adopted,  
3 and whether or not the parent abandons the child, shall be guilty of a  
4 misdemeanor and upon conviction shall be punished according to subsection  
5 (g). Willful neglect or refusal to provide adequate support of a child  
6 shall constitute a continuing offense and shall not be barred by any  
7 statute of limitations until the youngest living child of the parent  
8 shall reach the age of 18 years.

9 (e) Upon conviction for an offense under this section, the court  
10 may make such order as will best provide for the support, as far as may  
11 be necessary, of the abandoned spouse or child, or both, from the property  
12 or labor of the defendant.

13 (f) A prosecution for violation of subsection (d) may include a  
14 petition by the prosecuting witness or another properly interested  
15 person for a garnishment order for the child's support as provided in  
16 G.S. 110-136. If a petition for garnishment is made part of the criminal  
17 proceeding, the notice requirements of G.S. 110-136 shall not apply and  
18 it shall be sufficient notice if the garnishment petition is served on  
19 the parent and his employer at least ten days in advance of the garnish-  
20 ment hearing. A conviction for violation of subsection (d) shall be  
21 sufficient grounds for issuance of the garnishment order, and the hearing  
22 on garnishment may be held at any time following the entry of judgment.

23 (g) A first offense under this section shall be punishable by a  
24 fine not exceeding \$500.00, or by imprisonment for not more than six  
25 months, or both. A second or subsequent offense shall be a misdemeanor  
26 punishable by fine, or by imprisonment for not more than two years, or  
27 both."

1           Sec. 2. G.S. 14-325.1 is rewritten to read as follows:

2           "§ 14-325.1. When offense of failure to support child deemed  
3 committed in State.--The offense of willful neglect or refusal of a  
4 parent to support and maintain a child, and the offense of willful neg-  
5 lect or refusal to support and maintain one's illegitimate child, shall  
6 be deemed to have been committed in the State of North Carolina whenever  
7 the child is living in North Carolina at the time of such willful neglect  
8 or refusal to support and maintain such child."

9           Sec. 3. G.S. 49-8 is amended by adding the following new subdivi-  
10 sion (6):

11           "(6) Garnishment of no more than 20 percent of the defendant's  
12 monthly disposable earnings for support of the child as provided by G.S.  
13 110-136, if the prosecution for violation of G.S. 49-2 has included a  
14 petition by the prosecuting witness or another properly interested  
15 person for garnishment. If a petition for garnishment is made part of  
16 the criminal proceeding, the notice requirements of G.S. 110-136 shall  
17 not apply and it shall be sufficient notice if the garnishment petition  
18 is served on the parent and his employer at least ten days prior to the  
19 garnishment hearing. A conviction for violation of G.S. 49-2 shall be  
20 sufficient grounds for issuance of the garnishment order, and the hearing  
21 on garnishment may be held at any time following the entry of judgment."

22           Sec. 4. G.S. 14-323, G.S. 14-324, G.S. 14-325, and G.S. 14-326 are  
23 repealed.

24           Sec. 5. This act shall become effective July 1, 1977.

"Peeping Tom" statute. The present "Peeping Tom" statute, G.S. 14-202, makes it a two-year misdemeanor for any person (male or female) to "peep secretly" into any room occupied by a female. The committee decided that in addition to being made sex neutral, the statute needed to be amended to clarify its apparent intent. The bill that is recommended eliminates sex discrimination by making the offense applicable to any person peeping into a room occupied by someone else, and it also attempts to give some definition to the vague phrase "peep secretly" (replacing it with "place himself so as to conceal from the occupant that he is looking"), and limits the offense to secret looking into an occupied room in a residence (broadly defined so it will include dormitory and motel rooms).

1 A BILL TO BE ENTITLED

2 AN ACT TO REWRITE G.S. 14-202, THE 'PEEPING TOM' STATUTE, TO CLARIFY  
3 ITS INTENT AND TO MAKE ITS PROVISIONS APPLICABLE TO SECRET LOOKING  
4 INTO A ROOM OCCUPIED BY ANY PERSON, NOT JUST A FEMALE.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-202 is rewritten to read as follows:

7 "§ 14-202. Secretly looking into room occupied by another person.--

8 Any person who shall place himself so as to conceal from the occupant  
9 that he is looking, and who shall look, into any room of another's  
10 residence while that room is occupied by another person, shall be guilty  
11 of a misdemeanor and upon conviction shall be fined or imprisoned in the  
12 discretion of the court. For purposes of this section, 'residence'  
13 includes any place containing sleeping quarters and being used as a  
14 place of abode."

15 Sec. 2. This act shall be effective July 1, 1977.

Prostitution. The prostitution statutes presented the committee with a situation where the statutes are written in sex-neutral terms but the enforcement affects women disproportionately. Present law makes no distinction between female and male prostitutes and also--by providing the same punishment for assignation, soliciting, aiding and abetting prostitution and similar activities, as it provides for prostitution itself--offers ample grounds for prosecution of the customer as well as the prostitute, but in practice the woman who is a prostitute is much more likely than anyone else to wind up in court. Since the customer is an equal participant in the criminal activity, the committee makes several recommendations in an effort to equalize enforcement.

First, an amendment to G.S. 14-203, the section defining prostitution, would state the policy that managers of prostitution businesses and customers (the two positions most likely to be filled by males) are equally liable with prostitutes. Secondly, the various subsections of G.S. 14-204 would be amended to clarify the circumstances under which a customer could be prosecuted. Thirdly, and more importantly, a new subsection (G.S. 14-204(6)) would specify that a person is guilty of prostitution whenever he pays or offers to pay, either directly or indirectly, for the act of prostitution. Such conduct is covered by present law, but this simplified statement in the statute should make the possibility of such prosecutions more obvious to officers and district attorneys and should make drawing of warrants for customers easier. Fourthly, the committee would add to G.S. 14-204(7) a prima facie presumption that a person present in a place of prostitution is there for the purpose of prostitution.

Because G.S. 14-203 and 14-204 are somewhat complicated, and because the recommended amendments would appear mostly as short phrases throughout those sections, in addition to the bill itself there is included a typed revision of the two sections with the changes shown by striking through repealed portions and italicizing new language.

Although the committee limited itself to changes designed to make enforcement sex-neutral and did not attempt a general revision of the prostitution statutes, the review of those statutes revealed several other changes worthy of a committee recommendation. The committee recommends that "indiscriminate sexual intercourse without hire" no longer be considered a form of prostitution. Apparently there are no prosecutions based on that provision of G.S. 14-203, yet it offers too great an opportunity for abuse to remain in the statutes. The committee also recommends repeal of G.S. 14-205, an obsolete statute specifying what courts prostitution charges are to be tried in, and repeal of G.S. 14-206, concerning testimony as to reputation and prior convictions, a statute apparently in conflict with the rules of evidence for other criminal cases. Finally, the committee recommends repeal of the last paragraph of G.S. 14-208, which now requires that a convicted prostitute placed on probation or parole be under the supervision of a woman probation officer.

The committee felt that there might be merit in a complete revision and simplification of the prostitution statutes, but did not have the time to undertake such a task. Included in this report is one draft of such a revision prepared by the committee staff. This draft is not recommended but only placed here for information. In addition to substantially simplifying the law, the draft would encourage equal enforcement of the



law by restricting punishment for the prostitute to a fine (for the act of "arranging prostitution") unless the customer was also prosecuted. Operators of prostitution businesses would be subject to the higher punishment without the prosecution of a customer. If someone wanted to adopt such a scheme for the prostitution statutes, the draft would require additional work, but it seemed sufficient in its present state to illustrate one alternative that is available in a complete revision.

1 A BILL TO BE ENTITLED

2 AN ACT TO REVISE THE PROSTITUTION STATUTES TO ELIMINATE SEX DISCRIMINATION  
3 IN THEIR ENFORCEMENT BY CLARIFYING THEIR APPLICABILITY TO, AND FACILITATING  
4 PROSECUTION OF, CUSTOMERS AND OTHER PARTICIPANTS OTHER THAN PROSTITUTES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-203 is rewritten to read as follows:

7 "§ 14-203. Definition of terms.--As used in this Article, the  
8 term 'prostitution' means the offering or receiving of the body for  
9 sexual intercourse for hire and the term 'assignation' means the making  
10 of any appointment or engagement for prostitution or any act in furtherance  
11 of such appointment or engagement. Managers of prostitution businesses  
12 and patrons are subject to equal liability with prostitutes for the  
13 offenses in this Article."

14 Sec. 2. G.S. 14-204 is rewritten to read as follows:

15 "§ 14-204. Prostitution and various acts abetting prostitution  
16 unlawful.--It shall be unlawful:

- 17 (1) To keep, set up, maintain, operate or provide funds for  
18 the operation of any place, structure, building or convey-  
19 ance for the purpose of prostitution or assignation.
- 20 (2) To occupy or patronize any place, structure, building or  
21 conveyance for the purpose of prostitution or assignation;  
22 or for any person to permit any place, structure, building  
23 or conveyance owned by him or under his control to be  
24 used for the purpose of prostitution or assignation, with  
25 knowledge or reasonable cause to know that the same is,  
26 or is to be, used for such purpose.

- 1 (3) To receive, or to offer or agree to receive any person  
2 into any place, structure, building or conveyance for the  
3 purpose of prostitution or assignation, or to permit any  
4 person to remain there for such purpose, or to go to and  
5 enter any place, structure, building or conveyance for  
6 that purpose.
- 7 (4) To direct, take or transport, or to offer or agree to  
8 take or transport, any person to any place, structure, or  
9 building or to any other person, with knowledge or reasonable  
10 cause to know that the purpose of such directing, taking  
11 or transporting is prostitution or assignation, or to go  
12 to any such place, structure, or building for the purpose  
13 of engaging another person for an act of prostitution.
- 14 (5) To procure, or to solicit, or to offer to procure or to  
15 solicit, either directly or indirectly, for the purpose  
16 of prostitution or assignation.
- 17 (6) To pay for, or offer to pay, either directly or indirectly,  
18 any person for any act of prostitution or assignation.
- 19 (7) To reside in, enter, or remain in any place, structure or  
20 building, or to enter or remain in any conveyance, for  
21 the purpose of prostitution or assignation. Being present  
22 in a place, structure, building or conveyance which is  
23 being used for purposes of prostitution shall be prima  
24 facie evidence that the person is there for that purpose.
- 25 (8) To engage in prostitution or assignation, or to aid or  
26 abet prostitution or assignation by any means whatsoever,  
27 either as a prostitute, manager of a prostitution business,  
28 or customer."

1           Sec. 3. G.S. 14-208 is amended by deleting the last paragraph.

2           Sec. 4. G.S. 14-205 and G.S. 14-206 are repealed.

3           Sec. 5. This act shall become effective July 1, 1977.

CHANGES MADE IN G.S. 14-203 AND 14-204 BY THE PROPOSED BILL

Provisions of existing law are typed in prestige elite (that is what you are reading now); provisions struck from present law are indicated by ~~striking through~~; provisions added by the bill are typed *in italics*. Minor rearrangements of present wording are not indicated.

§ 14-203. Definition of terms.--As used in this Article, the term "prostitution" means the offering or receiving of the body for sexual intercourse for hire and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire and the term "assignation" means the making of any appointment or engagement for prostitution or any act in furtherance of such appointment or engagement. *Managers of prostitution businesses and patrons are subject to equal liability with prostitutes for the offenses in this Article.*

§ 14-204. Prostitution and various acts abetting prostitution unlawful.--It shall be unlawful:

- (1) To keep, set up, maintain, operate *or provide funds for the operation of* any place, structure, building or conveyance for the purpose of prostitution or assignation.
- (2) To occupy *or patronize* any place, structure, building, or conveyance for the purpose of prostitution or assignation; or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution or assignation, with knowledge or reasonable cause to know that the same is, or is to be, used for such purpose.
- (3) To receive, or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution or assignation, or to permit any person to remain there for such purpose, *or to go to and enter any place, structure, building or conveyance for that purpose.*
- (4) To direct, take or transport, or to offer or agree to take or transport, any person to any place, structure, or building or to any other person, with knowledge or reasonable cause to know that the purpose of such directing, taking, or transporting is prostitution or assignation, *or to go to any such place, structure, or building for the purpose of engaging another person for an act of prostitution.*
- (5) To procure, or to solicit, or to offer to procure or solicit, *either directly or indirectly,* for the purpose of prostitution or assignation.
- (6) *To pay for, or offer to pay, either directly or indirectly, any person for an act of prostitution, or assignation.*

- (7) To reside in, enter, or remain in any place, structure, or building or to enter or remain in any conveyance, for the purpose of prostitution or assignation. *Being present in a place, structure, building or conveyance which is being used for purposes of prostitution shall be prima facie evidence that the person is there for that purpose.*
- (8) To engage in prostitution or assignation, or to aid or abet prostitution or assignation by any means whatsoever, *either as a prostitute, manager of a prostitution business, or customer.*

Note: The bill would also repeal the last paragraph of G.S. 14-208 and all of G.S. 14-205 and 14-206.

DRAFT OF COMPLETE REVISION OF PROSTITUTION STATUTES (FOR INFORMATION ONLY; NOT RECOMMENDED BY THE COMMITTEE)

Definitions.--As used in this article:

- (1) "Prostitution" means sexual activity for hire.
- (2) "Prostitute" means a person who engages in sexual activity for hire.
- (3) "Customer" means a person who hires, or offers to hire, a prostitute.
- (4) "Arranging prostitution" means offering or agreeing to participate in an act of prostitution, either as a prostitute or customer.
- (5) "Operate a prostitution business" means to provide transportation or space for, or provide information on the availability of, a prostitute. The term also means to employ, other than as a customer, someone to be a prostitute, or to profit from a prostitute's acts of prostitution.
- (6) "Participate in prostitution" means to engage in an act of prostitution, either as a prostitute or customer.

Arranging prostitution; penalty.--Any person who commits an act of arranging prostitution shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$50.

Operating a prostitution business or participating in prostitution; penalty.--(a) Any person who operates a prostitution business or participates in prostitution shall be guilty of a misdemeanor and upon conviction shall be punished by a fine, or by imprisonment for not more than two years, or both.

(b) Neither a prostitute nor a customer may be punished for participating in prostitution based upon an act of prostitution between them unless they are both convicted. The prostitute and customer may be tried either separately or together. If at the time of sentencing, the other party has not been convicted of this offense, the defendant may be sentenced only for the lesser-included offense of arranging prostitution.

Rape. The committee considered revision of the rape statutes, which are discriminatory in that the serious offenses are applicable only to a male who forces sexual intercourse with a female. Also considered was expansion of the present concept of rape to have forced homosexual activities treated in the same manner as forced sexual intercourse (rather than as crime against nature). The committee decided that it would not attempt to undertake the very difficult task of revising these statutes in light of the work being done on the same subject by the Legislative Research Commission committee studying sexual assaults and the Criminal Code Commission. The committee encourages a revision of the rape laws and has forwarded to the sexual assault study committee certain materials prepared by the staff relating to this subject.

Other changes in criminal law. As a result of its study, the committee identified several other criminal statutes which warranted revision or repeal. These changes have been recommended as part of a proposed "omnibus" bill and are discussed under that subject heading.



EMPLOYMENT

## EMPLOYMENT

### Fair Employment Practices Act

The committee was specifically mandated to consider the desirability of creating a state fair employment opportunity commission along the lines proposed by Senate Bill 813 of the 1975 General Assembly. Such a commission would be authorized to investigate and act upon employment discrimination based on sex, race, religion or age. The committee has not been able to reach a consensus on whether such legislation should be enacted, but has agreed on the form the legislation should take if it is enacted. Included in this report is a draft of such a bill.

During its consideration of this legislation the committee heard from Cher Brooks of the N. C. Human Relations Commission and Eliza Paschall of the Atlanta office of the federal Equal Employment Opportunity Commission. Both speakers emphasized that the discriminatory practices proposed to be regulated by this bill are now covered by federal law and that the primary benefit of the state legislation would be to have enforcement by a North Carolina agency rather than by EEOC. The committee discussed the backlog of cases EEOC now has and agreed that the North Carolina legislation should be drafted to assure that the state commission will qualify as a "706 agency" to which EEOC must defer for investigation of complaints of discrimination in employment.

With the assistance of Michael Brough, at the time an attorney with the Institute of Government and now in private practice, the committee undertook a revision of S. 813. The advantage of this procedure opposed to starting from scratch, was a considerable saving of committee time. The proposed bill is similar to the federal law in coverage and in what practices are prohibited, but the enforcement mechanism is significantly different from that used by the federal government, using an administrative agency to keep most complaints out of court.

A brief summary of the proposed legislation follows, and, to place the proposal in context, there is also provided a summary of existing federal and state law concerning discrimination in employment in North Carolina.

## I. Summary of Proposed Bill

Discrimination in Employment Prohibited--The essence of the proposed bill is that it prohibits (1) employers having 15 or more employees, (2) labor organizations, (3) employment agencies, and (4) joint labor-management committees controlling apprenticeship or other training programs, from discriminating against a person in any aspect of the employment relationship on the basis of that person's race, color, religion, national origin, ancestry, sex, or age (but only those between the ages of 40 and 65 are protected against age discrimination).

Exemptions and Exceptions--There are several exceptions from the general policy against employment discrimination. To begin with, religious organizations are exempt from the prohibition against discrimination with respect to employment of individuals of a particular religion to perform work related to that organization's religious activities. Next, if religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of a business, then that discrimination is permissible. Third, sectarian schools may establish religious qualifications for employment. Fourth, seniority or merit systems that measure earnings by quantity or quality of production or location of the work place are not unlawful, even though they result in differential terms and conditions of employment, if the differences are not the result of an intention to discriminate because of race, color, etc. Finally, it is permissible to act upon the results of professionally developed and job validated tests if the tests are not designed or used to discriminate on the basis of race, color, etc.

Fair employment practices division and commission--The bill creates a fair employment practices division within the department of \_\_\_\_\_ . Complaints of discrimination are to be filed with the director of that division, who will investigate. If action is warranted, and conciliation is not successful; the director carries the complaint to the five-member Fair Employment Practices Commission. The members are to be chosen by the Governor and to serve staggered six-year terms. No more than three members of the commission are to be of the same political party.

The Commission should qualify under the federal law as a "706 agency" so that complaints must be filed with it instead of the federal Equal Employment Opportunity Commission and the EEOC must defer action until the state has acted.

Enforcement Provisions--A complaint alleging employment discrimination may be filed with the director by the person aggrieved, by his or her representative, or by the Attorney General. Complaints must be filed within 180 days after the alleged discrimination. The person charged in the complaint (the respondent) is to be notified, and the director make an investigation. The director has 90 days to determine whether there is reasonable cause to believe that an unlawful practice has occurred. If he does find reasonable cause, he is to attempt to eliminate the unlawful practice by conciliation or persuasion within 90 days. If the director does not find reasonable cause for the complaint, or if he is unable to enter into a conciliation agreement acceptable to the complainant, that person may petition the commission to have his case heard in a formal, adversary hearing conducted in accordance with the Administrative Procedure Act. In certain circumstances, attorneys' fees may be awarded to the successful party. If the commission finds, after the hearing,

that an unlawful employment practice has taken place, it may issue a cease and desist order and such additional remedial action (including reinstatement and back pay) as may be appropriate. Commission orders may be appealed to, or enforcement sought from, the superior court of the county where the hearing was conducted.

Local human relations commissions--A local human relations commission established pursuant to G.S. 160A-492 may be authorized by the local governing body to process complaints alleging employment discrimination in the same manner as (and in lieu of) the state commission at least up to and including the conciliation stage. However, local commissions have no power to hold adversary hearings, and if the complainant intends to pursue his case beyond the voluntary conciliation stage, he must petition the state commission for a hearing.

Effective date--The legislation would go into effect January 1, 1978.

II. Existing federal and state law concerning discrimination in employment in North Carolina. (Except where otherwise noted, these statutes apply to discrimination on basis of race, sex, religion, color, or national origin.)

A. Federal law

1. The equal protection clause of the 14th Amendment and the Civil Rights Act of 1871.--The 14th Amendment and the statutes enacted pursuant to it (primarily § 1983 of the Civil Rights Act of 1871) prohibit deprivation of federal rights under color of state law. Prior to passage of Title VII (below), this was the basis for most suits alleging discrimination by public employers.

2. Title VII of the Civil Rights Act of 1964.--

Scope of the act.--Title VII prohibits discrimination by any employer (public or private) of 15 or more, or by any employment agency, labor union or similar organization, in hiring, firing, conditions of employment, etc. (Religious organizations may make some discrimination on religious grounds.)

Responsibility for enforcement.--Title VII created the Equal Employment Opportunity Commission (EEOC) to enforce the act.

As indicated below, sometimes the EEOC is required to defer to the action of a state agency. EEOC now has a substantial backlog of cases.

Procedures for enforcement.--If the state in which the discrimination takes place has a state anti-discrimination law and an agency with power to enforce it similar to that of EEOC, the claim of discrimination must first be filed with the state agency. For this to be true, though, EEOC must have first designated the state agency as one for which this provision applies (called a "706 agency" after the section of the statute where this provision is found). If the state has an agency but it does not meet the requirements to be recognized as a 706 agency (perhaps it does not have real enforcement power), it is probably a "notice agency" which means that EEOC must notify it that a claim has been filed with EEOC but EEOC need not wait for the state agency to act first.

If the state agency is a 706 agency, EEOC must give it at least 60 days to act on the claim before EEOC can consider it.

EEOC regulations in effect provide for complete deferral as long as the 706 agency is working on the complaint.

The charge must be filed within 180 days of the violation (extended if the person making the complaint first had to go through a state agency).

EEOC is required to investigate the complaint, giving "substantial weight" to the findings of the state agency if it has already considered the matter. If the complaint is justified, EEOC is to first attempt correction through informal methods such as conferences and conciliation. If that fails, a civil suit may be filed by EEOC in federal district court unless the employer is a public agency, in which case the complaint is referred to the Attorney General to decide whether to sue. The individual who made the complaint may sue personally if EEOC decides not to or if within 180 days of the time the complaint was filed EEOC has not reached any agreement acceptable to the complaining party or filed suit. Most suits are in fact brought by individuals rather than by EEOC.

Relief.--If the suit is successful, the court can enjoin further discrimination and order appropriate relief for the persons who brought the complaint, including hiring, reinstatement, promotion and retroactive back pay.

Standard for judging discrimination.--There need be no intent to discriminate for a violation of Title VII. Enforcement is based on the effect of employer practices, not on the motive for those practices.

Bona fide occupational qualification (BFOQ).--It is not unlawful to consider sex in employment when sex is a bona fide occupational qualification. That term is narrowly defined, does not include the preference of other workers or customers (thus airlines may not limit flight attendants to females), but must be based on business necessity (using an actress for a part in a play, for example). The BFOQ exception is inapplicable to race and color discrimination.

EEOC procedural guidelines.--All employers covered by Title VII must keep certain records; those employing 100 or more persons must file certain reports with EEOC.

The use of a job test (which includes questions about personal and employment history) is discriminatory if it adversely affects job opportunity of a Title VII group, unless the employer can produce data to show that the test predicts work skills which are important for the job, and no suitable alternative hiring procedure is available.

3. Equal Pay Act of 1963.--This legislation prohibits employers covered by the Fair Labor Standards Act from paying males and females different wages for the same work. Enforcement is by the Wage and Hour Division of the Department of Labor, which is authorized to investigate upon complaint or upon its own initiative, attempt voluntary compliance, and bring civil suit. (This particular part of the Fair Labor Standards Act is applicable only to sex discrimination.)
4. Age Discrimination in Employment Act of 1967.--Similar to the other legislation that has been mentioned, this act prohibits



discrimination because of age against those 40 to 65. It is applicable to public and private employers of 20 or more workers and is administered by the Wage and Hour Division.

5. Title VI and Title IX of the Civil Rights Act of 1964.--Title VI generally prohibits racial and other non-sex discrimination in federal grant programs. Enforcement rests with the granting federal agency. Title IX prohibits sex discrimination against either students or employees in any federally assisted education program, school or college. Exempted are admissions at private and single-sex public undergraduate schools. Enforcement is by the Office of Civil Rights of the Department of Health, Education and Welfare, and can include termination of federal assistance.
6. Other.--Several other federal acts or regulations prohibit discrimination in programs receiving Law Enforcement Assistance Administration (LEAA) and revenue-sharing funds, as well as by employers (and subcontractors) working under federal contracts of more than \$10,000 and on federally assisted construction projects.

B. State law

G.S. 126-16 and the State Personnel Commission.--Since 1971 G.S. 126-16 has prohibited discrimination in employment by the State and by local governments. Exempted from this and other provisions of the State Personnel System are public school employees. Covered by the discrimination provision but exempted from the grievance procedure provisions (below) are various categories such as university instructional and research personnel, members of commissions,

employees of the General Assembly and the Judicial Department. Certain local employees are covered (welfare, health, mental health), but the local government may remove them by establishing its own personnel system for those employees, and it determines whether any other employees are covered.

Any applicant or state employee or covered local employee who has been denied a job, promotion, training, transfer, etc., because of race, sex, age, etc. discrimination (other than when age, sex, or physical ability is a bona fide occupational qualification) can appeal directly to the State Personnel Commission. If agreement cannot be reached after investigation, the Commission can hear the matter and issue a binding order to hire, reinstate, promote, pay back salary, adjust salary, or to do any other action necessary to correct the abuse.

A BILL TO BE ENTITLED  
AN ACT TO PROMOTE AND PROTECT THE WELFARE OF THE PEOPLE OF THE STATE OF  
NORTH CAROLINA BY PREVENTION AND ELIMINATION OF DISCRIMINATORY  
EMPLOYMENT PRACTICES AND POLICIES BASED UPON RACE, COLOR, RELIGION,  
NATIONAL ORIGIN, ANCESTRY, AGE OR SEX.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by  
adding a new Article 49 as follows:

"Article 49.

Fair Employment Practices

§ 143-416.1 Short title.--This Article shall be known and may be  
cited as the Fair Employment Practices Act.

§ 143-416.2 Legislative declaration.--It is the public policy of  
this State to protect and safeguard the right and opportunity of all  
persons to seek, obtain and hold employment without discrimination or  
abridgement on account of race, religion, color, national origin,  
ancestry, age or sex.

It is recognized that the practice of denying employment opportunity  
and discriminating in the terms of employment foments domestic strife  
and unrest, deprives the State of the fullest utilization of its capacities  
for advancement and development, and substantially and adversely affects  
the interests of employees, employers, and the public in general.

§ 143-416.3 Definitions.--As used in this Article, unless the  
context otherwise requires:

(a) 'Person' means one or more individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or other legal entities, including the State, cities, counties, local boards of education, or any other governmental subdivisions of agencies.

(b) 'Employer' means any person who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any person acting directly or indirectly as agent of such a person.

(c) 'Employment agency' means any person undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.

(d) 'Labor organization' means any organization, agency, employee representation committee, group, association, or plan in which employees participate, which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment; a conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization; or an agent of a labor organization.

(e) 'Employee' means an individual employed by an employer.

(f) 'Discrimination' includes any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, ancestry, sex or age,

or the aiding, abetting, inciting, coercing or compelling thereof.

(g) 'Commission' means the North Carolina Fair Employment Practices Commission as defined by this Article.

(h) 'Local Commission' means a human relations commission established by a city or county pursuant to G.S. 160A-492.

(i) 'Director' means the Director of the Division of Fair Employment Practices.

§ 143-416.4 Employers, discrimination.--It is an unlawful employment practice for an employer:

(a) To fail or refuse to hire, or to discharge any individual; or to otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, ancestry, or age; or

(b) To limit, segregate, or classify his employees in any way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, national origin, ancestry, or age.

§ 143-416.5 Employment agencies, discrimination.--It is an unlawful practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, religion, sex, national origin, ancestry, or age.

§ 143-416.6 Labor organization, discrimination.--It is an unlawful practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise discriminate against, a member or applicant for membership because of race, color, religion, sex, national origin, ancestry, or age.

(b) To limit, segregate, or classify its membership, or to classify or fail to refuse to refer for employment an individual, in any way that would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his status as an employee or an applicant for employment, because of such individual's race, color, religion, sex, national origin, ancestry, or age.

§ 143-416.7 Apprenticeship or training, discrimination.--It is an unlawful practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of race, color, religion, national origin, ancestry, sex or age in admission to or employment in any program established to provide apprenticeship or other training.

§ 143-416.8 Additional unlawful practices.--It is an unlawful practice:

(a) For any employer, labor organization, employment agency, or joint labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any person because he has opposed any practices forbidden under this Article or because he has filed a complaint, testified or assisted in any proceeding under this Article.

(b) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this Article or to attempt to do so.

(c) For any person to obstruct or prevent a person from complying with the provisions of this Article or any order issued thereunder.

(d) For an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or cause to be printed or published any notice or advertisement relating to employment that indicates any preference, limitation, specification, or discrimination, based on race, color, religion, sex, national origin, ancestry or age, subject to the following exceptions:

(1) Such a notice or advertisement is not unlawful if the preference, limitation, specification or discrimination indicated falls within the exemptions or exceptions of G.S. 143-416.9 and 143-416.10 or is otherwise not prohibited by this Article.

(2) Newspapers or other printed publications, or radio, television or other broadcast media are not required to exercise any control or supervision over or do any screening of any such advertisement or notice, except to the extent that such advertising medium is itself, as an employer, publishing or broadcasting the advertisement or notice for persons to be employed as its own employees.

§ 143-416.9 Exemptions.--(a) The provisions of this Article with respect to discrimination on the basis of age apply only to individuals who are at least forty but less than sixty-five years of age.

(b) The provisions of this Article concerning discrimination based on religion do not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities.

(c) The provisions of this Article concerning discrimination based on religion do not apply to a school, college, university, or other educational institution that is, in whole or substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion.

§ 143-416.10 Exceptions.--It is not an unlawful practice for an employer to hire and employ an employee, or for an employment agency to classify or refer for employment an individual, or for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining program to admit or employ an individual in the program, on the basis of his religion, sex or national origin if religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise.

§ 143-416.11 Clarifications.--It is not an unlawful practice under this Article:

(a) For an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system that measures earnings by quantity or quality or production or that relates earnings to work location, if the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, ancestry, or age;



(b) To give and act upon the results of a professionally developed and job validated test if its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, ancestry, or age.

§ 143-416.12 Complaints of discrimination, procedure, conciliation agreements.--(a) An individual claiming to be aggrieved may file with the Director a written, sworn complaint stating that an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining, or other person has committed or is committing an unlawful practice under this Article. A complaint may also be filed on behalf of an aggrieved individual by that individual's representative. If two or more individuals claim to be aggrieved by the same unlawful practice, they may all be named in the same complaint or separate complaints may be filed for each individual. If separate complaints are filed, they may be consolidated by the Director for purposes of investigation and informal resolution or by the Commission during the formal hearing proceedings authorized by G.S. 143-416.13. Complaints erroneously filed as joint complaints may be treated as separate complaints by the Director or the Commission.

(b) The Attorney General may file with the Director a written, sworn complaint stating that an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining, or other person, has committed or is committing an unlawful practice by engaging in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this Article. Such a complaint need not name particular aggrieved individuals.

(c) A complaint shall set forth facts sufficient to enable the Director to identify the person charged (the respondent), and shall contain such other information as the Commission requires by regulation. The Director shall within 15 days after it is filed, furnish the respondent with a copy of the complaint. A complaint must be filed within 180 days after the alleged unlawful practice occurs. A complaint is filed when it is received by the Director. That date shall be entered on the complaint by the Director.

(d) Within 90 days after the complaint is filed, the Director must, after investigation, do one of the following:

(1) Notify the complainant and respondent by certified mail that there exists reasonable cause to believe an unlawful practice has occurred and that the Director will endeavor within the succeeding 90 days to resolve the complaint by informal methods of conference, conciliation and persuasion;

(2) Notify the complainant and respondent by certified mail that there exists no reasonable cause to believe that an unlawful practice has occurred and that the complainant may request a formal hearing on the complaint before the Commission within 30 days from receipt of this notice;

(3) Notify the complainant and respondent by certified mail that the Director is unable to determine whether there exists reasonable cause to believe that an unlawful practice has occurred and that the complainant may request a formal hearing on the complaint before the Commission within 30 days from receipt of this notice.

(e) If the Director determines, after investigation, that there is reasonable cause to believe that the respondent has engaged in an unlawful

practice, the Director shall endeavor to eliminate the alleged unlawful practice by informal methods of conference, conciliation and persuasion. The terms of a conciliation agreement reached with a respondent may require him to refrain from the commission of unlawful discriminatory practices in the future and may make such further provisions as may be agreed upon between the Director and the respondent. The Director shall furnish the complainant with a copy of any conciliation agreement entered into. If the Director is unable to enter into a conciliation agreement acceptable to the complainant within 90 days after the complainant receives notification that reasonable cause has been found, then the Director shall notify the complainant and the respondent that the conciliation efforts have failed and that the complainant may request a formal hearing on the complaint before the Commission within 30 days from receipt of this notice.

(f) Except as provided in subsection (f) of G.S. 143-416.14, nothing said or done during and as a part of the informal endeavors to resolve the complaint, including the terms of any conciliation agreement, may be made public by the Director or any person under his supervision or used as evidence in a subsequent proceeding, other than a proceeding brought pursuant to subsection (g) of this section, without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for not more than one year, or both.

(g) At the expiration of one year from the date of a conciliation agreement and at other times in its reasonable discretion, the Director may investigate whether the terms of the agreement have been and are

being complied with by the respondent. Failure to comply with the terms of a conciliation agreement constitutes an unlawful practice under this Article.

(h) At any time after a complaint is filed, the Director may file an action in the superior court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has his principal place of business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under G.S. 143-416.13 and 143-416.14, including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the Commission may enter with respect to the complaint. The court shall have the power to grant such temporary relief or restraining order as it deems just and proper.

(i) The complainant and the respondent may jointly agree to extend any of the time limits specified in this section. A copy of any such agreement shall be filed with the Director.

§ 143-416.13 Administrative hearing.--(a) If the complainant is notified that the Director has determined that there does not exist reasonable cause to believe an unlawful practice has occurred or that the Director is unable to determine whether reasonable cause exists to believe that an unlawful practice has occurred, then the complainant may, within 30 days after receiving such notification, file a petition with the Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. If, on the 95th day after the complaint is filed with the Director, the complainant has not received any of the notifications specified in subsection (d) of G.S. 143-416.12, then the complainant may, within the succeeding 30 days, file a petition with the

Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. A petition is filed with the Commission on the date it is received by the Commission. That date shall be entered on the petition.

(b) If the complainant is notified by the Director that efforts to resolve the complaint through informal methods of conference, conciliation and persuasion have failed, then the complainant may, within 30 days after receiving such notification, file a petition with the Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. If, on the 95th day after receiving notification that reasonable cause has been found, the complainant has not been notified either that a conciliation agreement acceptable to him has been entered into or that the conciliation efforts have failed, then the complainant may, within the succeeding 30 days, file a petition with the Commission seeking a formal hearing on the complaint on accordance with G.S. 143-416.14. A petition is filed with the Commission on the date it is received by the Commission, and that date shall be entered on the petition.

(c) The complainant and the respondent may jointly agree to extend any of the time limits specified in this section. A copy of any such agreement shall be filed with the Director and with the Commission.

§ 143-416.14 Administrative hearing procedures.--(a) Except as provided in this section, the hearing before the Commission on the complaint shall be conducted in accordance with Article 3 of Chapter 150A of the General Statutes (Administrative Procedure Act).

(b) The Commission shall conduct the hearing on the complaint within 60 days after the petition seeking a hearing is filed.

(c) The complainant shall bear both the burden of going forward with the evidence to establish a prima facie case that an unlawful practice exists and the burden of proof on this issue.

(d) All parties in the hearing may be represented by counsel.

(e) A member of the Commission shall excuse himself from consideration of a complaint when he has an economic or personal relationship with any party to the hearing of such a nature that would likely impair his independence of judgment.

(f) As part of its final order, the Commission may award reasonable attorney's fees to the prevailing party and shall award reasonable attorney's fees (unless good cause be shown for denying them) if the prevailing party is the complainant and the Director or a local commission made a finding of reasonable cause following the initial investigation on the complaint, or if the prevailing party is the complainant and the Director or a local commission was unable to determine whether reasonable cause existed because of the failure of the respondent to cooperate in the initial investigation, or if the prevailing party is the respondent and the Director or a local commission made a finding of no reasonable cause following the initial investigation. Notwithstanding the foregoing provision, no award of attorney's fees may be made in favor of or against the State of North Carolina in a case in which the Attorney General participates. To the degree that the disposition of the complaint by the Director or a local commissioner is relevant to the Commission's award of attorney's fees under this subsection, the Commission may take evidence to determine how the Director or the local commission disposed of the complaint. If neither party objects, the Commission may base its determination on written records submitted by the Director or the local

commission. Evidence on this matter may not be taken until after the Commission has decided whether an unlawful practice under this Article has occurred.

(g) If the Commission finds as a result of the hearing that the respondent has engaged or is engaging in an unlawful employment practice charged in the complaint, other than an unlawful practice described in G.S. 143-416.12(b), the Commission may, as a part of its final order, require the respondent to cease and desist such unlawful employment practices and to engage in such additional remedial action as may be appropriate, including, but not limited to, the following:

(1) Hiring, reinstatement or upgrading of aggrieved individuals named in the complaint, with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Back pay liability shall not accrue from a date more than two years prior to the filing of the complaint with the Director.

(2) Admission or restoration of aggrieved individuals named in the complaint to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupation training or retraining program, and the utilization of objective criteria in the admission of such individuals to such programs.

(3) Reporting as to the manner of compliance.

(4) Posting notices in conspicuous places in the respondent's place of business in a form prescribed by the Commission.

(h) If the Commission finds as a result of a hearing held pursuant to a complaint filed by the Attorney General under subsection (b) of G.S. 143-416.12 that the respondent has engaged or is engaging in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this Article, then the Commission may, as part of its final order, require the respondent to cease and desist such unlawful employment practices and to engage in such additional remedial action as may be appropriate, except that the Commission may not require actions that benefit identified or named individuals, such as hiring, reinstatement, or back pay awards.

§ 143-416.15 Judicial review of Commission orders.--(a) Except as otherwise provided in this section, judicial review of Commission orders shall be in accordance with Article 4 of G.S. Chapter 150A.

(b) Notwithstanding the first sentence of G.S. 150A-45, a person seeking review of a final Commission order may file a petition in the superior court of the county where the administrative hearing was conducted.

(c) The appropriate superior court, and the appellate division, if appeal is taken pursuant to G.S. 150A-52, shall hear the appeal as expeditiously as possible.

§ 143-416.16 Enforcement of Commission orders.--(a) If at any time the respondent fails to comply with a final order of the Commission the complainant or the Commission may appeal to the superior court of the county where the hearing was held for an order requiring the respondent to abide by the final order of the Commission.

(b) Within 30 days after receipt of the petition for enforcement of the Commission's order, or within such additional time as the court may allow, the Commission shall transmit to the appropriate court the



original or a certified copy of the entire record of the administrative hearing proceedings leading to the order. With the permission of the court, the record may be shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(c) The hearing on the petition for enforcement of the Commission's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo.

(d) The court shall issue the order requiring compliance with the Commission's order unless it finds that enforcement of the Commission's order would prejudice substantial rights of the respondent because the Commission's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the Commission; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under

G.S. 150A-29(a) or G.S. 150A-30 in view of the entire record as submitted; or

(6) Arbitrary or capricious.

(e) If the court declines to enforce the commission's order for one of the reasons specified in subsection (d) of this section, it shall either

(1) Dismiss the petition; or

(2) Modify the Commission's order and enforce it as modified;

or

(3) Remand the case to the Commission for further proceedings.

If the court takes any of the actions permitted by this subsection, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such action.

(f) Any party to the hearing on the petition for enforcement of the Commission's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.

§ 143-416.17 Local human relations commissions.--(a) Local human relations commissions established in the discretion of local governments may be authorized by the local governing bodies to investigate complaints alleging violations of the provisions of this Article, make findings as to reasonable cause, and enter conciliation agreements, in accordance with the provisions of this section.

(b) An individual claiming to be aggrieved or a representative of such an individual may file with a local commission a written, sworn complaint stating that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training, has committed an

unlawful practice under this Article. If two or more individuals claim to be aggrieved by the same unlawful practice, they may all be named in the same complaint or separate complaints may be filed for each individual. If separate complaints are filed, they may be consolidated by the local commission for purposes of investigation and informal resolution or by the Commission during the formal hearing proceedings conducted in accordance with G.S. 143-416.13 and G.S. 143-416.14. Complaints erroneously filed as joint complaints may be treated as separate complaints by the local commission or by the Commission.

(c) A complaint shall set forth facts sufficient to enable the local commission to identify the persons charged (the respondent), and shall contain such other information as the Commission requires by regulation. The local commission shall, within 15 days after it is filed, furnish the respondent and the Director with a copy of the complaint. A complaint must be filed within 180 days after the alleged discriminatory practice occurs. A complaint is filed when it is received by the local commission. That date shall be entered on the complaint by the local commission.

(d) Within 90 days after the complaint is filed, the local commission must, after investigation, do one of the following:

(1) Notify the complainant and respondent by certified mail that there exists reasonable cause to believe an unlawful practice has occurred and that the local commission will endeavor within the succeeding 90 days to resolve the complaint by informal methods of conference, conciliation and persuasion;

(2) Notify the complainant and respondent by certified mail that there exists no reasonable cause to believe that an unlawful

practice has occurred and that the complainant may request a formal hearing on the complaint before the Commission within 30 days from receipt of this notice;

(3). Notify the complainant and respondent by certified mail that the local commission is unable to determine whether there exists reasonable cause to believe that an unlawful practice has occurred and that the complainant may request a formal hearing on the complaint before the Commission within 30 days from receipt of this notice.

(e) If the local commission determines after investigation that there is reasonable cause to believe that the respondent has engaged in an unlawful practice, the local commission shall endeavor to eliminate the alleged unlawful practice by informal methods of conference, conciliation and persuasion. The terms of a conciliation agreement reached with a respondent may require him to refrain from the commission of unlawful discriminatory practices in the future and may make such further provisions as may be agreed upon between the local commission and the respondent. The local commission shall furnish the complainant and the Director with a copy of any conciliation agreement entered into. If the local commission is unable to enter into a conciliation agreement acceptable to the complainant within 90 days after the complainant receives notification that reasonable cause has been found, then the local commission shall notify the complainant and the respondent that the conciliation efforts have failed and that the complainant may request a formal hearing on the complaint before the Commission within 30 days from receipt of this notice.

(f) Except as provided in subsection (f) of G.S. 143-416.14, nothing said or done during and as a part of the informal endeavors to resolve the complaint, including the terms of any conciliation agreement, may be made public by the local commission or any members of its staff or used as evidence in a subsequent proceeding, other than one brought pursuant to subsection (g) of this section, without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(g) At the expiration of one year from the date of a conciliation agreement and at other times in its reasonable discretion, the local commission may investigate whether the terms of the agreement have been and are being complied with by the respondent. Failure to comply with the terms of a conciliation agreement constitutes an unlawful practice under this Article.

(h) At any time after a complaint is filed, the local commission may request the Director to file an action in the superior court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has his principal place of business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under G.S. 143-416.13 and 143-416.14, including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the Commission may enter with respect to the complaint. The court shall have the power to grant such temporary relief or restraining order as it deems just and proper.

(i) If the complainant is notified that the local commission has determined that there does not exist reasonable cause to believe an

unlawful practice has occurred or that the local commission is unable to determine whether reasonable cause exists to believe that an unlawful practice has occurred, then the complainant may, within 30 days after receiving such notification, file a petition with the Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. If, on the 95th day after the complaint is filed with the local commission, the complainant has not received any of the notifications specified in subsection (d) of this section, then the complainant may, within the succeeding 30 days, file a petition with the Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. A petition is filed with the Commission on the date it is received by the Commission. That date shall be entered on the petition.

(j) If the complainant is notified by the local commission that efforts to resolve the complaint through informal methods of conference, conciliation and persuasion have failed, then the complainant may, within 30 days after receiving such notification, file a petition with the Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. If, on the 95th day after receiving notification that reasonable cause has been found, the complainant has not been notified either that a conciliation agreement acceptable to him has been entered into or that the conciliation efforts have failed, then the complainant may, within the succeeding 30 days, file a petition with the Commission seeking a formal hearing on the complaint in accordance with G.S. 143-416.14. A petition is filed with the Commission on the date it is received by the Commission. That date shall be entered on the petition.

(k) The complainant and the respondent may jointly agree to extend any of the time limits specified in subsections (d), (e), (i), and (j)

of this section. A copy of any such agreement reached with respect to the time limits specified in subsections (d) and (e) shall be filed with the local commission and a copy of any such agreement reached with respect to the time limits specified in subsections (i) and (j) shall be filed with the local commission and the Commission.

(1) The hearing before the Commission and any subsequent proceedings involving review of Commission orders or enforcement of Commission orders shall be conducted as provided in G.S. 143-416.14 through 143-416.16.

§ 143-416.18 Investigations.--In connection with an investigation of a complaint filed under this Article, the Director or any local commission may request access at any reasonable time to premises, records, and documents relevant to the complaint and may request the right to examine, photograph and copy evidence. A member of a local commission shall excuse himself from investigation or other consideration of a complaint when he has an economic or personal relationship with any party to the matter of such a nature that it would likely substantially influence his judgment as to the merits of the complaint.

§ 143-416.19 Fair Employment Practices Commission.--(a) There is hereby created the North Carolina Fair Employment Practices Commission, which shall be placed for organizational purposes within the Department of \_\_\_\_\_ . The Commission shall consist of five members appointed by the Governor. No more than three members of the Commission may be of the same political party. The term of office of each member of the Commission is six years, except that of those members first appointed two shall be appointed for a term of two years, two for a term of four years, and one for a term of six years. Members shall

serve until their successors are appointed and qualified. A member chosen to fill a vacancy otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he is to succeed. , A member of the Commission is eligible for reappointment.

(b) Except as otherwise provided by this section, the appointment, qualifications, and removal of members of the Commission shall be in accordance with G.S. 143B-13.

(c) Three members of the Commission constitute a quorum. A vacancy in the Commission does not impair the authority of the remaining members to exercise the powers of the commission.

(d) Each member shall receive while engaged in the performance of his duties the per diem and allowances provided by G.S. 138-5 for members of State boards and commission generally.

(e) Administrative services to the Commission shall be provided in accordance with G.S. 143B-14.

§ 143-416.20 Powers of Commission.--Within the limitations provided by law, the Commission has the following powers:

(a) To carry out the responsibilities given to it by any of the provisions of this Article.

(b) To maintain an office in the City of Raleigh and such other offices within the State as it may deem necessary.

(c) To meet and exercise its powers at any place within the State.

(d) To employ such hearing officers and other professional and clerical staff as are necessary to carry out the provisions of this Article, in accordance with applicable State personnel regulations and budgetary laws.



(e) To adopt procedural regulations.

(f) To adopt guidelines setting forth the Commission's interpretations of the substantive provisions of this Article.

(g) To make studies appropriate to effectuate the purposes and policies of this act and to make the results thereof available to the public.

(h) To render at least annually a comprehensive written report to the Governor and to the Legislature. The report shall contain proposed or adopted guidelines and may contain recommendations of the Commission for legislative or other action to effectuate the purposes and policies of this act.

§ 143-416.21 Division of Fair Employment Practices.--(a) There is created within the Department of \_\_\_\_\_ a Division of Fair Employment Practices, consisting of a Director, appointed by \_\_\_\_\_, and such professional and clerical employees as are necessary to carry out the functions assigned to the Director by G.S. 143-416.12.

(b) The Director may delegate to any of the employees of the Division of Fair Employment Practices any of the responsibilities assigned to him by G.S. 143-416.12."

Sec. 2. This act shall become effective January 1, 1978.

FAMILY LAW

## FAMILY LAW

The subject of family law has presented the Committee with a difficult analysis relating to whether certain statutory provisions that differentiate between husbands and wives or between fathers and mothers should be regarded as instances of unwarranted sex discrimination. For example G.S. 50-16.1(4), which defines "supporting spouse" in alimony and alimony pendente lite cases, spells out that "(A) husband is deemed to be the supporting spouse unless he is incapable of supporting his wife." Such statutory language appears to take for granted that a husband is the "breadwinner" until contrary evidence is presented, a presumption that - despite its deep historical roots - seems to be less valid in recent times. In any event, the Committee has been directed to consider whether this language and similar statutory provisions should remain as a rule of law.

The Committee has chosen to recommend two specific legislative proposals which amend discriminatory provisions in existing statutes. One proposal deals with G.S. Chapter 35 entitled "Persons with Mental Diseases and Incompetents," and is regarded as uncontroversial. The other proposal focuses on G. S. Chapter 50 entitled "Divorce and Alimony." This proposal requires some comment prior to discussing its individual sections.

The Committee also makes a recommendation concerning real property owned jointly by a husband and wife in tenancy by the entirety. See the subject heading "PROPERTY" for a commentary on this recommendation. Family law in general, and particularly G. S. Chapter 50, should be made a subject of detailed study for an appropriate body of the General Assembly. Because of time and money limitations as well as the broad scope of this study, the Committee has been unable to fully consider the complicated interrelationship among North Carolina laws relating to marriage, alimony, divorce, and child custody and support. The Committee has made its best judgment in

recommending the removal of sex discrimination from several existing sections in G. S. Chapter 50, but the proposal should be thoroughly examined by the 1977 General Assembly to assure that changes in this most sensitive area of the law reflect the best interests of North Carolina's citizens. One major example of an apparent limitation in current law which should be considered by the General Assembly deals with equitable property settlements. Courts are unable in divorce cases to enter equitable property settlements which would determine a fair division of property between the parties rather than rely on title to determine possession. Testimony received during Committee deliberations suggests the equitable property settlement approach is perhaps overdue and should at least be carefully studied by the legislature. The Committee simply has not examined the matter sufficiently in order to draft specific legislation, but it endorses the principle of equitable property settlements.

G. S. Chapter 50 changes. Section 1 of the draft repeals G. S. 50-5(3), one of the grounds for absolute divorce. §50-5(3) allows a husband to divorce: if the wife is pregnant at the time of the marriage, if the husband is ignorant of the pregnancy, and if the husband is not the father. This particular 'fault' ground for absolute divorce does not appear to have been the subject of any recent cases in North Carolina and is perhaps an anachronism. (It appears few, if any, other states have such a law.) The Committee believes the statute should be repealed rather than expanding it to correct the inequality present.

Sec. 2 of the draft deals with another ground for divorce in §50-5(6). One spouse may divorce the other one who has become insane. In these cases, the court is authorized to require the plaintiff to provide maintenance to the insane defendant, but the standard varies depending on whether the plaintiff is a husband or a wife. The draft singularizes the standard for maintenance, basically leaving the court discretion to require maintenance.

Child custody is dealt with in Sec. 3 of the bill. §50-13.2(a) is amended to provide that in child custody cases no presumption

exists between the mother and father as to which one should receive custody of the child (assuming the court awards custody to one parent only). Also added is a list of factors, not exclusive, to guide the court in making its custody determination. Note that the last addition, which is proposed as the final sentence of §50-13.2(a), has been taken from the Uniform Marriage and Divorce Act, drafted by the National Conference of Commissioners on Uniform State Laws (see Sec. 402 of the Uniform Act).

Child support is the subject of Sec. 4 of the draft bill. §50-13.4(b) currently provides that the father's duty of child support is presumed higher than the mother's duty. The proposal amends the statute to place each parent's duty of child support on an equal plane and to point out that neither parent shall be liable for child support solely because of such parent's sex.

The proposal amends the statutes relating to alimony and alimony pendente lite by modifying the terms "dependent spouse" and "supporting spouse" in §50-16.1 (see Sec. 5 and 6 of the draft). Under the proposal, two findings must be made before a spouse can be adjudged dependent (the language is taken from Sec. 308(a) of the Uniform Act referred to above). This language has been added to give the court at least minimal guidance in adjudicating dependence, and to make clearer that the court is not required in each case to find that one spouse is 'supporting' and the other is 'dependent'. The proposal also affirmatively states that there is no presumption between the spouses as to which one is dependent. The definition of "supporting spouse" is modified in the proposal by removing the sentence (in §50-16.1(4)) which indicates the "husband is deemed to be the supporting spouse unless he is incapable of supporting his wife" and replacing it with the statement that no presumption exists between the spouses as to which one is supporting.

Sec. 7 of the draft bill amends G. S. 50-11(c), which currently provides that a decree of absolute divorce does not impair a spouse's right to receive alimony and any other rights provided under any judgment or decree of a court rendered before or at the time of the judgment for absolute divorce, except in two instances. The first exception is a divorce obtained on the grounds of adultery of the de-

pendent spouse; the second exception (the one which concerns the committee) is "in case of divorce obtained by the dependent spouse in an action initiated by such spouse on the ground of separation for the statutory period(.)" In either of these cases the dependent spouse loses the right to permanent alimony once the divorce is granted. The proposed legislation amends G. S. 50-11(c) by deleting the second exception to the basic policy set forth in the subsection.

The net result of this deletion will be to allow a dependent spouse to receive alimony and also to institute an action for absolute divorce based on separation for the statutory period - one year - as authorized in G. S. 50-6. As Professor Lee points out: "If it were not for the language of N. C. General Statute §50-11(c), a dependent spouse who has been abandoned by his or her spouse could obtain an absolute divorce on the ground of separation and, in the same proceeding, on the ground of abandonment, permanent alimony....(T)he prudent wife who has obtained a court order for permanent alimony should let her husband be the plaintiff if a subsequent action for absolute divorce is to be instituted on the ground of separation." (2 Lee, N. C. Family Law, §135 at pp. 43-44 (Supp. 1976).)

Present G. S. 50-11(c) forces a difficult decision on the dependent spouse who may be in substantial need of support and maintenance, but who has lived separate and apart from the other spouse for one year. The dependent spouse loses the right to obtain alimony if he or she seeks a divorce based on the one year separation. Under present North Carolina law, this burden may be regarded as sex discriminatory because the dependent spouse in the vast majority of cases is a woman (Note: the definition of "supporting spouse" concludes with: (a) husband is deemed to be the supporting spouse unless he is incapable of supporting his wife(.)" ).

Even though the committee also recommends defining "supporting spouse" and "dependent spouse" to be sex-neutral (in order to have every interspousal support case decided on its own merits), it still believes §50-11(c) should be amended to allow a dependent spouse to seek alimony under appropriate circumstances without prejudicing his or her right to petition for a divorce on the ground of one year's separation. This in no way alters the evidence which a dependent

spouse must present in order to obtain alimony. The court must find not only that the spouse needs support and that the other spouse is capable of providing support, but also that one of the grounds for alimony exists (G. S. 50-16.2).

Under the common law, the husband has a legal duty to support his wife. The extent of his obligation depends generally on his capacity to earn and his existing assets and on the accustomed standard of living of the wife. Some legal scholars raise the question whether state legislatures which have created "sex-neutral" support statutes have had any effect on the husband's common law duty of support. It has been suggested to this Committee that in the absence of a specific repeal, the common law remains intact. No cases have been decided in North Carolina on this point since the pertinent statutes were rewritten in 1967. Uncertainty on this point apparently leaves open the question whether a court has power to deny support to a wife when her husband is able to support her and she has a right to support under the common law. The Committee is uncertain whether the common law duty of the husband to provide support still exists in North Carolina, although the language of G. S. 50-16.1(4) appears to support this assertion. The Committee proposal amending this statute is designed to remove from the law any presumption concerning the duty of support and to leave the issue of support open for determination in each case. With this in mind, the Committee endorses specific repeal of the common law doctrine if such action is necessary.

**SESSION 197\_**

INTRODUCED BY:

**DRAFT  
FOR REVIEW ONLY**

Referred to:

1                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE CIVIL DIVORCE, CUSTODY AND SUPPORT LAWS TO  
3 PROVIDE EQUALITY OF RIGHTS UNDER THE LAW TO MEN AND WOMEN.

4 The General Assembly of North Carolina enacts:

5                   Section 1. G.S. 50-5(3) is repealed.

6                   Sec. 2. G.S. 50-5(6) as it appears in the 1975 Cumu-  
7 lative Supplement to 1966 Replacement Volume 2A is amended by  
8 deleting all of paragraph 4 and substituting therefor a new  
9 paragraph 4 to read as follows:

10            "In all decrees granted under this subdivision in actions  
11 in which the insane defendant has insufficient income and property  
12 to provide for his or her own care and maintenance, then in the  
13 discretion of the court, the court may require the plaintiff to  
14 provide for the care and maintenance of the insane defendant for  
15 the defendant's lifetime, compatible with the plaintiff's financial  
16 standing and ability. The trial court will retain jurisdiction of  
17 the parties and the cause, from term to term, for the purpose of  
18 making such orders as equity may require to enforce the provisions  
19 of the decree requiring plaintiff to furnish the necessary funds  
20 for such care and maintenance."

21                   Sec. 3. G.S. 50-13.2(a) as it appears in the 1975  
22 Cumulative Supplement to 1966 Replacement Volume 2A is amended by  
23 adding new language at the end of the subsection to read as follows:

24            "Provided, between the mother and father, whether natural



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# DRAFT FOR REVIEW ONLY

1 or adoptive, there is no presumption as to who will better promote  
2 the interest and welfare of the child. The court shall consider  
3 all relevant factors including:

- 4 (1) the wishes of the child's parent or parents as  
5 to his custody;
- 6 (2) the wishes of the child as to his custodian;
- 7 (3) the interaction and interrelationship of the  
8 child with his parent or parents, his siblings, and  
9 any other person who may significantly affect the  
10 child's best interest;
- 11 (4) the child's adjustment to his home, school, and  
12 community; and
- 13 (5) the mental and physical health of all individuals  
14 involved.

15 The court shall not consider conduct of a proposed custodian  
16 that does not affect his relationship to the child."

17 Sec. 4. G.S. 50-13.4(b) as it appears in the 1975  
18 Cumulative Supplement to 1966 Replacement Volume 2A is amended  
19 by deleting the first sentence and substituting therefor a new  
20 sentence to read as follows:

21 "(b) In the absence of pleading and proof that circum-  
22 stances of the case otherwise warrant, each parent or any person,  
23 agency, organization or institution standing in loco parentis  
24 shall be liable for the support of a minor child; provided,  
25 neither parent shall be found liable for the support of the child  
26 solely because of such parent's sex."

27 Sec. 5. G.S. 50-16.1(3) as it appears in the 1975  
28 Cumulative Supplement to 1966 Replacement Volume 2A is amended

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1 by adding new language at the end of the subdivision to read as  
2 follows:

3 "A spouse shall be adjudged dependent only if the following  
4 circumstances exist:

5 (a) he or she lacks sufficient property to provide  
6 for his or her own reasonable needs; and

7 (b) he or she is unable to provide for his or her  
8 own reasonable needs through suitable employment or  
9 is the custodian of a child whose condition or  
10 circumstances make it appropriate that the custodian  
11 not be required to seek employment outside the home.

12 There shall be no presumption between husband and wife as to who  
13 is the dependent spouse."

14 Sec. 6. G.S. 50-16.1(4) as it appears in the 1975  
15 Cumulative Supplement to 1966 Replacement Volume 2A is amended  
16 by deleting the second sentence and substituting therefor the  
17 following:

18 "There shall be no presumption between husband and wife as  
19 to who is the supporting spouse."

20 Sec. 7. G. S. 50-11(c) as it appears in the 1975  
21 Cumulative Supplement to 1966 Replacement Volume 2A is amended  
22 by deleting the following language: "and except in case of  
23 divorce obtained by the dependent spouse in an action initiated  
24 by such spouse on the ground of separation for the statutory  
25 period".

26 Sec. 8. This act shall become effective on July 1,  
27 1977; and shall not affect pending litigation.

28

G. S. Chapter 35 changes. The Committee proposes amending three statutes in this Chapter in order to equalize the treatment afforded to husbands and wives. For the sake of clarity these changes have been incorporated into a separate draft from the G. S. Chapter 50 changes. Basically the changes reflect the policy that, in appropriate circumstances, either married partner may be entitled to support from his or her spouse. §35-7 now provides that an abandoned insane wife is entitled to apply to the Clerk of Superior Court for support out of any property or estate of her husband. The proposal extends to an abandoned insane husband the same right to seek support; the proposal also authorizes an appeal by any party from the clerk's order in order to have the issue determined in Superior Court.

§35-13 currently allows the wife of an insane person to bring a special proceeding, under certain circumstances, to sell the insane husband's property and have the proceeds applied to her support. The proposal extends this right to the husband of an insane wife, under the same circumstances.

§35-19 presently appears to allow the income or estate of an insane widowed mother to be used for the support of her minor children if the father has died, but the language leaves it unclear as to whether the intended result is accomplished. The proposal rewrites §35-19 in sex-neutral terms and makes it clear that the income of any insane surviving spouse may be made liable for the support of minor children.

SESSION 197\_\_

DRAFT  
FOR REVIEW ONLY

INTRODUCED BY:

Referred to:

1                                   A BILL TO BE ENTITLED  
2    AN ACT TO AMEND G.S. CHAPTER 35 RELATING TO MENTAL DISEASES  
3           AND INCOMPETENTS TO REMOVE SEX DISCRIMINATION.

4    The General Assembly of North Carolina enacts:

5                    Section 1. G.S. 35-7 as it appears in 1966 Replace-  
6    ment Volume 2A of the General Statutes is rewritten to read as  
7    follows:

8            "§35-7. Allowance to abandoned insane married person.---When  
9    any insane married person is abandoned by his or her spouse, the  
10   insane person may by guardian or next friend apply to the clerk  
11   of the superior court of the county in which the insane person  
12   has residence for support and maintenance, which the clerk may  
13   order out of any property or estate of the abandoning spouse.  
14   Any party involved may appeal from the clerk's order to the  
15   next session of the superior court, when the matters at issue  
16   shall be tried de novo."

17                    Sec. 2. G.S. 35-13 as it appears in 1966 Replacement  
18    Volume 2A is rewritten to read as follows:

19            "§35-13. Spouse of insane husband or wife entitled to special  
20    proceeding for sale of property.---Every married person whose  
21    husband or wife is insane and is confined in a mental hospital  
22    or other institution in this State, and who was living with the  
23    insane spouse at the time of commitment shall, if he or she be  
24    in needy circumstances, have the right to bring a special

1 proceeding before the clerk of the superior court to sell the  
2 property of the insane spouse, or so much thereof as is deemed  
3 expedient, and have the proceeds applied for support: Provided,  
4 that said proceeding shall be approved by the judge of the supe-  
5 rior court holding the courts of the judicial district where the  
6 said property is situated. When the deed of the commissioner  
7 appointed by the court, conveying the lands belonging to the  
8 insane spouse is executed, probated, and registered, it conveys  
9 a good and indefeasible title to the purchaser."

10           Sec. 3. G.S. 35-19 as it appears in 1966 Replacement  
11 Volume 2A is rewritten to read as follows:

12       "§35-19. Income of insane surviving spouse used for children's  
13 support.--When a parent dies leaving surviving minor children and  
14 a surviving spouse who is the other parent of such children, but  
15 leaving no sufficient estate for the support, maintenance and  
16 education of such minor children, and the surviving spouse is or  
17 becomes insane and is so declared according to law, and such in-  
18 sanity continues for twelve months thereafter, and the insane  
19 person has an estate which is placed in the hands of a guardian  
20 or other person, as provided by law, the estate of such insane  
21 person shall be made liable for the support, maintenance and  
22 education of the minor children. The clerk of the superior court  
23 for the county in which the insane person has residence shall  
24 order that fit and proper advancements be made on behalf of the  
25 minor children."

26           Sec. 4. This act shall become effective upon ratifica-  
27 tion.

28

INCOME TAX

## INCOME TAX

After discussing the problem of sexual discrimination in North Carolina State Income Tax laws with officials from the Department of Revenue, the committee makes two specific legislative recommendations.

The first proposal deals with the treatment for income tax purposes, of real property held concurrently by a husband and wife in tenancy by the entirety. This proposal is presented (and the doctrine of tenancy by the entirety extensively discussed) under the subject heading "PROPERTY". To summarize, North Carolina taxes all income, rents and profits obtained from TBTE property as part of the husband's reportable income because under the common law doctrine which still exists in the State, the husband is entitled to the control, possession, income, etc. of such property. The committee recommends that the right to control TBTE property be shared equally between husband and wife. It follows that each spouse should be required to report  $\frac{1}{2}$  (one-half) of the income on his or her tax return. Officials in the Department of Revenue have informed the committee that this will be the result; they also indicate that the reporting change will cause a \$950,000 to \$1,000,000 State income tax loss in the first year. Subsection (e) of the proposed legislation relating to tenancy by the entirety property contains the income tax change.

The second proposal deals with the deduction from net income of certain exemptions for married couples. Following is an explanation, prepared by the Department of Revenue, of the sexually discriminatory features of these exemptions and the proposed legislation to remove the discrimination.

Rewrite G. S. 105-149(a)(3): Under present law the wife is discriminated against in that she can claim the \$2,000 exemption only by permission of her husband. The rewriting of this subdivision provides that the spouse having the larger adjusted gross income shall be allowed the \$2,000 exemption, and the other spouse is allowed only the \$1,000 exemption. It also allows the married couple to claim the

exemptions as they wish. The spouse having the smaller adjusted gross income may by agreement claim the \$2,000 exemption if the couple feels there would be a tax advantage by filing in this manner.

Amend G. S. 105-149(a)(2a): This amendment prevents the spouse who is entitled to claim only \$1,000 exemption under (a)(2) from claiming the \$2,000 "head of household" exemption or a total combined exemption of \$4,000 for the couple. This amendment would not change the present law whereby one spouse is entitled to \$2,000 and the other \$1,000, or a total combined exemption of \$3,000.

Rewrite G. S. 105-149(a)(3): Since the rewriting of subdivision (2) allows the spouse to claim exemptions on the basis of their adjusted gross incomes or their agreement, the specific reference to "a married woman" in subdivision (3) is incorrect in some cases and would be confusing if left in its present form. This subdivision is unnecessary and should be deleted in its entirety; but if not deleted, it should be rewritten.

Rewrite G. S. 105-149(a)(6): This subdivision is rewritten to make it consistent with the writing of subdivision (2) of G. S. 105-149(a).



**SESSION 197**\_\_\_\_\_

INTRODUCED BY:

**DRAFT  
FOR REVIEW ONLY**

Referred to:

1                   A BILL TO BE ENTITLED  
2    AN ACT TO AMEND G.S. CHAPTER 105 TO REMOVE SEX DISCRIMINATION  
3       FROM CERTAIN REVENUE LAWS.

4    The General Assembly of North Carolina enacts:

5                   Section 1. G.S. 105-149(a)(2) as it appears in the  
6    1975 Cumulative Supplement to 1972 Replacement Volume 2D is  
7    rewritten to read as follows:

8       "(2) In the case of a married couple living together, two  
9    thousand dollars (\$2,000) exemption to the spouse having the  
10   larger adjusted gross income and one thousand dollars (\$1,000)  
11   exemption to the other spouse; provided that the spouse having  
12   the larger income may by agreement with the other spouse allow  
13   that spouse to claim the two thousand dollars (\$2,000) exemp-  
14   tion in which case the spouse having the larger adjusted gross  
15   income must file a return and claim only one thousand dollars  
16   (\$1,000) exemption."

17                  Sec. 2. G.S. 105-149(a)(2a) is amended by deleting  
18   the words "married woman living with her husband" and substi-  
19   tuting therefor the words "married individual living with his  
20   or her spouse".

21                  Sec. 3. G.S. 105-149(a)(3) is rewritten to read as  
22   follows:

23       "(3) In the case of a married couple living together, the  
24   spouse who does not claim the two thousand dollars (\$2,000)



INSURANCE

## INSURANCE

The committee recommends that the present life insurance exemption contained in the Constitution of North Carolina (Article X, Section 5) be amended in order that both husbands and wives may insure their own lives for the benefit of their spouse or children, or both, free from claims of the representatives or creditors of the insured or his estate. The current provision applies only to husbands. The committee has drafted legislation proposing a constitutional amendment on this matter to be considered by the voters of the State. Companion legislation has also been drafted which will make a conforming statutory change in G. S. 58-205 if the voters approve the constitutional amendment. These proposals and related commentary are set out under the subject heading "CONSTITUTION OF THE STATE OF NORTH CAROLINA".

The committee received and considered a summary of a Department of Insurance report concerning sex discrimination in insurance. A copy of that summary, which was discussed at two different meetings of the committee, is included here. Some members of the committee expressed doubt about the reliability of the facts supporting the recommendations in the summary; other members felt that they did not have sufficient knowledge to make an informed judgment on the question. As a result, the committee takes note of the Department's summary and recommendations but is not prepared to make any recommendation of its own.

# N. C. DEPARTMENT OF INSURANCE REPORT

## SUMMARY

Business as usual in the insurance industry means in most cases charging women policyholders more for inferior benefits. It means selling separate policies to women and adding special limitations of coverage and benefits available to them.

The insurance industry is entirely regulated by the states but just a few states---New York, Pennsylvania, Maryland, New Jersey, Iowa, California and North Carolina, have begun to study the extent of discrimination against women by the insurance industry.

Sex has been used as a classification in life insurance only since the late 50's when it was decided that the marked difference between the mortality rates of men and women entitled women to a cut in life insurance costs. The 1958 Mortality Tables entitled "The Commissioners Standard Ordinary Table of Mortality (CSO)" which are used almost universally for computing reserves in life insurance -- (G.S. 58-201.2) provides a standard set back of three years for women. This means that women are charged the premium that would be charged a man three years younger. Yet the HEW mortality tables show a five to seven year longer life expectancy for women.

The industry uses a six year differential on annuity policies wherein a person contracts to receive fixed annual payments after a certain period of premium payment. This means that in annuity contracts women must pay six years longer than a man of the same age.

In addition, options and additional benefits such as settlement options, guaranteed purchase options and disability income options are often completely unavailable to women or if available are severely limited. Also, the amount of life insurance a woman may buy often depends upon her husband's coverage, and women who head families may find it difficult or impossible to purchase a family policy.

Health insurance is a form of protection against the costs of illness or injury.

In other than group coverage the problems are:

1. Premium rates are higher for women. Sometimes as high as 199%.
2. Maternity coverage is available only with a family policy.
3. Maternity coverage is not available to an individual married

or unmarried applicant.

4. Maternity coverage is subject to a waiting period of ten months which may not be reduced for miscarriages or premature births.

5. Maternity coverage unlike other illnesses is limited to a flat maximum amount or length of time.

6. Abortion coverage is not generally available to individual policyholders. It is only available to family policyholders with maternity coverage.

7. Health insurance policies often carry exclusions or riders which exempt all treatment for disease of female genital organs.

Two thirds (2/3) of all health insurance coverage is sold through group contracts and the employee has no voice in selection of the policy.

One method of limiting coverage which employers often use is to treat female employees differently than wives of male employees in terms of maternity coverage, by offering female employees fewer benefits. This is blatantly unfair to working women, violates Title VII of the Civil Rights Act and seems to lack any financial basis. The Commissioner on Living Costs and the Economy of the State of New York obtained coverage premiums for work groups made up of 31 to 40% women. He found that if maternity benefits "without special limits" were included for female employees only, the cost to the employer would be about \$.92 per month per employee. If the wives of male employees were covered but not female employees, this would add about \$4.00 per month per employee to the cost. It would cost \$.25 per month per employee to provide maternity benefits to all female employees of the State.

Disability insurance provides payments to replace income lost when the insured is unable to work due to illness or injury. Attitudes about women workers affect disability coverage and availability. Many insurance companies still operate on outdated assumptions about women in the job market--that they are not permanent members of the work force--that a woman's place is in the home where she really prefers to be.

Half of all women over 16 work and they make up 40% of the work force nationwide. In 1969 the median income of white women working year round, full time, was about \$5,000.00, for black women, \$4,000.00. Loss of earning for many of these women could mean financial disaster to their families.

Public health statistics show that men and women lose the same amount of time due to acute disabilities. In addition, women's illnesses usually kept them away from work for shorter periods than men's and--men are more likely than women to be absent from work because of chronic conditions such as heart trouble, arthritis or rheumatism. Despite these statistics, a disability policy for five

years with a 30-day elimination period costs \$497.00 for men and \$763.00 for women-54% more.

Disability policies are sold on the basis of age, sex, and job classification. Jobs are divided into broad classes by stability of work, physical demands and hazards. Women who are able to qualify for disability insurance are offered policies substantially inferior to those sold to men in the same profession or occupation.

Insurance companies often define disability differently for men and women.--Total disability for males means the inability to perform the duties of his occupation for 60 months; after that it means the inability to perform duties of any occupation. Females are charged a higher rate and are covered for 24 months; after which they are expected to perform the duties of any occupation.

Insurance companies have refused to offer disability benefits to housewives--using the excuse that they are unable to measure the economic value of childcare and homemaking. This is hardly a valid argument in view of all the studies done of this subject.

Discrimination in other types of insurance such as homeowners, tenants, and general liability insurance is more subtle. Companies routinely do investigations of divorced and widowed women inquiring into their living habits, friends, associates and personal activities. In most instances the individual is never aware that an investigation has been made and is never given a reason when an application for insurance is rejected. Often the agent will never convey the fact of rejection to the applicant and will merely place the application with another company.

This type of discrimination is much harder to document. Occasionally an agent will complain to the Department that his company has asked him to investigate a newly widowed or newly divorced insured's living habits or an applicant who is rejected will demand to be told why she was rejected and will be told simply that "we do not insure single women". The Department of Insurance Consumer Insurance Information Division has followed up on such complaints. Where it had the documentary evidence of discrimination, particularly when the agents were cooperating, the Department has obtained agreements not to continue such discriminatory practices. In other situations the companies have denied that they engaged in such a practice and there was no strong evidence to refute it.

## RECOMMENDATIONS

TO: General Assembly

1. Amend G.S. 58-44.3 and G.S. 58-54.4(7) to prohibit discrimination on the basis of sex and marital status in the availability of insurance.
2. Adopt legislation which would prohibit:
  - a. Exclusions in disability insurance for
    - (1) disorders of the female generative system
    - (2) pregnancy and pregnancy related conditions
  - b. Exclusions in health insurance for
    - (1) pregnancy and pregnancy related conditions.
3. Amend G.S. 58-201.2 which requires insurance companies to use the 1958 mortality tables entitled "The Commissioner's Standard Ordinary Table of Mortality" which provides a standard set back of three years for women, to require the Commissioner to revise the mortality statistics, and to require the companies to use the most recently adopted table; or in the alternative, to amend G.S. 58-201.2 by including therein a new table based upon existing mortality statistics.

TO: Commissioner

Adopt a rule pursuant to the Unfair Trade Practices Statutes prohibiting discrimination on the basis of sex and marital status in the availability of insurance.



OMNIBUS BILL

## OMNIBUS BILL

During its examination of the General Statutes, the committee identified several miscellaneous provisions containing sex discriminatory wording which warrant revision or repeal. Rather than treat each statute in a separate bill, the committee has drafted an omnibus bill incorporating numerous modifications of a consensus, noncontroversial nature. Only those modifications consented to by each member present and considered unlikely to create much controversy or opposition have been "plugged into" this proposal. Most of the amendments are simple wording changes intended to eliminate discrimination. For example, G. S. 6-21(1) is amended by changing "widow" to "surviving spouse". Certain changes are more complicated and many of them are discussed in explanatory comments in the following paragraphs.

The omnibus bill is designed to reflect the General Assembly's commitment to a thorough examination of statutory law in order to eliminate language that "may deny equality of rights under the laws of this State." For this reason, the committee recommends that the General Assembly give its careful attention to the full proposal; however, to the extent that any individual section of the omnibus bill creates any appreciable controversy, it should be excised and considered as a separate matter.

Sec. 5 of the omnibus bill is noteworthy because it amends G.S. 12-3 entitled "Rules for construction of statutes". Currently the section provides in part: "every word importing the masculine gender only shall extend and be applied to females as well as to males, unless the context clearly shows to the contrary." This means a statute that refers to the 'clerk of court and his wife' would not appear to encompass the husband of a female clerk of court (see G.S. 7A-104). The proposed amendment changes the construction of words importing the feminine gender only; they are extended and applied to the other sex unless the context clearly shows to the contrary.

In the course of its deliberations the committee discovered several sections of the criminal statutes which needed either revision or repeal. Several statutes to be repealed are long out of date and currently serve no useful purpose as part of the criminal law: G.S. 14-43 (a felony for a man to abduct or elope with the innocent and virtuous wife of another); G.S. 14-274 ( a misdemeanor for a male to "disturb, annoy or harass" the students of a girls' school by "persistent unnecessary presence" or by "willful addressing or communicating orally or otherwise" with the female students); G.S. 14-336, -338, and -339 (completing the repeal of the "vagrants and tramps" article, the heart of which has already been declared unconstitutional by the courts). These statutes are repealed in Sec. 36 of the omnibus bill.

The committee also recommends revision of several sections to eliminate possible sex discrimination. Sec. 6 of the proposal rewrites G.S. 14-46 to make a person liable for aiding and abetting any other person--not just the mother as in present law--in the concealment of the birth of a child. (The provision concerning the mother's liability for homicide was eliminated in the revision as being unnecessary; she would remain liable even with those words taken from the statute.) G.S. 14-320 is amended in Sec. 7 of the draft to make it unlawful to separate a child under six months old from whichever parent has legal custody, not just from the mother as the present statute reads. Finally, Sec. 8 of the bill establishes in G.S. Chapter 14 a new section to eliminate a wife's common law defense of "coercion." Generally a person is not excused from criminal acts because of an order or command from another, but compulsion is a defense if the criminal act was done under reasonable apprehension of death or serious bodily injury. However, the command of a husband plus his presence has been held to create a defense of coercion on the part of the wife. The committee proposal eliminates that presumption in favor of the wife and instead treats husbands and wives the same as all other criminal defendants, having to prove compulsion by the usual means in order to excuse a criminal act.

Sec. 13, 14, and 15 of the proposal amend three statutes in Article 6 of G.S. Chapter 29 relating to intestate succession by and from illegitimate children. These amendments primarily make a conforming change in two related statutes (G.S. 29-21 and 29-22) that was apparently overlooked when G.S. 29-19 was rewritten by Chapter 1062 of the 1973 Session Laws, Second Session 1974. In addition, G.S. 29-19(b) is amended to provide a further protection to the heirs of an illegitimate intestate, other than a person who acknowledges himself to be the father of the child, by requiring that the acknowledgement must also be made and filed during the child's lifetime. This amendment is designed to eliminate the possibility of a person making such acknowledgement after the child's death in order to share in the estate.

G.S. Chapter 51 entitled "Marriage" is modified by minor changes contained in Secs. 21-23 of the omnibus bill. The committee studied at length the Uniform Marriage and Divorce Act drafted by the National Conference of Commissioners on Uniform State Laws. At the committee's request, the staff prepared a draft rewriting G.S. Chapter 51 to conform to the Uniform Act. After considering the extensive modification, committee members decided that whatever problems exist in Chapter 51 are largely unrelated to sex discrimination and that it was more appropriate for this study to identify specifically sex discriminatory language which warrants removal. The committee encourages the 1977 General Assembly to consider whether Chapter 51 should be completely rewritten.

Also included in the omnibus bill (Sec. 27-31) are amendments to several sections of Article 1 of Chapter 110 of the General Statutes, the child labor laws. The amendments proposed by the committee do no more than eliminate sex discrimination. In each instance where boys and girls are treated differently, the committee has proposed that the more lenient standard be adopted for both sexes. For example, G.S. 110-2 presently allows messenger boys over 16 to work until one o'clock in the morning if the company's offices are open that late; the proposed legislation would allow any minor in that position to work until one. The committee was concerned

only with sex discrimination but could not help but notice the confused state of the child labor statutes generally. It is difficult for any person to decipher from Article 1 just how a minor may be employed. The committee recommends that the Department of Labor undertake a thorough review of Article 1 for appropriate revisions.

INTRODUCED BY:

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Referred to:

1                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND OR REPEAL CERTAIN MISCELLANEOUS STATUTES THAT  
3 DISCRIMINATE ON THE BASIS OF SEX IN ORDER TO REMOVE THE  
4 DISCRIMINATION.

5 The General Assembly of North Carolina enacts:

6           Section 1. General Statutes (G.S.) 1-223, as it  
7 appears in 1969 Replacement Volume 1A of the General Statutes  
8 of North Carolina, is rewritten to read as follows:

9       "§1-223. Against married persons.--In an action brought by  
10 or against a married person, judgment may be given against such  
11 married person for costs or damages or both, to be levied and  
12 collected solely out of such married person's separate estate  
13 or property."

14           Sec. 2. G.S. 6-21, as it appears in 1969 Replacement  
15 Volume 1B, is amended in subdivision (1) by deleting the word  
16 "widow" and substituting therefor the words "surviving spouse";  
17 and,

18           G.S. 6-21 is further amended in subdivision (4) by  
19 deleting the words and punctuation "the wife, either by the  
20 husband or by her from her separate estate" and substituting  
21 therefor the words "either spouse from either estate".

22           Sec. 3. G.S. 7A-104(a), as it appears in the 1975  
23 Cumulative Supplement to 1969 Replacement Volume 1B, is amended  
24 in subdivision (3) by deleting the word "wife" and substituting

1 therefor the word "spouse"; and  
2 G.S. 7A-104(a) is further amended in subdivision (4)  
3 by deleting the word "wife" and substituting therefor the  
4 word "spouse".

5 Sec. 4. G.S. 8-56, as it appears in 1969 Replacement  
6 Volume 1B is amended immediately after the words "except that  
7 in actions of criminal conversation brought by" by deleting  
8 the words "the husband in which the character of the wife is  
9 assailed she" and substituting therefor the language "either  
10 spouse in which the character of the other spouse is assailed,  
11 that other spouse".

12 Sec. 5. G.S. 12-3, as it appears in 1969 Replacement  
13 Volume 1B, is amended in subdivision (1) by deleting the words  
14 "shall extend and be applied to females as well as to males"  
15 and substituting therefor the words "or the feminine gender  
16 only shall extend and be applied to the other sex".

17 Sec. 6. G.S. 14-46, as it appears in 1969 Replace-  
18 ment Volume 1B, is rewritten to read as follows:

19 "§14-46. Concealing birth of child.--If any person shall,  
20 by secretly burying or otherwise disposing of the dead body of  
21 a newborn child, endeavor to conceal the birth of such child,  
22 such person shall be guilty of a felony and punished by fine  
23 or imprisonment, or both, in the discretion of the court. Any  
24 person aiding, counseling or abetting the parent of a child  
25 in concealing the birth of a child, shall be guilty of a  
26 misdemeanor."

27 Sec. 7. G.S. 14-320, as it appears in the 1975  
28 Cumulative Supplement to 1969 Replacement Volume 1B, is amended

1 by deleting the words "its mother" from the third line of that  
2 section and inserting in lieu thereof the words "a parent  
3 legally entitled to custody of the child"; and, is further  
4 amended by deleting the word "mother" in the catchline, in  
5 line six, and in line nine, and in each instance inserting in  
6 lieu thereof the word "parent".

7           Sec. 8. Chapter 14 of the General Statutes is amended  
8 by adding the following new section:

9           "Defenses of compulsion and coercion.--Any person charged  
10 with a criminal offense may assert the common law defense of  
11 compulsion, but no presumption of coercion shall arise because  
12 of the marriage relationship alone."

13           Sec. 9. G.S. 20-187.2(a), as it appears in the 1975  
14 Cumulative Supplement to 1975 Replacement Volume 1C, is amended  
15 in line 1 by deleting the word "Widows" and substituting there-  
16 for the words "Surviving spouse"; and, is further amended in  
17 line 2 by deleting the word "widow" and substituting therefor  
18 the word "spouse".

19           Sec. 10. G.S. 23-18, as it appears in 1965 Replace-  
20 ment Volume 1D, is amended by deleting the words "his wife,  
21 or any of his" and substituting therefor the words "any of his  
22 or her".

23           Sec. 11. G.S. 28A-13-3(a), as it appears in the  
24 1975 Cumulative Supplement to 1966 Replacement Volume 2A, is  
25 amended in line 5 by deleting the word "man" and substituting  
26 therefor the word "person".

27           Sec. 12. G.S. 28A-13-10(c), as it appears in the  
28 1975 Cumulative Supplement to 1966 Replacement Volume 2A, is



1 amended in line 8 by deleting the word "man" and substituting  
2 therefor the word "person".

3           Sec. 13. G.S. 29-19(b), as it appears in the 1975  
4 Cumulative Supplement to 1966 Replacement Volume 2A, is amended  
5 in subdivision (2) immediately after the words "acknowledged  
6 himself during his own lifetime" by inserting the words "and  
7 the child's lifetime"; and, is further amended in subdivision  
8 (2) immediately after the words "filed during his own lifetime"  
9 by inserting the words "and the child's lifetime".

10           Sec. 14. G.S. 29-21, as it appears in 1966 Replacement  
11 Volume 2A, is rewritten to read as follows:

12       "§29-21. Share of surviving spouse.--The share of the  
13 surviving spouse of an illegitimate intestate shall be the same  
14 as provided in G.S. 29-14 for the surviving spouse of a legiti-  
15 mate person. In determining whether the illegitimate intestate  
16 is survived by one or more parents as provided in G.S. 29-14(3),  
17 any person identified as the father under G.S. 29-19(b)(1) or  
18 (b)(2) shall be regarded as a parent."

19           Sec. 15. G.S. 29-22, as it appears in 1966 Replace-  
20 ment Volume 2A, is rewritten to read as follows:

21       "§29-22. Shares of others than the surviving spouse.--Those  
22 persons surviving the illegitimate intestate, other than the  
23 surviving spouse, shall take that share of the net estate pro-  
24 vided in G.S. 29-15. In determining whether the illegitimate  
25 intestate is survived by one or more parents of their collateral  
26 kindred as provided in G.S. 29-15, any person identified as the  
27 father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as  
28 a parent."

1           Sec. 16. G.S. 30-17, as it appears in the 1975  
2 Cumulative Supplement to 1966 Replacement Volume 2A, is amended  
3 in the last paragraph after the language "Provided, however,  
4 the allowance shall not be available to an illegitimate child  
5 of a deceased father, unless" by deleting the remainder of that  
6 sentence and substituting therefor the following: "the dece-  
7 dent would have been identifiable as the father for purposes  
8 of intestate succession under G.S. 29-19(b)(1), (b)(2), or (d)."

9           Sec. 17. G.S. 33-2, as it appears in the 1975  
10 Cumulative Supplement to 1966 Replacement Volume 2A, is amended  
11 by deleting the first two sentences of the section and substi-  
12 tuting therefor the following:

13        "Any parent, whether of full age or minor, may by last will  
14 and testament in writing dispose of the custody and tuition  
15 of any of his or her infant children, being unmarried, and  
16 whether born at the parent's death or in ventre sa mere for  
17 such time as the children may remain under 18 years of age, or  
18 for any less time; provided, if both parents make such dispo-  
19 sition in separate written wills, the provisions contained in  
20 the will of the last surviving parent shall determine the  
21 custody and tuition of the children and provided further, any  
22 parent who willfully abandons the other parent and children  
23 shall relinquish the right of appointment."

24           Sec. 18. G.S. 33-67, as it appears in 1966 Replace-  
25 ment Volume 2A, is amended in line 5 by deleting the word  
26 "mother" and substituting therefor the words "other parent".

27           Sec. 19. G.S. 35-2, as it appears in the 1975 Cumu-  
28 lative Supplement to 1966 Replacement Volume 2A, is amended in

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1 line 10 by deleting the word "men" and substituting therefor  
2 the word "persons".

3 Sec. 20. G.S. 47-15, as it appears in 1966 Replacement  
4 Volume 2A, is amended in the catchline by rewriting it to read:

5 "Probate of married person's deed where spouse insane.";

6 G.S. 47-15 is further amended in line two by deleting  
7 the language "a married man whose wife" and substituting there-  
8 for the language "a married person whose spouse"; and

9 G.S. 47-15 is further amended in line five by deleting  
10 the word "wife" and substituting therefor the words "insane spouse".

11 Sec. 21. G.S. 51-1, as it appears in the 1975 Cumu-  
12 lative Supplement to 1966 Replacement Volume 2A, is amended on  
13 line 6 by deleting the word "man" and substituting therefor  
14 the word "husband".

15 Sec. 22. G.S. 51-2, as it appears in the 1975 Cumu-  
16 lative Supplement to 1966 Replacement Volume 2A of the General  
17 Statutes is amended at the end of subsection (b) by adding a  
18 new sentence to read as follows:

19 "Provided that, if the putative father is less than 18 years  
20 old, consent in writing to such marriage shall be given on the  
21 part of the putative father in the same manner as required for  
22 the unmarried female."

23 Sec. 23. G.S. 51-6, as it appears in the 1975 Cumu-  
24 lative Supplement to 1966 Replacement Volume 2A, is amended in  
25 lines 2 and 3 by deleting the language "any two persons, or  
26 shall declare them to be man and wife" and substituting there-  
27 for the language "a man and woman, or shall declare them to be  
28 husband and wife".

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1           Sec. 24. G.S. 94-7(4), as it appears in 1975 Replace-  
2 ment Volume 2C, is amended near the end of the subdivision by  
3 deleting the words "and sex".

4           Sec. 25. G.S. 94-8, as it appears in 1975 Replace-  
5 ment Volume 2C, is rewritten to read as follows:

6        "§94-8. Approval of apprentice agreements; signatures.--  
7 No apprentice agreement under this chapter shall be effective  
8 until approved by the Director. Every apprentice agreement shall  
9 be signed by the employer, or by an association of employers  
10 or an organization of employees as provided in G.S. 94-9, and  
11 by the apprentice, and if the apprentice is a minor, by either  
12 of the minor's lawful parents, or by any person, agency, organi-  
13 zation or institution standing in loco parentis. Where a minor  
14 enters into an apprentice agreement under this chapter for a  
15 period of training extending into his or her majority, the  
16 apprentice agreement shall likewise be binding for such a  
17 period as may be covered during the apprentice's majority."

18           Sec. 26. G.S. 95-49, as it appears in 1975 Replace-  
19 ment Volume 2C, is amended by deleting the word, "employee"  
20 and substituting therefor the word "person".

21           Sec. 27. G.S. 110-1, as it appears in 1975 Replace-  
22 ment Volume 3A, is amended in line six by deleting the word  
23 "boys" and inserting in lieu thereof the word "minors."

24           Sec. 28. G.S. 110-2, as it appears in 1975 Replace-  
25 ment Volume 3A, is amended in lines 13 and 16 by deleting in  
26 each of those lines the word "boys" and by inserting in lieu  
27 thereof the word "minors"; and,

28           G.S. 110-2 is further amended by rewriting the proviso

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1 that begins after the semicolon on line 23 and continues to  
2 the end of that sentence to read as follows: "and provided  
3 further, that minors employed as telegraph messengers in  
4 towns where a full-time service is not maintained on Sundays  
5 may work seven days per week, but not for more than two hours  
6 on Sunday."

7           Sec. 29. G.S. 110-7, as it appears in 1975 Replace-  
8 ment Volume 3A, is amended by deleting the third sentence of  
9 that section, which begins on line 14 with the word "Nor" and  
10 ends on line 18 with the word "messages."

11           Sec. 30. G.S. 110-8, as it appears in 1975 Replace-  
12 ment Volume 3A, is rewritten to read as follows:

13       "§110-8. Employment of minors in street trades; sale or  
14 distribution of newspapers, etc.--No minor under 14 years of  
15 age shall distribute, sell, expose, or offer for sale news-  
16 papers, magazines, periodicals, candies, drinks, peanuts, or  
17 other merchandise in any street or public place, or exercise  
18 the trade of bootblack in any street or public place. No  
19 minor under 16 years of age shall be employed or permitted  
20 or allowed to work at any of the trades or occupations men-  
21 tioned in this section after 7:00 P.M. or before 6:00 A.M., or  
22 unless that minor has an employment certificate issued in  
23 accordance with G.S. 110-9. The State Commissioner of Labor  
24 shall have authority to make, promulgate and enforce such  
25 rules and regulations as he may deem necessary for the enforce-  
26 ment of this section, not inconsistent with this Article or  
27 existing law.

28       "Nothing in this section shall be construed to prevent

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1 minors over 14 years of age from distributing newspapers,  
2 magazines and periodicals on fixed routes, seven days per  
3 week: Provided, that such persons shall not be employed nor  
4 allowed to work after 8:00 P.M. and before 5:00 A.M., and that  
5 the hours of work and the hours in school do not exceed eight  
6 in any one day, except minors 12 years of age and over who  
7 have secured a certificate from the Department of Labor for  
8 the sale or distribution of newspapers, magazines or periodi-  
9 cals: Provided further, that such person shall not be per-  
10 mitted or allowed to work more than four hours per day nor more  
11 than 24 hours per week: Provided further, that nothing in  
12 this Article shall be construed to prevent minors 12 years of  
13 age and over, upon securing a proper certificate from the  
14 Department of Labor, from being employed outside school hours  
15 in the sale or distribution of newspapers, magazines and  
16 periodicals (where not more than 75 customers are served  
17 in one day): Provided, that such minors shall not be employ-  
18 ed between the hours of 7:00 P.M. and 6:00 A.M., nor for more  
19 than 10 hours in any one week."

20           Sec. 31. G.S. 110-64, as it appears in 1975 Replace-  
21 ment Volume 3A, is amended by rewriting the last sentence to  
22 read as follows: "In applying the provisions of Article IV  
23 of the compact to secure the return of a runaway from North  
24 Carolina, the courts of this State shall construe the word  
25 'juvenile' as used in this Article to mean any person who has  
26 not reached his or her eighteenth birthday."

27           Sec. 32. G.S. 127A-80(b), as it appears in the 1975  
28 Cumulative Supplement to 1974 Replacement Volume 3B, is amended

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1 in the third sentence immediately after the language: "To  
2 be eligible for service as an officer," by deleting the  
3 remainder of the sentence and substituting therefor the  
4 following language: "a person must be at least 18 years of  
5 age and under 64."

6 Sec. 33. G.S. 128-15, as it appears in 1974 Replace-  
7 ment Volume 3B, is amended in the catchline by deleting the  
8 words "wives or widows" and substituting therefor the word  
9 "spouse"; and, is further amended in line 15 by deleting the  
10 words "the widows of such veterans and to the wives" and sub-  
11 stituting therefor the words "surviving spouses of such  
12 veterans and to spouses".

13 Sec. 34. G.S. 128-15.1, as it appears in 1974  
14 Replacement Volume 3B, is amended in lines 3 and 4 by deleting  
15 the words "the widows of such veterans and the wives" and sub-  
16 stituting therefor the words "surviving spouses of such  
17 veterans and spouses"; and, is further amended in lines 8 and  
18 9 by deleting the words "the widows of such veterans and the  
19 wives" and substituting therefor the words "surviving spouses  
20 of such veterans and spouses".

21 Sec. 35. G.S. 147-32, as it appears in 1974 Replace-  
22 ment Volume 3C, is amended in line 1 by deleting the word  
23 "widows" and substituting therefor the word "surviving spouses".

24 Sec. 36. The following G. S. sections are repealed:  
25 §14-43; §14-274; §14-336; §14-338; and §14-339.

26 Sec. 37. This act shall become effective on  
27 July 1, 1977.

28

PROPERTY



## PROPERTY

The committee makes three recommendations concerning sexual discrimination in the area of property law. These recommendations deal with the following topics:

- (1) the homestead exemption contained in the State Constitution,
- (2) the statutory requirement that a married woman be privately examined concerning certain conveyances or contractual agreements with her husband, and
- (3) real property held by husband and wife in tenancy by the entirety.

Additionally, the committee heard testimony about the need to consider fully the concept of "equitable property settlements" in final divorce actions. Current law apparently does not recognize the contribution made by the married partner who cares for the home and children and thus does not earn a salary, when a marital break-up occurs and property must be divided. The "equitable property settlement" approach would recognize this contribution as well as the fact that the homemaker spouse may be unable to re-enter the job market temporarily or permanently, because of children, age, lack of training, etc. Although time and financial restrictions prevented the committee from pursuing this subject, it is recommended that the 1977 General Assembly give careful consideration to legislation which would authorize more equitable property settlements.

The first proposal, dealing with the homestead exemption is discussed in the commentary under the heading, "Constitution of the State of North Carolina." Note that the homestead exemption change includes a "proposed" constitutional amendment bill and a related statutory modification which would become effective if the voters first approve the constitutional amendment.

### Repeal of G. S. 52-6

The second recommendation is to repeal G.S. 52-6, relating to the private examination of married women. This statute basically

applies to contracts between husband and wife which affect the real estate of the wife and to separation agreements between husband and wife (see §52-6(a)). The contract or separation agreement must be in writing and "acknowledged before a certifying officer who shall make a private examination of the wife ...(.)" The certifying officer (defined in §52-6(c)) conducts the examination to determine whether the wife duly executed the instrument voluntarily without fear of compulsion of her husband. As part of his findings, the certifying officer also must include a statement "as to whether or not said contract is unreasonable or injurious to the wife (.)" (§52-6(b)). Clearly, this law is sexually discriminatory because it requires married women to undergo a procedure not required of married men. The law also places a tremendous burden on the certifying officer - who may range from a justice to a deputy clerk of the General Court of Justice - because it requires this official to go beyond finding that the contract or agreement was executed voluntarily and to ascertain independently whether the contract is "unreasonable or injurious to the wife." And, no statutory guidelines appear to help the certifying officer make this independent determination.

The committee has heard arguments pro and con about the efficacy of G.S. 52-6. One alternative to repeal would be to expand the statutory requirement of the private examination to all married persons. In practice, however, it appears the clerk of court is the official who conducts most private examinations; expanding the requirement to include married men would likely cause undue (and perhaps unnecessary) book-keeping and other problems in the clerk's office. There is also a question about whether the clerk of court is an appropriate official to make an independent determination about whether the contract is unreasonable or injurious to the wife. Another alternative to repeal would answer this question by eliminating the requirement that the certifying officer make this independent finding and leave him responsible for determining only that the instrument was duly executed and that it was signed voluntarily. One other alternative - which would preserve all the present findings and conclusions that must accompany the private examination - is to redefine "certifying officer" more

narrowly to assure that a higher judicial officer examines the conveyance or separation agreement.

On balance, the committee favors repeal of §52-6. At common law all transactions of the wife with her husband concerning her separate property were void. The statute first appeared as an enabling act to give validity to such transactions, and the private examination was included to protect the wife from the influence and control which the husband was presumed to exercise over her as a consequence of the marital relation. More recent changes in North Carolina law reflect the erosion of the common law presumption that the husband controls his wife. For example, G.S. 47-14.1, enacted in 1945, eliminated the private examination of the wife when she conveys her real property to a third party (not her husband). In 1947, G.S. 52-12 (the former designation for current §52-6) was amended by removing a provision requiring a private examination when the wife conveyed her personal property. And, in 1964, the Constitution of North Carolina was amended by changing Article X, Section 6, to remove the former requirement that a married woman have the written consent of her husband in order to convey her real property. In his treatise entitled North Carolina Family Law, Professor Lee notes that this statute should be repealed (see Lee, v.2, §111, pp. 47-49, 3rd Ed. 1963).

Following is the proposed legislation to repeal §52-6, and the full text of the statute. Note that the proposal runs to 14 sections because §52-6 is referred to specifically in several other statutes. In drafting the proposal, the committee has attempted to identify every such statute and to determine what changes must be made in each of them to conform to the basic policy of repealing the requirements of a private examination. Sec. 14 of the proposal creates a curative statute which is broader in coverage than G.S. 52-8. §52-8 validates certain contracts between husband and wife where the only defect was the failure to have the private examination. Under §52-8 the certifying officer must still find that the contract was not unreasonable or injurious to the wife. The curative statute which appears in the proposal is intended to validate defective contracts based solely on the "failure to meet the requirements set out in former G.S. 52-6...(.)" Finally, the effective date of the repeal is October 1, 1977.

**SESSION 197**\_\_\_\_\_

INTRODUCED BY:

**DRAFT  
FOR REVIEW ONLY**

Referred to:

1                   A BILL TO BE ENTITLED  
2 AN ACT TO REPEAL G.S. 52-6 RELATING TO THE PRIVATE EXAMINATION  
3 OF MARRIED WOMEN.

4 The General Assembly of North Carolina enacts:

5           Section 1. G.S. 52-6 is repealed.

6           Sec. 2. G.S. 7A-292(10) as it appears in the 1975  
7 Cumulative Supplement to Replacement Volume 1B of the General  
8 Statutes is repealed.

9           Sec. 3. G.S. 39-13.2(b) as it appears in 1966 Replace-  
10 ment Volume 2A is repealed.

11           Sec. 4. G.S. 39-13.3(e) as it appears in 1966 Replace-  
12 ment Volume 2A is repealed.

13           Sec. 5. G.S. 47-39 is repealed.

14           Sec. 6. G.S. 10-5(a)(1) as it appears in the 1975  
15 Cumulative Supplement to Replacement Volume 1B is amended after  
16 the words "signing of any instrument or writing" and before the  
17 semicolon by deleting the words "except a contract between a  
18 husband and wife governed by the provisions of G.S. 52-6."

19           Sec. 7. G.S. 29-19(b), as it appears in the 1975  
20 Cumulative Supplement to 1966 Replacement Volume 2A, is rewritten  
21 to read as follows:

22           "(b) For purposes of intestate succession, an illegitimate  
23 child shall be entitled to take by, through and from:

24           (1) Any person who has been judicially determined to be

1 the father of such child pursuant to the provisions  
2 of G.S. 49-14 through 49-16;

3 (2) Any person who has acknowledged himself during his  
4 own lifetime to be the father of such child in a  
5 written instrument executed or acknowledged before  
6 a certifying officer and filed during his own  
7 lifetime in the office of the clerk of superior  
8 court of the county where either he or the child  
9 resides. Such certifying officer must be a justice,  
10 judge, magistrate, clerk, assistant clerk or deputy  
11 clerk of the General Court of Justice or the equiva-  
12 lent or corresponding officers of the state, territory  
13 or foreign country where the acknowledgement is  
14 made and such officer must not be a party to the  
15 contract.

16 Notwithstanding the above provisions, no person shall be entitled  
17 to take hereunder unless he has given written notice of the basis  
18 of his claim to the personal representative of the putative  
19 father within six months after the date of the first publication  
20 or posting of the general notice to creditors."

21 Sec. 8. G.S. 39-13.4 as it appears in the 1975  
22 Cumulative Supplement to 1966 Replacement Volume 2A is amended  
23 by deleting the last sentence.

24 Sec. 9. G.S. 39-13.5 as it appears in the 1975  
25 Cumulative Supplement to Replacement Volume 2A is amended in the  
26 paragraph numbered "(1)" immediately after the words "clearly  
27 stated in the granting clause of the deed or deeds to such  
28 tenant and his or her spouse" by deleting the remainder of that

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FOR REVIEW ONLY

1 numbered paragraph and substituting therefor the following:

2 ";or".

3 G.S. 39-13.5 is further amended in the paragraph  
4 numbered "(2)" immediately after the words "shall be owned by  
5 them as tenants by the entirety" by deleting the remainder of  
6 that numbered paragraph and substituting therefor a period.

7 Sec. 10. G.S. 52-2 as it appears in 1966 Replacement  
8 Volume 2A is amended in line one by deleting the following:  
9 "G.S. 52-6,".

10 Sec. 11. G.S. 52-9 as it appears in 1966 Replacement  
11 Volume 2A is amended on line 9 by deleting the following:  
12 "May 1, 1958, whichever date is later." and substituting there-  
13 for the following: "October 1, 1977, whichever date is earlier."

14 Sec. 12. G.S. 52-10 as it appears in 1966 Replacement  
15 Volume 2A is rewritten to read as follows:

16 "§52-10. Contracts between husband and wife generally;  
17 release.-- Contracts between husband and wife not inconsistent  
18 with public policy are valid, and any persons of full age about  
19 to be married and any married persons may, with or without a  
20 valuable consideration, release and quit claim such rights which  
21 they might respectively acquire or may have acquired by marriage  
22 in the property of each other; and such releases may be pleaded  
23 in bar of any action or proceeding for the recovery of the  
24 rights and estate so released."

25 Sec. 13. G.S. 52-10.1 as it appears in 1966 Replacement  
26 Volume 2A is amended after the words "the separation agreement  
27 must be acknowledged" by deleting the remainder of the section  
28 and substituting therefor the following: "by both parties before

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DRAFT

1 a clerk of the superior court." **FOR REVIEW ONLY**  
2           Sec. 14. G.S. Chapter 52 is amended by adding a new  
3 section to be numbered G.S. 52-6.1 and to read as follows:  
4           "§52-6.1. Validation of instruments executed prior to repeal  
5 of §52-6. -- Any deed, contract, conveyance, lease or other  
6 instrument executed prior to October 1, 1977, which is in all  
7 other respects valid except for the failure to meet the re-  
8 quirements set out in former G.S. 52-6, as it appeared in 1965  
9 Session Laws Chapter 878, Section 1, 1969 Session Laws Chapter  
10 44, Section 54, and 1973 Session Laws Chapter 1446, Section 10,  
11 is hereby validated and confirmed to the same extent as if  
12 former G.S. 52-6 had been complied with, provided that this  
13 section shall not apply to any litigation pending before  
14 October 1, 1977."

15           Sec. 15. This act shall become effective October 1,  
16 1977.

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PRESENT PROVISION

**§ 52-6. Contracts of wife with husband affecting corpus or income of estate; authority, duties and qualifications of certifying officer; certain conveyances by married women of their separate property.—**(a)

No contract between husband and wife made during their coverture shall be valid to affect or change any part of the real estate of the wife, or the accruing income thereof for a longer time than three years next ensuing the making of such contract, nor shall any separation agreement between husband and wife be valid for any purpose, unless such contract or separation agreement is in writing, and is acknowledged before a certifying officer who shall make a private examination of the wife according to the requirements formerly prevailing for conveyance of land.

(b) The certifying officer examining the wife shall incorporate in his certificate a statement of his conclusions and findings of fact as to whether or not said contract is unreasonable or injurious to the wife. The certificate of the officer shall be conclusive of the facts therein stated but may be impeached for fraud as other judgments may be.

(c) Such certifying officer must be a justice, judge, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice or the equivalent or corresponding officers of the state, territory or foreign country where the acknowledgment and examination are made and such officer must not be a party to the contract.

(d) This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and his wife, or their attorneys, may be construed to constitute a contract between such husband and wife.

(e) Any other provisions of this section to the contrary notwithstanding, in all cases where a married woman owning property as an individual joins with her husband in execution of a deed conveying her real property to a third party and said third party reconveys said real property to said wife and her husband as tenants by the entirety and in the deed to the third party the acknowledgment as herein provided was not complied with, but in all other respects the acknowledgment of the execution of said deed and the probate and registration thereof are regular, such conveyances shall not be void but shall be voidable only, and any action, the purpose of which is to have said conveyances set aside or declared invalid shall be commenced within seven (7) years after the recordation of such deed in the office of the register of deeds of the county or counties in which said real property is located. If no such action is or has been brought then the effect of the conveyances shall be to create an estate by the entirety. (1871-2, c. 193, s. 27; Code, s. 1835; Rev., s. 2107; C. S., s. 2515; 1945, c. 73, s. 19; 1947, c. 111; 1951, c. 1006, s. 2; 1955, c. 1082; 1957, c. 1229, s. 1; 1963, c. 909, ss. 1, 4; 1965, c. 878, s. 1.)

(1969, c. 44, s. 54; 1973, c. 1446, s. 10.)



## Tenancy by the entirety

The third recommendation relates to real property owned concurrently by a husband and wife in tenancy by the entirety. Under current law, the husband has the exclusive right to the control, use, possession, rents, income and profits of this property. The committee recommends equalizing between married persons the right to the control, use, possession, rents, income and profits of real property held by them in tenancy by the entirety. The proposed legislation creating a new statutory section, G.S. 39-13.6, attempts to accomplish this purpose. The committee adds a note of caution about the proposed legislation: the doctrine of tenancy by the entirety is somewhat complicated and not entirely clear, and in order to change one feature of TBTE (i.e., the right to the control and income from TBTE property) it is advisable to consider what effect the change may have on the remainder of the law. The committee's proposed legislation tries to attain this objective, but the draft should be examined carefully by the 1977 General Assembly to assure the avoidance of unintended adverse consequences.

Subsection (a) sets forth in the first sentence the basic legal change which is proposed. The second sentence states that both spouses must agree before encumbering TBTE property, with certain specified exceptions. This appears to change current North Carolina law which allows H (as part of his right to control the property) to lease, mortgage, grant a right of way, and convey a deed by way of estoppel. On the death of either spouse the survivor will take the property encumbered by whatever agreements were made during H and W's joint "life".

Subsection (b) deals with the various methods of naming grantees in a deed of conveyance in order to establish TBTE. It intends to do nothing more than make statutory what is already the existing law.

Subsection (c) focuses on the grantor of a deed creating a TBTE. It is intended to change the case law that has developed in North Carolina which holds that if a married woman furnishes the consideration and attempts to make the deed to her husband and herself a resulting trust arises in her favor and she owns the property outright. If a married man attempts such conveyance he is held to have created a valid TBTE. Apparently this line of cases developed to offset any unfairness which resulted from the common law rule permitting H to control the property during the existence of the marriage: H in most

cases is controlling TBTE property which was purchased with his own money. Subdivision (3), "a third party", is included for the purpose of completeness and to parallel the structure of subsection (b): Subsection (b) provides a complete list of possible grantees in a TBTE; subsection (c) provides a complete list of possible grantors. This does not change existing law which clearly allows a third party to convey property to husband and wife concurrently in order to establish a TBTE.

Subsection (d) addresses the problem of individual judgment creditors of either spouse. Currently North Carolina appears to allow individual creditors of the husband to reach the accrued rents and profits to satisfy the judgment. Individual creditors of the wife can reach nothing during the existence of the TBTE. Consistent with the basic policy change which equalizes between husband and wife the right to income, etc., subsection (d) treats individual judgment creditors of either spouse equally but without expanding the creditors' access to TBTE property.

Subsection (e) makes the legislation apply to all conveyances on and after January 1, 1978. The committee did not believe it was appropriate to make the legislation applicable to property already held in TBTE. For state income tax purposes, however, a change will be necessary in the treatment of income from TBTE property if this legislation is approved; and the North Carolina Department of Revenue indicates that it will be much more suitable to apply the change to every TBTE, regardless of when created. Presently, income from TBTE property is reportable by H unless H and W have a valid partnership agreement providing a specific distribution ratio, in which case a partnership return must be filed. If this legislation is approved, the Department of Revenue will modify its regulations to require H to report one-half the income and W to report one-half the income. (Sources in the Department of Revenue estimate a revenue loss of \$950,000 to \$1,000,000 in the first tax collection year.) The proviso language of subsection (e), drafted by officials in the Department of Revenue, will take care of the income tax problem.

Note that no change will be necessary for ad valorem tax purposes because the tax statement is presently addressed to both spouses and considered a joint obligation if the property is listed as owned by both spouses.

Sec. 2 of the draft bill makes a conforming change in G.S. 31A-5 which relates to the treatment of tenancy by the entirety property in the "slayer statutes". Currently the treatment of such property varies depending on whether the slayer is a husband or a wife, and the basis for this distinction is the husband's common law right of possession, control, etc. of TBTE property. The change recommended in §31A-5 is designed to be consistent with the basic revision of the draft bill which equalizes between husband and wife the right to possess and control TBTE property. Specifically, §31A-5 is amended to treat TBTE property the same regardless of which spouse is the slayer: one half of the property passes immediately to the decedent's estate and the other one half is held by the slayer during his or her life but then passes to the estate of the decedent (not the slayer-spouse).

Appendix 3 contains a discussion of certain pertinent characteristics of tenancy by the entirety in North Carolina. The primary source of information for comments is Professor Robert E. Lee's three volume treatise entitled North Carolina Family Law, Third Edition, 1963, The Michie Company Publishers. See generally Chapter 12 entitled "Tenancy by the Entirety".

**SESSION 197**\_\_\_\_\_

INTRODUCED BY:

**DRAFT  
FOR REVIEW ONLY**

Referred to:

1                   A BILL TO BE ENTITLED  
2 AN ACT TO EQUALIZE BETWEEN MARRIED PERSONS THE RIGHT TO INCOME,  
3       POSSESSION, AND CONTROL OF PROPERTY OWNED CONCURRENTLY IN  
4       TENANCY BY THE ENTIRETY.

5 The General Assembly of North Carolina enacts:

6           Section 1. Article 2 of G. S. Chapter 39 is amended  
7 by adding a new section to be numbered 39-13.6 and to read as  
8 follows:

9           "§ 39-13.6 Control of real property held in tenancy  
10 by the entirety.

11           (a) A husband and wife shall have an equal right to  
12 the control, use, possession, rents, income, and  
13 profits of real property held by them in tenancy by  
14 the entirety. Neither spouse may bargain, sell, lease,  
15 mortgage, transfer, convey or in any manner encumber  
16 any property so held without the written joinder of  
17 the other spouse; provided, this section shall not be  
18 construed to require the spouse's joinder where a  
19 different provision is made under G. S. 39-13,  
20 G. S. 39-13.3, G. S. 39-13.4, or G. S. 52-10.

21           (b) A conveyance of real property, or any interest  
22 therein, to a husband and wife vests title in them as  
23 tenants by the entirety when the conveyance is to:

24           (1) a named man 'and wife', or

- 1                   (2) a named woman 'and husband', or  
2                   (3) two named persons, whether or not identified  
3                   in the conveyance as husband and wife, if at  
4                   the time of conveyance they are legally  
5                   married;

6                   unless a contrary intention is expressed in the convey-  
7                   ance.

8                   (c) A conveyance of real property, or any interest  
9                   therein, which establishes a tenancy by the entirety  
10                   shall be valid when the conveyance is from:

- 11                   (1) a man to himself and his wife, or  
12                   (2) a woman to herself and her husband, or  
13                   (3) a third party;

14                   regardless of the source of the consideration.

15                   (d) Individual judgment creditors of the husband  
16                   shall be entitled to reach  $\frac{1}{2}$  (one-half) of the accrued  
17                   rents, income, and profits of real property held by  
18                   the spouses in tenancy by the entirety in satisfaction  
19                   of the judgment. Individual judgment creditors of  
20                   the wife shall be entitled to reach  $\frac{1}{2}$  (one-half) of  
21                   the accrued rents, income, and profits of real property  
22                   held by the spouses in tenancy by the entirety in  
23                   satisfaction of the judgment. This subsection shall  
24                   not modify or repeal any other laws relating to the  
25                   procedures for obtaining, recording, and satisfying a  
26                   judgment.

27                   (e) This section shall apply to all conveyances on  
28                   and after January 1, 1978; provided, for income tax

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purposes effective for taxable years beginning on and after January 1, 1978, the income from property held in tenancy by the entirety shall be reportable 1/2 (one-half) by each spouse regardless of when the conveyance of such property was made."

Sec. 2. G. S. 31A-5 as it appears in 1966 Replacement Volume 2A is rewritten to read as follows:

"§31A-5. Entirety property. -- Where the slayer and decedent hold property as tenants by the entirety, one half of the property shall pass upon the death of the decedent to the decedent's estate, and the other one half shall be held by the slayer during his or her life, subject to pass upon the slayer's death to the estate of the decedent."

Sec. 3. This act shall become effective on January 1, 1978.

APPENDIX

LEGISLATIVE RESEARCH COMMISSION  
ON  
SEXUAL DISCRIMINATION AND RELATED MATTERS

Senator William D. Mills, Chairman  
P. O. Box 385  
Swansboro, N. C. 28584  
919-326-8743

Rep. Robert A. Jones, Co-Chairman  
Professional Building  
Forest City, N. C. 28043  
704-245-4223

Senator Katherine Sebo, Co-Chairman  
Guilford College  
Greensboro, N. C. 27410  
919-299-0270

Senator Luther J. Britt, Jr.  
P. O. Box 1015  
Lumberton, N. C. 28358  
919-739-2331

Senator Edward Renfrow  
P. O. Box 731  
Smithfield, N. C. 27577  
919-934-4512

Rep. Ruth E. Cook  
3413 Churchill Road  
Raleigh, N. C. 27607  
919-787-6528

Rep. Frances E. Setzer  
806 S. Main Ave.  
P. O. Box 265  
Newton, N. C. 28658  
704-464-2210

Senator Donald R. Kincaid  
227 Main St., N. W.  
Lenoir, N. C. 28645  
704-758-5181

Rep. Allen C. Ward  
Star Rt. 1, Box 27  
Shallotte, N. C. 28459  
919-287-6510

Rep. H. M. Michaux, Jr.  
P. O. Box 2152  
Durham, N. C. 27702  
919-596-8102



SEX DISCRIMINATION STUDY  
COMMITTEE MEETINGS

<u>Date</u>	<u>Subjects Considered</u>	<u>Speakers</u>
10-29-75	Organizational meeting; begin examination of General Statutes, possible tax changes; equal employment opportunities in State government and State Personnel Act changes	Mr. Sam Currin, Special Assistant to the Secretary of Revenue  Mr. Sam Badgett, Office of State Personnel
12-11-75	Continue examination of General Statutes	
1-7-76	Continue examination of General Statutes	
1-7-76 (evening)	Informal discussion with William B. Aycock, Kenan Professor of Law, University of North Carolina School of Law	
1-8-76	Continue examination of General Statutes; examine Constitution of North Carolina	
2-18-76	Continue examination of General Statutes; task force study conducted by State Department of Insurance on sex discrimination in the insurance industry; further consideration of tax law changes; divorce laws and property settlements; presumptions in family laws; tenancy by the entirety in property law	Ms. Gloria Jimenez, Mr. Ken Brown, N. C. Department of Insurance  Mr. B. W. Brown, Mr. Sam Currin, Mr. William Rogers, N. C. Department of Revenue  Mr. Frank Swindell  Mrs. Meyressa Schoonmaker, Attorney  Ms. Susan Lewis, Professor, University of N.C. School of Law  Mrs. Pat Marshall, Professor, N.C. Central University School of Law

Appendix 2 - continued

<u>Date</u>	<u>Subjects Considered</u>	<u>Speakers</u>
3-17-76	Draft bills re: Revenue law changes, N. C. Constitution change (homestead exemption), tenancy by the entirety, criminal law changes ("peeping tom" statute, criminal nonsupport, prostitution); fair employment practices laws	Mrs. Eliza Paschal, Liaison officer with the Equal Employment Opportunity Commission regional office in Atlanta Ms. Cher Brooks, N.C. Human Relations Commission
3-18-76	Review of Uniform Marriage and Divorce Act; draft bills re: G.S. Ch. 29 changes, and Sexual Assault laws; N.C. Human Relations Comm.	Ms. Cher Brooks
4-7-76	Draft bills re: Criminal law changes, uniform marriage act, and fair employment practices act (based on Senate Bill 813 introduced in the 1975 General Assembly)	Mr. Mike Brough, Institute of Government
4-21-76	Continue discussion of a State fair employment practices act	Mr. Mike Brough
6-23-76	Final determinations re: remaining unfinished business	

## COMMENTS ON TENANCY BY THE ENTIRETY

Tenancy by the entirety (also referred to as estate by the entirety) is a form of co-ownership of real property held by a husband and wife with the right of survivorship. This estate developed at commonlaw and still exists in North Carolina substantially unchanged. It relates only to real property and only to a husband and wife who receive such property. The conveyance of property to husband and wife may be by deed or will. A husband and wife are not required to own their real property in tenancy by the entirety (they may, for example, each own separate property, or one spouse may own all the property); but Professor Robert E. Lee, Wake Forest College of Law, estimates that ninety per cent of married persons in North Carolina choose this form of co-ownership when buying a home.

The right of survivorship is a key feature of a tenancy by the entirety. The husband and wife as a separate entity own the estate; neither has a separate estate or interest; and on the death of either married partner, the survivor succeeds to the entire estate. This theory of one interest derives from the common-law fiction that the act of marriage creates a special relationship between the united partners and makes them in unity one "person". Once established, a tenancy by the entirety cannot be destroyed or divided into separate interests by either spouse acting alone. Both spouses must agree before such property is sold or divided and the tenancy is terminated. Absolute divorce destroys a tenancy by the entirety and converts it into a tenancy in common. Thus if the husband and wife do not mutually agree to sell or divide the real property held as tenants by the entirety, and if no divorce occurs, the entire property vests in the surviving spouse upon the death of the other spouse.

Real property held in tenancy by the entirety is not liable for payment of individual obligations of either the husband or wife. Such property is, however, subject to levy under execution on a judgment rendered against both husband and wife for a joint obligation. Additionally, if a husband and wife obtain an absolute divorce or voluntarily convert property held in tenancy by the entirety to a tenancy in common, then the property becomes liable for individual debts. Real property that is held in tenancy by the entirety until the death of a spouse not only remains insulated from separate creditors of either spouse during the existence of the tenancy, but also passes

to the surviving spouse free from all claims of the creditors or representatives of the decedent. The surviving spouse becomes the sole owner of the property, and it thereupon becomes liable for payment of his or her individual obligations.

North Carolina and a few other states cling to the common-law rule that the husband has the exclusive right to the control, use, possession, rents, income and profits of real property held in tenancy by the entirety. This rule is generally based on a married woman's disabled status at common-law. In the eyes of common-law, marriage merged husband and wife into one entity, and the husband was recognized as the spokesman for that entity. The wife relinquished her property and contract rights as long as the marriage remained in existence. (See generally Lee, Family Law, Chapter 11 entitled "Wife's Property and Contract Rights".) The North Carolina courts have repeatedly re-affirmed that the husband is not accountable to his wife for rent and income received from property owned by them as tenants by the entirety. The husband's right includes the power to lease, mortgage, grant a right of way, and convey by deed by way of estoppel such property without the wife's agreement. As a practical matter the husband's right to control tenancy by the entirety property does not seem as significant when the property is the married couple's residence as when it is income-producing.

Several decisions of the North Carolina Supreme Court relating to the creation of a tenancy by the entirety have diminished the discrimination apparent in authorizing the husband to control and receive the income from such property. The decisions have established these principles: when a husband purchases realty and causes the conveyance to be made to him and his wife, the law presumes a gift to the wife and a valid tenancy by the entirety is created; to rebut the presumption of a gift the evidence must be clear, strong, and convincing. But, when a wife purchases realty and requests that her husband and herself be named as grantees, the law presumes the attempted conveyance is invalid as to the husband, and the wife is the sole owner. The justification for these decisions, also articulated at common-law, is that the husband is presumed to understand the effect of his act while the wife is presumed to have acted under the coercion of her husband. (See Lee, Family Law, v. 2, pp. 62-64.) The net

result of these decisions is that in most cases tenancy by the entirety property is purchased with the husband's separate money or other valuable consideration, and it appears less objectionable to permit him to control such property.

