

Proposed Amendments to North Carolina General Statutes Chapter 106, Article 44. Unfair Practices by Handlers of Fruits and Vegetables.

N.C.G.S. § 106-496. Protection against unfair trade practices.

The Board of Agriculture is authorized to make such rules and regulations as it deems necessary to protect producers from loss caused by financial irresponsibility and unfair, harmful or unethical trade practices of handlers who incur financial liability for the purchase or production of fruits and vegetables.

N.C.G.S. § 106-497. Definitions.

(a) "Certificate of deposit" means a certificate of deposit at any recognized financial institution doing business in the United States.

(b) "Commissioner" means the North Carolina Commissioner of Agriculture.

(c) "Consignment" means any transfer of fruits and vegetables by the seller to the custody of another person who acts as the agent for the seller for the purpose of selling such fruits and vegetables.

(c) "Department" means the North Carolina Department of Agriculture and Consumer Services.

(d) "Handler" means any person in the business of buying, receiving, selling, exchanging, negotiating, processing for resale or soliciting the sale, resale, exchange, or transfer of any fruits and vegetables purchased from the producer, received on consignment from the producer, or received to be handled on net return basis from the producer.

(e) "Net return basis" means a purchase for sale of fruits and vegetables from a producer or shipper at an unfixed or unstated price at the time the fruits and vegetables are shipped from the point of origin, and it shall include all purchases made "at the market price," "at net worth," and on

similar terms, which indicate that the buyer is the final arbiter of the price to be paid.

(f) "Person" means a natural person, firm, corporation, or other legal entity.

(g) "Processor" means any person operating any plant in North Carolina that freezes, dehydrates, cans, or otherwise changes the physical form or characteristics of fruits and vegetables.

(h) "Producer" means any person who produces fruits or vegetables, or both.

N.C.G.S. § 106-498. Annual license required.

It shall be unlawful for any handler of fruits and vegetables who comes within the terms of this Article to engage in such business in North Carolina without an annual license issued by the Commissioner.

N.C.G.S. § 106-499. Application for annual license.

(a) Every handler of fruits and vegetables desiring to transact business in North Carolina shall file an application for an annual license with the Commissioner.

(b) The Board of Agriculture may prescribe by regulation the form of the application, the information to be furnished to the Commissioner by the applicant for an annual license, and the date for filing the application.

(c) Applicants are required to pay an initial or renewal license fee, as set by the Board of Agriculture, not to exceed five hundred dollars (\$500), with each application. A penalty, as set by the Board of Agriculture, not to exceed two hundred fifty dollars (\$250), shall be paid by the applicant if the application is filed after the date established by the Board of Agriculture and no license shall be issued until such penalty is paid. Any

fees or late penalties collected by the Commissioner shall be used to help defray the costs of administering this Article.

N.C.G.S. § 106-500. Denial, suspension, or revocation of license.

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he or she is satisfied that the applicant or licensee has:

- (1) Suffered a money judgment to which that person cannot satisfy or is otherwise insolvent or financially irresponsible;
- (2) Made false charges for handling or services rendered;
- (3) Failed to promptly and properly account and pay any producer;
- (4) Made any false statement or statements as to the condition, quality, or quantity of goods received or held for sale when that person could have ascertained the true condition, quality, or quantity by reasonable inspection;
- (5) Made any false or misleading statement or statements as to market conditions or service rendered;
- (6) The handler has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying, selling, or the handling of payments for fruits and vegetables;
- (7) The handler has failed either to file the required surety bond or certificate of deposit or to keep such surety bond or certificate of deposit in force;
- (8) Provided false or misleading information in the person's application for license; or
- (9) Failed to comply with the terms of this Article any rules promulgated by the Board of Agriculture.

N.C.G.S. § 106-501. Surety bond or certificate of deposit required.

(a) Before any license is issued, the applicant shall make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in North Carolina and approved by the Commissioner or a certificate of deposit approved by the Commissioner. All surety bonds delivered to the Commissioner shall be accompanied by a certificate of “good standing” issued by the North Carolina Department of Insurance verifying that the surety is authorized to transact business in North Carolina. If any surety issuing a bond shall be removed from doing business in North Carolina, it shall be the duty of the North Carolina Department of Insurance to notify the Commissioner within thirty (30) days of removal. No certificate of deposit may be accepted unless the issuing institution is properly insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The surety bond or certificate of deposit to secure the faithful performance of that person’s obligations as a handler shall be based on the maximum amount of gross business the applicant did in any month in North Carolina during the preceding licensing year or an estimate if the applicant did not engage in business as a handler in North Carolina the preceding year, and in accordance with the following schedule:

Maximum Monthly Gross Business	Bond or Deposit Required
Up to \$25,000.....	\$25,000
\$25,001 to \$50,000.....	\$50,000
\$50,001 to \$75,000.....	\$75,000
\$75,001 to \$100,000.....	\$100,000
\$100,001 to \$125,000.....	\$125,000

\$125,001 to \$150,000.....	\$150,000
\$150,001 to \$175,000.....	\$175,000
\$175,001 to \$200,000.....	\$200,000
\$200,001 to \$225,000.....	\$225,000
\$225,001 or More.....	\$250,000

(c) Surety bonds and certificate of deposits shall have such surety or sureties, financial institution or financial institutions, subject to service of process in suits on the surety bond or certificate of deposit within North Carolina and shall contain such terms and conditions as the Commissioner may prescribe to carry out the purposes of this Article.

(d) Whenever the Commissioner shall determine that a previously approved surety bond or certificate of deposit has for any cause become insufficient, the Commissioner may require an additional surety bond or certificate of deposit to be given, conforming with the requirements of this Article. Unless the additional surety bond or certificate of deposit are given within the time fixed by written demand therefor, or if the surety bond or certificate of deposit of a handler is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing.

N.C.G.S. § 106-502. Action on surety bond or certificate of deposit by person injured.

Any person claiming to be injured by nonpayment, noncompliance with the terms of a contract, fraud, deceit, negligence, or other misconduct of a handler shall be entitled to sue the handler and his or her sureties upon the surety bond or certificate of deposit in that person’s name in any court of competent jurisdiction to recover the damages that person may

have sustained by such breach without any assignment thereof by the Department or the State of North Carolina.

N.C.G.S. § 106-503. Inspection of spoiled, damaged, unmarketable, or unsatisfactory produce before sale.

Whenever fruits and vegetables are shipped to or received by a handler for handling, purchase, or sale in North Carolina, and the handler finds such produce to be in a spoiled, damaged, unmarketable, or unsatisfactory condition, the Department may provide inspection services and execute and deliver a certificate stating the day and the time and place of such inspection and the condition of such produce, and mail or deliver a copy of such certificate to both the handler and producer. The party requesting the inspection shall bear the cost of inspection.

N.C.G.S. § 106-504. Additional powers of Commissioner to enforce Article.

(a) In order to enforce this Article, the Commissioner, upon his or her own motion or upon the verified complaint of any person, shall have the following additional powers:

(1) To inspect or investigate transactions for the sale or delivery of fruits and vegetables to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, fruits and vegetables, and other articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under that person's contracts and to pay for it as agreed;

(2) To suspend or revoke the licenses of persons disobeying the terms of this Article or of rules and regulations made by the Board of Agriculture;

(3) To issue all such rules and regulations, with the approval of the Board of Agriculture, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this Article; and

(4) In addition to the remedies provided in this Article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to any court of competent jurisdiction, and such court shall have jurisdiction upon hearing and for cause shown to grant, for a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this Article or any rule or regulation promulgated thereunder. Such injunction shall be issued without bond.

(b) For the purposes specified in Paragraph (a) of this Section, the Commissioner or his or her agents may examine the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, at the place or places of business of the applicant or licensee, and may take testimony under oath.

N.C.G.S. § 106-505. Violation of Article or rules made misdemeanor.

Any person who violates the provisions of this Article or the rules and regulations promulgated thereunder shall be guilty of a Class 1 misdemeanor.

N.C.G.S. § 106-506. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) per violation against any person or business entity who violates a provision of this Article or any rule adopted thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to

this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2

N.C.G.S. § 106-507. Exceptions to this Article.

This Article does not apply to:

- (1) Farmers or groups of farmers in the sale of fruits and vegetables grown by themselves;
- (2) A handler of fruits and vegetables who pays at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN-based debit transaction, or who pays with a credit card;
- (3) Handlers who purchase less than one thousand dollars (\$1,000) worth of fruits and vegetables from North Carolina producers or their agents or representatives during the peak month of such purchases within the calendar year;
- (4) A handler to the extent that the handler purchases fruits and vegetables from a producer that is owned by the handler or if the handler is owned by the producer, or if both the handler and producer are owned by the same person;
- (5) Fruits and vegetables grown under contract for seed purposes.

N.C.G.S. § 106-508. Bankruptcy.

Nothing in this Article shall be construed as relieving a surety company or financial institution from responsibility for payment on properly established complaints against handlers involved in a federal bankruptcy proceeding.