

THE GENERAL STATUTES OF NORTH CAROLINA

1959 CUMULATIVE SUPPLEMENT

To Recompiled Volume

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF

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Volume 2B

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Preface

This Cumulative Supplement to recompiled volume 2B contains the general laws of a permanent nature enacted at the 1951, 1953, 1955, 1956, 1957 and 1959 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. The index, appearing in volume 4B of the Cumulative Supplement, is confined mainly to new laws and such amendatory laws as are not reflected in the original index.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1951, 1953, 1955, 1956, 1957 and 1959 Sessions of the General Assembly affecting Chapters 53 through 82 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 230 (p. 577)-250 (p. 377).
- Federal Reporter 2nd Series volumes 175-265 (p. 656).
- Federal Supplement volumes 84-172 (p. 272).
- United States Reports volumes 338-359 (p. 343).
- Supreme Court Reporter volumes 70-79 (p. 943).
- North Carolina Law Review volumes 28-37 (p. 232).

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ARTICLE 2.

Creation.

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4. The amount of its authorized capital stock, the number of shares into which it is divided, the par value of each share; the amount of capital stock with which

it will commence business, which shall not be less than fifty thousand dollars (\$50,000) in cities or towns of three thousand population or less; nor less than seventy-five thousand dollars (\$75,000) in cities and towns whose population exceeds three thousand, but does not exceed ten thousand; nor less than one hundred thousand dollars (\$100,000) in cities and towns whose population exceeds ten thousand but does not exceed twenty-five thousand, nor less than one hundred twenty-five thousand dollars (\$125,000) in cities and towns having a population of twenty-five thousand, but not exceeding fifty thousand; or less than one hundred fifty thousand dollars (\$150,000) in cities and towns having a population of fifty thousand and over; and in addition shall have a paid-in surplus of at least fifty percent (50%) of the authorized capital stock, as hereinbefore set out, the population to be ascertained by the last preceding national census: Provided, that this subsection shall not apply to banks organized and doing business prior to its adoption. Provided further, that fractional shares may be issued for the purpose of complying with the requirements of G. S. 53-88.

(1953, c. 1209, s. 3.)

Editor's Note.—

The 1953 amendment rewrote paragraph 4, eliminating a requirement that the stock be divided into shares of ten, twenty, twenty-five, fifty or one hundred dollars each, increasing the minimum amounts

of capital stock required, and inserting the requirement of a paid-in surplus of at least 50% of the authorized capital stock. As the rest of section was not changed by the amendment, only paragraph 4 is set out.

§ 53-4. Examination by Commissioner; when certification to be refused.—Upon receipt of a copy of the certificate of incorporation of the proposed bank, the Commissioner of Banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Commissioner of Banks shall so certify to the Secretary of State, unless upon examination and investigation he has reason to believe that (1) the proposed corporation is formed for any other than legitimate banking business; or (2) that the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said bank is proposed to be located; or (3) that the probable volume of business and reasonable public demand in such community is not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or (4) that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or (5) that the proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public. Upon such certification the Secretary of State shall issue and record such certificate of incorporation. (1921, c. 4, s. 4; Ex. Sess. 1921, c. 56, s. 1; C. S., s. 217(c); 1931, c. 243, s. 5; 1953, c. 1209, s. 1.)

Editor's Note.—

The 1953 amendment rewrote this section.

§ 53-16. Consolidation, conversion or merger of State banks or trust companies with national banks.—(a) Nothing in the law of this State shall restrict the right of a State bank or trust company to consolidate, convert into, or merge with a national bank. The action to be taken by such consolidating, converting, or merging State bank and its rights and liability and those of its stockholders shall be the same as those prescribed by the law of the United States for national banks at the time of the action, except that a vote of the holders of two-thirds of each class of voting stock of a State bank shall be required for the consolidation, conversion, or merger and that upon consolidation, conversion, or

merger by a State bank with or into a national bank the rights of dissenting stockholders shall be those hereinafter specified.

(b) Upon consolidation, conversion, or merger the resulting national bank shall be the same business as each consolidating, converting, or merging bank with all the property rights, powers, and duties of each consolidating, converting, or merging bank, except as affected by the law of the United States and by the charter and bylaws of the resulting bank, and any reference to a consolidating, converting, or merging bank in any writing, whether executed or taking effect before or after the consolidation, conversion, or merger, shall be deemed and taken a reference to the resulting bank if not inconsistent with the other provisions of such writing.

(c) The holders of shares of the stock of a State bank which were voted against a consolidation, conversion, or merger into a national bank shall be entitled to receive their value in cash, if and when the consolidation, conversion, or merger becomes effective, upon written demand, made to the resulting national bank at any time within thirty (30) days after the effective date of the consolidation, conversion, or merger accompanied by the surrender of the stock certificate or certificates. The value of such shares shall be determined as of the date of the stockholders' meeting approving the consolidation, conversion, or merger, by three (3) appraisers, one to be selected by the owners of two-thirds of the dissenting shares involved, one by the board of directors of the resulting national bank and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety (90) days after the consolidation, conversion, or merger becomes effective, the Comptroller of the Currency shall cause an appraisal to be made.

(d) The amount fixed as the value of the shares of stock of the consolidating, converting, or merging bank at the time of the stockholders' meeting approving the consolidation, conversion, or merger and the amount fixed by the appraisal as hereinbefore provided, where the fixed value is not accepted, shall constitute a debt of the resulting national bank.

(e) Upon the completion of the consolidation, conversion, or merger the permit to operate of any consolidating, converting, or merging State bank shall automatically terminate. (1929, c. 148, s. 1; 1951, c. 1129, s. 1.)

Editor's Note. — The 1951 amendment rewrote this section.

ARTICLE 3.

Dissolution and Liquidation.

§ 53-22. Statute relating to receivers applicable to insolvent banks.

—The provisions of G. S. 1-507.1 through 1-507.11, both inclusive, relating to receivers, when not inconsistent with the provisions of G. S. 53-20, shall apply to liquidation of insolvent banks. (1921, c. 4, s. 19; 1923, c. 148, s. 4; C. S., s. 218 (e); 1931, c. 215; 1955, c. 1371, s. 4.)

Editor's Note.—

507.1 through 1-507.11" in place of "article

The 1955 amendment, effective July 1, 1957, inserted the reference to "G. S. 1-

ARTICLE 5.

Stockholders.

§ 53-42. Impairment of capital; assessments; etc. — The Commissioner of Banks shall notify every bank whose capital shall have become impaired from losses or any other cause, and the surplus and undivided profits of such bank are insufficient to make good such impairment, to make the impairment good

within sixty days of such notice by an assessment upon the stockholders thereof, and it shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made: Provided, that such bank may reduce its capital to the extent of the impairment, as provided in § 53-11. If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon thirty days' notice given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper in the place where the bank is located, and if none therein, a newspaper circulating in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the Commissioner of Banks, the Commissioner of Banks may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock, as provided in this section, shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock. (Ex. Sess. 1921, c. 56, s. 3; C. S., s. 219(f); 1925, c. 117; 1931, c. 243, s. 5; 1959, c. 157.)

Editor's Note.—

The 1959 amendment deleted the part of the last sentence added by the 1925 amendment.

ARTICLE 6.

Powers and Duties.

§ 53-43. General powers.

3. To purchase, hold, and convey real estate for the following purposes:

(a) Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other apartments to rent as a source of income, which investment shall not exceed fifty per cent of its paid-in capital stock and permanent surplus: Provided, that this provision shall not apply to any such investment made before the ninth day of March, one thousand nine hundred and twenty-one. Provided further, that the Commissioner of Banks may in his discretion authorize the continuance of investments made prior to the first day of February, one thousand nine hundred and twenty-five, of the character described in this paragraph. Provided, further, that the Commissioner of Banks may, in his discretion, authorize any bank located in a city having a population of more than five thousand, according to the last United States census, to invest more than fifty per cent of its capital and permanent surplus in its banking houses, furniture, and fixtures.

(b) Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.

(c) Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subsection shall be sold by such bank within one year after it is acquired, unless, upon application by the board of directors, the Commissioner of Banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and

insurance business, or the right to deal to any extent in real estate, inconsistent with this chapter, are hereby repealed.

(1955, c. 590.)

Editor's Note. — The 1955 amendment substituted "five" for "ten" in line eleven of paragraph (a) of subsection (3). As only subsection (3) was changed the rest

of the section is not set out.

Cited in *Lambeth v. Lambeth*, 249 N. C. 315, 106 S. E. (2d) 491 (1959).

§ 53-43.1. Obligations of agencies supervised by Farm Credit Administration as securities for deposits of public funds.—Notwithstanding any restrictions or limitations on securities for deposits of public funds contained in any law of this State, federal farm loan bonds issued by federal land banks pursuant to the Federal Farm Loan Act as amended, federal intermediate credit bank debentures issued by federal intermediate credit banks pursuant to the Federal Farm Loan Act as amended, and debentures issued by Central Bank for Cooperatives and regional banks for cooperatives pursuant to the Farm Credit Act of 1933 as amended, or by any of such banks, shall be without limitation, authorized securities for all deposits of public funds for the State of North Carolina, of agencies of the State of North Carolina, of counties of North Carolina, and of municipalities and other political subdivisions of the State of North Carolina. This section shall be cumulative to all other laws relating to securities for deposits of such funds. (1957, c. 507.)

§ 53-43.2. Obligations of agencies supervised by federal home loan bank board as securities for deposits of public funds.—Notwithstanding any restrictions or limitations on securities for deposits of public funds contained in any law of this State, federal home loan banks securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932 as amended shall be without limitation, authorized securities for all deposits of public funds for the State of North Carolina, of agencies of the State of North Carolina, of counties of North Carolina, and of municipalities and other political subdivisions of the State of North Carolina. This section shall be cumulative to all other laws relating to securities for deposits of such funds. (1959, c. 1069, s. 1.)

§ 53-44.1. Investments in obligations of agencies supervised by Farm Credit Administration.—Notwithstanding any restrictions or limitations on investments contained in any law of this State, federal farm loan bonds issued by federal land banks pursuant to the Federal Farm Loan Act as amended, federal intermediate credit bank debentures issued by federal intermediate credit banks pursuant to the Federal Farm Loan Act as amended, and debentures issued by Central Bank for Cooperatives and regional banks for cooperatives pursuant to the Farm Credit Act of 1933 as amended, or by any of such banks, shall be, without limitation, authorized investments of funds of banks, savings banks, trust companies, insurance companies, building and loan associations, savings and loan associations, credit unions, fraternal organizations, pension and retirement funds, and of fiduciary funds of executors, administrators, guardians and trustees, unless such trust and fiduciary funds are required to be otherwise invested by will, deed, order or decree of court, gift, grant or other instrument creating or fixing the trust. This section shall be cumulative to all other laws relating to investments of such funds. (1957, c. 508.)

§ 53-44.2. Investments in obligations of agencies supervised by federal home loan bank board.—Notwithstanding any restrictions or limitations on investments contained in any law of this State, federal home loan banks securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932 as amended shall be without limitation, authorized investments of funds of banks, savings banks, trust companies, insurance

companies, building and loan associations, savings and loan associations, credit unions, fraternal organizations, pension and retirement funds, and of fiduciary funds of executors, administrators, guardians and trustees, unless such trust and fiduciary funds are required to be otherwise invested by will, deed, order or decree of court, gift, grant or other instrument creating or fixing the trust. This section shall be cumulative to all other laws relating to investments of such funds. (1959, c. 1069, s. 2.)

§ 53-45. Banks, fiduciaries, etc., authorized to invest in mortgages of Federal Housing Administration, etc.—(a) Insured Mortgages and Obligations of National Mortgage Associations and Federal Home Loan Banks.—It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, insurance companies, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or the moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured by the Federal Housing Administrator, in mortgages on real estate which have been accepted for insurance by the Federal Housing Administrator, and in obligations of national mortgage associations, or bonds, debentures, consolidated bonds or other obligations of any federal home loan bank or banks.

(b) Insured Loans.—All such banks, trust companies, building and loan associations and insurance companies, and other financial institutions, and also all such guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State, may make such loans, secured by real estate, as the Federal Housing Administrator has insured or has made a commitment to insure, and may obtain such insurance.

(c) Eligibility for Credit Insurance.—All banks, trust companies, building and loan associations, insurance companies and other financial institutions, on being approved as eligible for credit insurance by the Federal Housing Administrator, may make such loans as are insured by the Federal Housing Administrator.

(d) Certain Securities Made Eligible for Collaterals, etc.—Wherever, by statute of this State, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured by the Federal Housing Administrator, debentures issued by the Federal Housing Administrator and obligations of national mortgage associations shall be eligible for such purposes.

(e) General Laws Not Applicable.—No law of this State prescribing the nature, amount or form of security or requiring security upon which loans or investments may be made, or prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs. (1935, cc. 71, 378; 1937, c. 333; 1959, c. 364, s. 1.)

Editor's Note.—

The 1959 amendment added at the end

of subsection (a) the provision as to obligations of federal home loan banks.

§ 53-62. Establishment of branches.—Any bank doing business under this chapter may establish branches in the cities in which they are located, or elsewhere, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks,

in his discretion, and shall not be given until he shall have ascertained to his satisfaction that the probable volume of business and reasonable public demand in such community is sufficient to assure and maintain the solvency of said branch and of the existing bank or banks in said community. Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier and such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee shall be responsible for the conduct and management of said branch, but not of the parent bank or of any branch save that of which they are officers, managers, or committee: Provided, that the Commissioner of Banks shall not authorize the establishment of any branch, the paid-in capital stock of whose parent bank is not sufficient in an amount to provide for the capital of at least fifty thousand dollars (\$50,000) for the parent bank, and at least fifty thousand dollars (\$50,000) for each branch which it is proposed to establish in cities or towns of three thousand population or less, nor less than sixty thousand dollars (\$60,000) in cities and towns whose population exceeds three thousand, but does not exceed ten thousand; nor less than one hundred thousand dollars (\$100,000) in cities and towns whose population exceeds ten thousand, but does not exceed twenty-five thousand; nor less than one hundred fifty thousand dollars (\$150,000) in cities and towns whose population exceeds twenty-five thousand. Provided, that all applications for the establishment of branch banks or teller's windows pending on April 30, 1953, before the Banking Commission or the Commissioner of Banks shall be controlled by the provisions of law in force at the time such applications were filed. The creation, requirements and operation of all existing branch banks or teller's windows shall be controlled by the law in effect when same were authorized. Provided, however, that any bank with a capital stock (including both common and preferred) of one million dollars (\$1,000,000) or more may without additional capital establish and operate such number of branches or agencies in the State of North Carolina as the Commissioner of Banks may in his discretion permit; but a bank operating branches under this proviso shall at all times maintain an unpaired capital of at least one million dollars (\$1,000,000): Provided further that in small communities having no other banking facilities, and upon a finding by the Commissioner of Banks that the public convenience and advantage will be promoted thereby, the opening of "teller's window branches" of then existing banks may be permitted. Provided, further, that the State Banking Commission may authorize the establishment of a teller's window only, for a bank in the community in which its home office or a branch thereof is located, without the allocation of additional capital for said teller's window as otherwise provided by law.

Provided, further that the provisions of this section as amended by chapter 1209 of the Session, Laws of 1953 shall not apply to the establishment of branch banks or teller's windows by national banks which on April 30, 1953, have applications pending in the office of the Comptroller of the Currency for the establishment of such branch banks or teller's windows.

The State Banking Commission shall authorize the establishment of a teller's window only for a bank in the city or town in which its home office or a branch thereof is located, or within two miles of the limits of such city or town, without the allocation of additional capital for said teller's window as otherwise provided by law if the Commissioner shall find that the capital of said bank will not be unduly impaired by the establishment of such teller's window. A teller's window within the meaning of this section shall be considered to be a place in which no loans or investments for the bank are made and at which only the functions and duties of a bank teller are performed. (1921, c. 4, s. 43; Ex. Sess.

1921, c. 56, s. 2; C. S., s. 220(r); 1927, c. 47, s. 8; 1931, c. 243, s. 5; 1933, c. 451, s. 1; 1935, c. 139; 1947, c. 990; 1953, c. 1209, ss. 2, 5.)

Editor's Note.—

The 1953 amendment rewrote this section.

§ 53-66. **Savings deposits.**—Any bank conducting a savings department may receive deposits on such terms as are authorized by its board of directors and agreed to by its depositors. The board of directors shall prescribe the terms upon which such deposits shall be received and paid out, and a pass-book or other evidence of deposit shall be issued to each depositor containing the rules and regulations adopted by the board of directors governing such deposits. By accepting such book or such other evidence of deposit the depositor assents and agrees to the rules and regulations therein contained. (1921, c. 4, § 47; C. S., s. 220(v); 1959, c. 270.)

Editor's Note.—

The 1959 amendment rewrote the second sentence.

§ 53-77.1. **Saturday closing of banks.**—(a) Any bank as defined by G. S. 53-1 or G. S. 53-136, including national banking associations and federal reserve banks, or any branch or office of any of the foregoing, located in any city or town of this State having a population according to the latest United States census now or hereafter of more than seventy thousand may remain closed on any one or more or all Saturdays, as the board of directors of such banks may from time to time determine.

(b) Any bank electing to close on Saturday under the provisions of this section shall comply with the following provisions:

- (1) On each Friday except when a legal holiday falls on Friday such bank shall remain open a minimum of seven hours, three of which will be after three P. M.
- (2) Remain open on each of the following State holidays: Lee-Jackson Day, Halifax Day, Confederate Memorial Day, Mecklenburg Declaration of Independence, Memorial Day, and Election Day.

(c) Any Saturday on which a bank or branch or office thereof shall remain closed as herein permitted shall, as to such closed bank or branch or office constitute a legal holiday, and any act authorized, required, or permitted to be performed at, by or with respect to any such bank or branch or office on a Saturday when it is closed may be performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

All the provisions of this section shall apply to any city or town of this State having a population now or hereafter of more than sixty-five thousand and having as many as five thousand persons employed by governmental units.

All of the provisions of subsections (a), (b), and (c) of this section shall apply to each city of this State now or hereafter having a population, according to the latest United States census, of thirty-nine thousand people or more, located in any county having two or more such cities therein. Any bank located in any such city which closes its offices located in the city on Saturday may also close any of its offices located outside the city but in the same county. (1953, c. 965; 1955, cc. 546, 1220; 1957, c. 350, s. 1; c. 687; 1959, c. 156.)

Editor's Note.—The first 1955 amendment added the next to last paragraph, and the second 1955 amendment added the last paragraph.

The first 1957 amendment substituted "eighty-five" for "one hundred thirty" in line five of subsection (a), and deleted

"Easter Monday" from the list of holidays in paragraph (2) of subsection (b). Section 2 of the amendatory act provides that it shall not be construed as amending or repealing G. S. 53-77.2 or any portion thereof.

The second 1957 amendment deleted

from subsection (b) the former provision requiring each bank having a vault or night depository safe to open same for one hour each Saturday morning.

The 1959 amendment substituted "seventy" for "eighty-five" in line five of subsection (a).

§ 53-77.2. Additional provision for operation of banks on five-day week basis.—(a) Whenever requested by all of the commercial banks operating in any city or town the Commissioner of Banks shall, after ten days notice published in a newspaper of general circulation in such city or town, hold a hearing in a local community where the bank or banks are located to determine whether all of the commercial banks in such city or town shall be permitted to operate on a five-day week basis.

(b) The request of commercial banks desiring permission so to operate shall specify which day of the week they shall be closed and the notice published shall also specify the day of the week upon which the commercial banks shall be closed.

(c) At the hearing the Commissioner shall hear all evidence offered and if he shall find that the best interests of the commercial banks and the public will be served by a five-day week for commercial banks, he shall enter an order directing that all commercial banks in such city or town shall be closed upon the day of the week specified in the original request.

(d) All commercial banks operating on a five-day week under the provisions of this article shall comply with the following provisions:

(1) On one day of the week such banks shall remain open for not less than seven hours, three of which shall be after 3:00 P. M.

(2) Remain open on each of the following State holidays: Lee-Jackson Day, Halifax Day, Confederate Memorial Day, Mecklenburg Declaration of Independence Day, Memorial Day and Election Day, unless such holiday falls on the day on which said banks are otherwise closed under the provisions of this section.

(e) Any day on which a bank or branch or office thereof shall remain closed as herein permitted, shall, as to such closed bank or branch or office constitute a legal holiday, and any act authorized, required, or permitted to be performed at, by or with respect to any such bank or branch or office on a day when it is closed may be performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

(f) In the case of any commercial bank the principal office of which is not located in an incorporated city or town such bank acting alone shall have the right to petition the Commissioner of Banks for permission to operate on a five-day week basis and may be authorized to so operate under the same terms and conditions as specified in subsections (a)-(e) above.

(g) This section shall not replace or be in lieu of the provisions of G. S. 53-77.1 but shall constitute an additional provision relating to the operation of banks on a five-day week basis. (1957, c. 358.)

ARTICLE 7.

Officers and Directors.

§ 53-78. Appointment of executive and loan committees by directors.—The board of directors shall appoint an executive committee or committees, each of which shall be composed of at least three of its members with such duties and powers as are defined by the regulations or bylaws, who shall serve until their successors are appointed. Such executive committee or committees shall meet as often as the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all loans and investments. All loans and investments shall be made under such rules and regulations as the board of directors may prescribe.

The board of directors may appoint, in addition to the executive committee or committees, a general loan committee, the membership of which shall include at least three directors and such officers of the bank as may be appointed, with such duties and powers with respect to making loans and investments as are defined in the bylaws or by resolution of the board of directors, the members of such general loan committee to serve until their successors are appointed. Such general loan committee, if appointed, shall meet as often as the bylaws or resolution of the board of directors may require, which shall be not less frequently than once each month, and approve or disapprove all such loans and investments as may be required by the bylaws or by resolution of the board of directors to be submitted to the general loan committee. The board of directors of any bank, which has branches, may appoint, in addition to a general loan committee, a loan committee for the parent bank and for any branch, each of which committees shall include at least three members who are officers or members of the board of managers for such parent bank or branch, with such duties and powers with respect to approving or disapproving loans and investments as may be defined in the bylaws or by resolution of the board of directors, and under such rules and regulations as the board of directors may prescribe. Such loans and investments as are authorized or approved by a general loan committee or either of the other loan committees hereinabove provided for may, but need not, be approved or disapproved by the executive committee or committees. All loans and investments made, however, shall be authorized or approved by either the executive committee or committees, a general loan committee, or one of the other loan committees herein provided for. (1921, c. 4, s. 49; C. S., s. 221(a); 1951, c. 167, s. 1.)

Editor's Note. — The 1951 amendment added the second paragraph.

§ 53-79. Minutes of meetings of directors and executive and loan committees.—Minutes shall be kept of all meetings of the board of directors, executive committee or committees, and of the loan committee or committees, if appointed, and the same shall be recorded in a book or books which shall be kept for that purpose; which book or books shall be kept on file in the bank. Such minutes shall show a record of the action taken by the board of directors, the executive committee or committees and the loan committee or committees on all loans, discounts, and investments made, authorized or approved, and such further action as the board of directors and the executive committee or committees shall take concerning the conduct, management and welfare of the bank. The minutes of the executive committee and all committees authorizing or approving loans and investments, showing the actions taken by such committees since the last meeting of the board of directors, shall be submitted to the board of directors at each meeting of the board. (1921, c. 4, s. 50; C. S., s. 221(b); 1951, c. 167, s. 2.)

Editor's Note. — The 1951 amendment made this section applicable to loan committees.

ARTICLE 8.

Commissioner of Banks and Banking Department.

§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.—On or before April first, one thousand nine hundred and thirty-one, after the ratification of this section, and quadrennially thereafter, the Governor, with the advice and consent of the Senate, shall appoint a Commissioner of Banks who shall hold his office for a term of four years or until his successor has been appointed and has qualified, subject, however, to the provisions herein made as to his removal. The Commissioner of Banks shall, before entering upon the discharge of his duties, enter into bond with some surety company authorized to do business in the State of North Carolina, in the sum of not less than

fifty thousand dollars, conditioned upon the faithful and honest discharge of all duties and obligations imposed by statute upon him.

The State Banking Commission, which has heretofore been created, shall hereafter consist of the State Treasurer and the Attorney General, who shall serve as ex officio members thereof, and nine members who shall be appointed by the Governor. Five members of the said Commission shall be practical bankers and the remainder of the membership of said Commission shall be selected so as to fairly represent the industrial, manufacturing, business and farming interests of the State. The terms of office of the two additional members who are now to be appointed shall expire on the first day of April, 1957, and thereafter their successors shall be appointed by the Governor for terms of four years each and shall serve until their successors are appointed and qualified. Successors to members whose terms expired on the first of April 1953, shall be filled by the Governor for the unexpired portion of the four-year terms which began on said date. Members of the Commission whose present terms expire on the first day of April, 1955, shall continue in office until the expiration of their respective terms and until their successors are appointed and qualified. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the Governor for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission, which compensation shall be paid from the fees collected from the examination of banks as provided by law.

The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any state banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State; any party to a proceeding before the Banking Commission may, within twenty days after a final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)". It shall be placed on the civil issue docket of such court and shall

have precedence over other civil actions. In event of an appeal the Commissioner shall certify the record to the clerk of Superior Court of Wake County within fifteen days thereafter. (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6.)

Editor's Note.—

The 1953 amendment rewrote the second paragraph, and added that part of

the last paragraph which follows the semicolon in the first sentence.

§ 53-93.1. Deputy commissioner.—The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks. He shall receive such compensation as shall be fixed by the Governor with the approval of the Advisory Budget Commission.

Irrespective of the conditions under which the deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the commissioner as the commissioner, in his discretion, may direct.

This section is not to be construed to modify the provisions of G. S. 53-97. (1959, c. 273.)

§ 53-96. Salary of Commissioner; legal assistance and compensation.—The salary of the Commissioner of Banks shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Governor may in his discretion appoint and assign to the Commissioner of Banks such legal assistance as in his judgment may be necessary; and compensation therefor, when permanent, shall be fixed in like manner. (1931, c. 243, s. 6; 1957, c. 541, s. 3.)

Editor's Note.—Prior to the 1957 amendment the salary of the Commissioner of Banks was fixed by the Advisory Budget Commission.

§ 53-110. Banking Commission to prescribe books, records, etc.; retention, reproduction and disposition of records.—(a) Whenever in its judgment it may appear to be advisable, the State Banking Commission may issue such rules, instructions, and regulations prescribing the manner of keeping books, accounts, and records of banks as will tend to produce uniformity in the books, accounts, and records of banks of the same class.

(b) The following provisions shall be applicable to banks and trust companies operating under chapter 53 of the General Statutes and amendments thereto, and to national banking associations in so far as this section does not contravene paramount federal law:

(1) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, and all records which the Banking Commission shall in accordance with the terms of this section require to be retained permanently.

(2) All other bank records shall be retained for such periods as the Banking Commission shall in accordance with the terms of this section prescribe.

(3) The Banking Commission shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed, but any amendment or repeal shall not affect any action taken prior to such amendment or repeal. Prior to issuing any such regulations the Commission shall consider:

a. Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable;

b. State and federal statutes of limitation applicable to such actions or proceedings;

c. The availability of information contained in bank records from other sources; and

d. Such other matters as the Banking Commission shall deem pertinent in order that its regulations will require banks to retain their records for as short a period as is commensurate with the interest of bank customers and stockholders and of the people of this State in having bank records available.

(4) Any bank may cause any or all records kept by it to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic process which correctly, accurately, and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material.

(5) Any such photographic, photostatic or miniature photographic copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

(6) Any bank may dispose of any record which has been retained for the period prescribed by the Banking Commission or in accordance with the terms of this section for retention of records for its class. (1921, c. 4, s. 70; C. S., s. 222(h); 1931, c. 243, s. 5; 1939, c. 91, s. 2; 1951, c. 166, ss. 1, 2.)

Editor's Note. — The 1951 amendment added subsection (b).

ARTICLE 9.

Bank Examiners.

§ 53-121. Examiners may make arrest.

Stated in *Alexander v. Lindsey*, 230 N. C. 663, 55 S. E. (2d) 470 (1949).

§ 53-122. **Fees for examinations and other services.**—For the purpose of paying the salaries and necessary traveling expenses of the Commissioner of Banks, State bank examiners, assistant State bank examiners, clerks, stenographers and other employees of the Commissioner of Banks, the following fees shall be paid into the office of the Commissioner of Banks: (a) Each bank and each branch of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the Commissioner of Banks and is authorized to do business or is in process of voluntary liquidation shall, within ten days after the assessment has been made, pay into the office of the Commissioner of Banks according to its total resources as shown by its report of condition made to the Commissioner of Banks at the close of business December thirty-first, nineteen hundred and twenty-six, and on the thirty-first day of December, or the date most nearly approximating same of each year thereafter on which a report of condition is made to the Commissioner of Banks not in excess of the following fees for its annual examination: Fifty dollars for the first one hundred thousand dollars of assets or less, seven dollars for each one hundred thousand dollars or fraction in excess thereof, and two dollars for each one hundred thousand dollars or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect

to loan agencies or brokers subject to the provisions of article 15 of chapter 53 of the General Statutes, the fee shall be one hundred dollars (\$100.00) for the first one hundred thousand dollars (\$100,000.00) of assets or less.

(b) All examinations made other than those provided for in subsection (a) hereof shall be deemed special examinations and for such special examination the bank shall pay into the office of the Commissioner of Banks the following fees for each special examination: Fifty dollars for the first one hundred thousand dollars of assets or less, seven dollars for each one hundred thousand dollars or fraction in excess thereof, and two dollars for each one hundred thousand dollars or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of article 15 of chapter 53 of the General Statutes, the fee shall be one hundred dollars (\$100.00) for the first one hundred thousand dollars (\$100,000.00) of assets or less. The fees paid for special examination shall be based on the assets of the bank examined as of the date of such examination.

(e) The total compensation and necessary traveling expenses of the employees of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided such expenses and compensation may exceed the total fees collected in any year when surplus funds are available.

(f) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, and, if the estimated fees provided for under paragraphs (a) and (b) shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees provided for in paragraphs (a) and (b) of this section but not in a percentage greater than fifty per cent (50%) nor to an amount which will reduce the amount of the fees to be collected below the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. Such fees shall be reduced whenever a surplus exists which exceeds the estimated cost of operating the office of the Commissioner of Banks for one year, even if such reduction shall result in the collection of a smaller sum than the estimated cost of maintaining the office of the Commissioner of Banks for that year. (1921, c. 4, s. 77; C. S., s. 223(f); 1927, c. 47, s. 15; 1931, c. 243, s. 5; 1943, c. 733; 1945, c. 467; 1955, c. 640, ss. 1, 2; 1957, c. 1443, s. 1.)

Editor's Note. — The 1955 amendment added the proviso at the end of subsection (e), and the last sentence of subsection (f). The 1957 amendment added the provisos at the end of subsection (a) and near the end of subsection (b). Section 3 of the amendatory act made it applicable with respect to all assessments made after June 12, 1957. As the rest of the section was not changed only subsections (a), (b), (e) and (f) are set out.

ARTICLE 11.

Industrial Banks.

§ 53-141. Powers.

3. To charge for loans made pursuant to this section a fee of two dollars and fifty cents on loans of fifty dollars or less and on loans in excess of fifty dollars, one dollar for each fifty dollars or fraction thereof loaned, up to and including two hundred and fifty dollars, and for loans in excess of two hundred and fifty dollars, one dollar for each two hundred and fifty dollars excess or fraction thereof, to cover expenses, including any examination or investigation of the character and circumstances of the borrower, comaker, or surety. An additional fee of five dollars may be charged on such loans where same are

secured by mortgage on real estate. No charge shall be collected unless a loan shall have been made.

(1959, c. 365.)

Editor's Note.—

The 1959 amendment, which deleted the word "installment" formerly preceding the word "loans" the first time it appears in line two of subsection 3, provided that the fees provided for in this subsection

may be charged by any bank irrespective of whether a loan is an installment loan or not. As only subsection 3 was affected by the amendment the rest of the section is not set out.

ARTICLE 12.

Joint Deposits.

§ 53-146. Deposits in two names.

Editor's Note.—

For note on rights of a survivor to a joint bank account, see 31 N. C. Law Rev. 95; 35 N. C. Law Rev. 75.

For note on joint bank accounts without survivorship provision in joint account agreement, see 35 N. C. Law Rev. 352.

ARTICLE 13.

Conservation of Bank Assets and Issuance of Preferred Stock.

§ 53-156. Term "stock" not to include preferred stock; latter not to be used as collateral for loans.—Wherever in existing banking law, the words "stock," "stockholders," "capital" or "capital stock" are used, the same shall not be deemed to include preferred stock: Provided that no bank issuing preferred stock under the provisions hereof, shall be permitted at any time to make loans upon such preferred stock; provided further that in determining whether or not the minimum capital or capital stock required in §§ 53-2, 53-11, 53-62 and 53-139, has been supplied to such bank or banking corporation, the Commissioner of Banks shall include preferred stock as capital or capital stock. (1933, c. 155, s. 9; 1935, c. 80; 1953, c. 675, s. 5.)

Editor's Note.—

The 1953 amendment deleted the former reference to § 58-116.

ARTICLE 14.

Banks Acting in a Fiduciary Capacity.

§ 53-159. Banks may act as fiduciary.

Stated in *Wiggins v. Finch*, 232 N. C. 391, 61 S. E. (2d) 72 (1950).

ARTICLE 15.

North Carolina Small Loans Act.

§ 53-164. Supervision, expenses and definitions.—(a) Loan agencies or brokers, as defined in subsection (b) of this section, shall be under the supervision and control of the Commissioner of Banks. Such persons, firms or corporations (hereinafter referred to as "lenders") shall, for purpose of defraying necessary expenses of the Commissioner of Banks and his agents in supervising them, pay to the Commissioner of Banks the fees prescribed in G. S. 53-122 at the times therein specified.

(b) For purposes of this article a "lender" is any person, firm or corporation engaged in the business of making loans, lending money, or accepting fees for endorsing or otherwise securing loans or contracts for repayment of debts.

(c) For purposes of this article a "borrower" is any person who borrows

money from or, in connection with the obtaining of credit, pays money to a lender. (1955, c. 1279; 1957, c. 1429, s. 1.)

Editor's Note. — The 1955 amendment, effective July 1, 1955, rewrote this article, formerly containing five sections derived from Public Laws 1945, c. 282, so as to provide additional protection to borrowers from small loan agencies. The article heading formerly read "Loan Agencies or

Brokers."

The 1957 amendment substituted "subsection (b) of this section" for "G. S. 105-88" in the former section and designated it as subsection (a). The amendment also added subsections (b) and (c).

§ 53-165. Limitation on charges and collateral.—(a) Such lenders shall not, directly or indirectly, charge, demand of, contract for, or receive from borrowers any amount or thing whatever except the following:

(1) The same fees and interest that may lawfully be charged by industrial banks on installment loans.

(2) Reasonable credit life insurance as defined in G. S. 58-195.2 and reasonable accident and health insurance as defined in G. S. 58-254.8, including reasonable hospitalization benefits, and the premiums therefor, together with a policy writing fee, all in accordance with, and in such amounts as may be from time to time authorized by the rules and regulations promulgated by the Commissioner of Insurance for the writing of insurance in connection with loans; provided, however, that in no event shall the amount of credit life insurance coverage exceed the original face amount of the specific contract of indebtedness in connection with which it is written; and provided, further, that credit accident and health insurance shall not be written in connection with any loan repayable over a period of less than eight weeks.

(3) Liens on tangible property.

(4) The fees necessary to probate and record such liens.

(5) Endorsements of negotiable paper by third parties.

(b) Those fees and insurance premiums permitted by the terms of subsection (a) of this section shall not be charged more frequently than once each sixty days by the same lender to the same borrower. (1955, c. 1279; 1957, c. 1429, s. 2.)

Editor's Note.—The 1957 amendment inserting before the word "borrowers" in line deleted the word "their" formerly appearing three of subsection (a).

§ 53-166. Restrictions as to insurance.—(a) The term of those life insurance and accident and health insurance policies defined in G. S. 53-165 (a) (2) shall correspond to the term of the loan contract.

(b) If such insurance is written in connection with a loan, the insurer shall deliver the original policy or certificate of insurance to the insured borrower in accordance with the rules and regulations promulgated by the Commissioner of Insurance for the writing of insurance in connection with loans.

(c) If a loan obligation is discharged or if a new life insurance or accident and health insurance policy is issued, the credit life insurance or credit accident and health insurance on such obligation shall be discharged and the unearned portion of the insurance premium shall be refunded to the borrower; provided that if the unearned premiums total less than one dollar (\$1.00), the provisions of this subsection shall not apply.

(d) The Commissioner of Insurance, in addition to the powers and duties granted him by G. S. 58-9, may, by order, suspend or cancel the right of any lender and its officers, agents or representatives to sell and take insurance as authorized by this article, when the Commissioner shall find that the lender has violated any provisions of this article, or the rules and regulations referred to herein relating to the writing of insurance. (1955, c. 1279.)

§ 53-167. Written statement of rates in force.—(a) At the time any loan is made, the lender shall deliver to the borrower a statement, which shall dis-

close in clear and distinct terms the amount and date of the loan, the amount of interest, fees, premiums, and charges, the type of security given for the loan, a schedule of payments to be made, and the name and address of the lender and of each person primarily obligated on the note.

(b) Each lender doing business in North Carolina shall display at each place of business a full and accurate schedule of the interest, fees, and charges upon all classes of loans made. (1955, c. 1279.)

§ 53-168. Payment of loans; receipts.—(a) After each payment made on account of any loan, the lender shall give to the person making such payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(b) Upon payment of the loan in full, the lender shall mark every note with the word "paid" or "cancelled," and shall release any mortgage or restore any pledge. The cancelled note shall be returned to the borrower. (1955, c. 1279.)

§ 53-168.1. Advertising, broadcasting, etc., false or misleading statements.—No lender shall advertise, display, distribute, broadcast or televise or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans regulated by this article. (1957, c. 1429, s. 3.)

§ 53-169. Securing of information; records and reports; allocations of expense.—(a) Each lender shall maintain in his local office all records required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner is authorized and empowered to examine such records at all reasonable times.

(b) Each lender shall file with the Commissioner of Banks semiannually on or before the 31st days of January and July for the preceding six months' periods ending December 31 and June 30 respectively reports on forms prescribed by the Commissioner. Such reports shall disclose in detail and under appropriate headings the resources, assets and liabilities of such lender at the end of the period, the income, expense, gain, loss and distribution of earnings and surplus during such period, the ratios of such profits to the assets reported, the monthly average number and amount of loans outstanding and a classification of loans made, by size and by security. Such reports shall be verified by the oath or affirmation of the owner, manager, president, vice president, cashier, secretary or treasurer of such lender.

(c) If a lender conducts another business or is affiliated with other lenders under this article, or, if any other situation exists under which allocations of expense are necessary, the lender or lenders shall make such allocation according to appropriate and reasonable accounting methods as prescribed by the Commissioner.

(d) If a lender is affiliated with other lenders, all of the affiliated lenders shall file composite semiannual reports in addition to the separate reports required in subsection (c) of this section. (1955, c. 1279; 1957, c. 1429, s. 4.)

Editor's Note.—The 1957 amendment rewrote subsections (b) and (c) and added subsection (d).

§ 53-170. Banking Commission to make rules and regulations.—The State Banking Commission is hereby authorized, empowered and directed to make all rules and regulations deemed by the Commission to be necessary or desirable in providing for the protection of the borrowing public and the efficient management of such lenders and to give all necessary instructions to such lenders for the purpose of interpreting this article. And it shall be the duty of all such lenders, their officers, agents and employees, to comply fully with all such rules,

regulations and instructions, and with all such orders as the Commissioner of Banks may issue pursuant to the provisions of G. S. 53-169. (1955, c. 1279.)

§ 53-170.1. Commissioner to issue subpoenas, conduct hearings, give publicity to investigations, etc.—The Commissioner of Banks shall have the power and duty to issue subpoenas and compel attendance of witnesses, administer oaths, conduct hearings, transcribe testimony, and to send for persons and papers whenever he deems it necessary, in making the investigations and conducting the hearings provided for herein or in the other discharge of his duties, and to give such publicity to his investigations and findings as he may deem best for the public interest. (1957, c. 1429, s. 5.)

§ 53-171. Revocation or suspension of right to do business.—If the Commissioner of Banks shall find, after due notice and hearing, that any such lender, or an officer, agent or representative thereof has violated any of the provisions of this article, or has failed to comply with the rules, regulations, instructions or orders promulgated by the State Banking Commission pursuant to the powers and duties prescribed herein or has furnished false information to the Commissioner of Banks or the State Banking Commission, he shall issue an order revoking or suspending the right of such lender and such officer, agent or representative to do business in North Carolina as a loan agency or broker. (1955, c. 1279.)

§ 53-171.1. Injunctive powers; receivers. — Whenever the Commissioner has reasonable cause to believe that any lender is violating or is threatening to violate any provision of this article, he may in addition to all actions provided for in this article, and without prejudice thereto, enter an order requiring such lender to desist or to refrain from such violation; and an action may be brought in the name of the Commissioner on the relation of the State of North Carolina to enjoin such lender from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this article through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court. (1957, c. 1429, s. 6.)

§ 53-171.2. Review of regulation, order or act of Commission or Commissioner.—The validity of any regulation or order or act of the Commission or Commissioner shall be subject to review on the filing of a petition by the aggrieved person, firm or corporation as provided in article 33, chapter 143 of the General Statutes of North Carolina. (1957, c. 1429, s. 6.)

§ 53-172. Penalties; Commissioner to provide and testify as to facts in his possession.—Any such lender, or any officer, agent or representative thereof who fails to comply with or who otherwise violates any of the provisions of this article, shall be guilty of a misdemeanor, and each such violation shall be considered a separate offense. It shall be the duty of the Commissioner of Banks to provide the solicitor of the court having jurisdiction of any such offense with all facts and evidence in his actual or constructive possession, and

to testify as to such facts upon the trial of any person for any such offense. (1955, c. 1279; 1957, c. 1429, s. 7.)

Editor's Note.—The 1957 amendment added the second sentence.

§ 53-173. Businesses exempted.—Nothing in this article shall be construed to apply to any person, firm or corporation engaged solely in the business of making loans of fifty dollars (\$50.00) or more secured by motor vehicles nor to any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, building and loan associations, co-operative credit unions, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G. S. 105-41, nor to installment paper dealers as defined in G. S. 105-83 other than persons, firms and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of debts. (1955, c. 1279; 1957, c. 1429, s. 8.)

Editor's Note.—Prior to the 1957 amendment only the business of making certain loans on motor vehicles was exempted.

Chapter 53A.

Business Development Corporations.

Sec.	Sec.
53A-1. Definitions.	53A-9. Amendment of charter.
53A-2. Incorporation authorized; information to be set forth; purposes; powers generally.	53A-10. Board of directors; officers and agents.
53A-3. Capital stock; provisions of certificates of incorporation.	53A-11. Earned surplus requirements; determination of net earnings and surplus.
53A-4. Approval and filing of certificates; authority of incorporators.	53A-12. Deposits by corporation in banking institutions; corporation not to receive deposits.
53A-5. Acquisition, etc., of corporation's securities and stock; financial institutions becoming members; limitation on stock acquired by members.	53A-13. Examinations and reports.
53A-6. Applications for membership in corporation; acceptance; loans to corporation by members.	53A-14. First meeting.
53A-7. Term of membership; withdrawal.	53A-15. Tax exemptions and credits.
53A-8. Powers of stockholders and members; voting.	53A-16. Duration of corporation.
	53A-17. Charter void unless business begun; chapter void unless corporation organized.
	53A-18. Credit of State not pledged.

§ 53A-1. Definitions.—As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation": A North Carolina business development corporation created under this chapter.

(2) "Financial institution": Any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this State which shall undertake to lend money to a corporation created under this chapter, upon its call, and in accordance with the provisions of this chapter.

(4) "Board of directors": The board of directors of the corporation created under this chapter.

(5) "Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter. (1955, c. 1146, s. 1.)

§ 53A-2. Incorporation authorized; information to be set forth; purposes; powers generally.—Twenty-five (25) or more persons, a majority of whom shall be residents of this State, who may desire to create a business development corporation under the provisions of this chapter, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the State and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner; such persons shall, by certificate of incorporation filed with the Secretary of State, under their hands and seals, set forth:

(1) The name of the corporation, which shall include the words "Business Development Corporation of North Carolina";

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the State as may be fixed by the board of directors.

(3) The purpose for which the corporation is founded, which shall include the following:

The purposes of the corporation shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of the State of North Carolina and its citizens; to encourage and assist through loans, investments or other business transactions, in the location of new business and industry in this State and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this State, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this State; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in this State; and to provide financing for the promotion development, and conduct of all kinds of business activity in this State.

In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of chapter 55 of the General Statutes the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(a) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money from the members, from any financial institution, and from any agency established under the Small Business Investment Act of 1958, Public Law 85-699-85th Congress, or other similar federal legislation, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(c) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(d) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(e) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments, and to transfer, lease, or otherwise dispose of industrial plants or business establishments.

(f) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(g) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in paragraphs (d), (e) or (f), as security for the payment of any part of the purchase price thereof.

(h) To cooperate with and avail itself of the facilities of the Department of Conservation and Development and any similar governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the State in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this State or of any part thereof.

(i) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter. (1955, c. 1146, s. 2; 1959, c. 613, s. 1.)

Editor's Note. — The 1959 amendment deleted the word "only" formerly appearing in line one of paragraph (3) (b), and inserted in lieu thereof, immediately following the word "members", the following: "from any financial institution, and from any agency established under the Small Business Investment Act of 1958, Public Law 85-699—85th Congress, or other similar federal legislation." Section 2

of the amendatory act provides that nothing contained therein shall change or affect in any way the provisions of the certificate of incorporation of any existing corporation organized under chapter 1146 of the Session Laws of 1955 unless and until such certificate of incorporation shall be amended as provided in section 9 of such chapter.

§ 53A-3. Capital stock; provisions of certificates of incorporation. —The certificate shall set forth the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, and the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names

and postoffice addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business. The certificate of incorporation may also contain any provision consistent with the laws of this State for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The certificate of incorporation shall be in accordance with the provisions of G. S. 55-3. (1955, c. 1146, s. 3.)

§ 53A-4. Approval and filing of certificates; authority of incorporators.—Before the said certificates of incorporation shall become effective, it must be approved by a resolution adopted by the Governor and Council of State and, from the date the said certificate of incorporation is filed in the office of the Secretary of State, with such approval, the stock subscribers, their successors and assigns, shall become a body corporate, by the name specified in the certificate, subject to amendment and dissolution as provided in this chapter. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this chapter, as set forth in § 53A-2. (1955, c. 1146, s. 4.)

§ 53A-5. Acquisition, etc., of corporation's securities and stock; financial institutions becoming members; limitation on stock acquired by members.—Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures: (1) All domestic corporations organized for the purpose of carrying on business within this State including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the State, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State; (2) all financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein; (3) a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation; and (4) each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent (10%) of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire. (1955, c. 1146, s. 5.)

§ 53A-6. Applications for membership in corporation; acceptance; loans to corporation by members.— Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be ap-

proved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance: Two per cent (2%) of the capital and surplus of commercial banks and trust companies; one per cent (1%) of the total outstanding loans made by a building and loan association: Provided, however, that any business development corporation created pursuant to this chapter may in its certificate of incorporation, or by appropriate amendment thereto, provide that the loan limit of a building and loan association member shall be only one-half of one per cent (.5 of 1%) of the total outstanding loans made by such building and loan association member; one per cent (1%) of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; one per cent (1%) of the unassigned surplus of mutual insurance companies, except fire insurance companies, one-tenth of one per cent (.1 of 1%) of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one per cent (.25 of 1%) in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans. (1955, c. 1146, s. 6; 1957, c. 1041, s. 1.)

Cross Reference.—See note to § 53A-9. inserted the proviso in paragraph (b) of **Editor's Note.**—The 1957 amendment subdivision (3).

§ 53A-7. Term of membership; withdrawal.—Membership in the corporation shall be for the duration of the corporation; provided that—

Upon written notice given to the corporation three years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant

to calls made subsequent to the withdrawal of said member. (1955, c. 1146, s. 7; 1957, c. 1041, s. 4.)

Cross Reference.—See note to § 53A-9. substituted “three” for “five” in line one
Editor’s Note.—The 1957 amendment of the second paragraph.

§ 53A-8. **Powers of stockholders and members; voting.**—The stockholders and the members of the corporation shall have the following powers of the corporation: (a) To determine the number of and elect directors as provided in § 53A-10; (b) to make, amend and repeal bylaws; (c) to amend this charter as provided in § 53A-9, (d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars (\$1,000.00) shall have one additional vote, in person or by proxy, for each additional one thousand dollars (\$1,000.00) which such member is authorized to have outstanding on loans to the corporation at any one time as determined under paragraph (3) (b) of § 53A-6. (1955, c. 1146, s. 8.)

§ 53A-9. **Amendment of charter.**—This charter may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled; provided, that no amendment of this charter which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the Secretary of State to examine the corporation or the obligation of the corporation to make reports as provided in § 53A-13, shall be made without amendment of this chapter; and provided, further, that no amendment of this charter which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member’s right to withdraw from membership as provided in § 53A-7, or affects a member’s voting rights as provided in § 53A-8, shall be made without the consent of each member affected by such amendment.

Within thirty days after any meeting at which amendment of this charter has been adopted, articles of amendment signed and sworn to by the president, treasurer and a majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the Secretary of State, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the Secretary of State and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid. (1955, c. 1146, s. 9.)

Editor’s Note.—Session Laws 1957, c. 1041, s. 5, effective June 5, 1957, provides that nothing contained in the 1957 amendments to §§ 53A-6, 53A-7, 53A-10 and 53A-15 shall be construed to change or affect in any way the provisions of the certificate of incorporation of any existing corporation organized under this chapter with respect to requirements to amend its certificate of incorporation.

§ 53A-10. Board of directors; officers and agents.—The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than fifteen nor more than twenty-one, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the members of the corporation shall elect two-thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the wilful misconduct of such directors and officers. (1955, c. 1146, s. 10; 1957, c. 1041, s. 2.)

Cross Ref rence.—See note to § 53A-9. substituted “twenty-one” for “eighteen”
Editor’s Note. — The 1957 amendment in line five.

§ 53A-11. Earned surplus requirements; determination of net earnings and surplus.—Each year the corporation shall set apart as earned surplus not less than ten per cent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors’ determination made in good faith shall be conclusive on all persons. (1955, c. 1146, s. 11.)

§ 53A-12. Deposits by corporation in banking institutions; corporation not to receive deposits.—The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit. (1955, c. 1146, s. 12.)

§ 53A-13. Examinations and reports.—The corporation shall be subject to the examination of the Commissioner of Banks, and shall make reports of its condition not less than annually to said Commissioner, who in turn shall make copies of such reports available to the Commissioner of Insurance and to the Governor, and the corporation shall also furnish such other information as may from time to time be required by the Secretary of State. (1955, c. 1146, s. 13.)

§ 53A-14. **First meeting.**—The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Ten of the incorporators shall be a quorum for the transaction of business. (1955, c. 1146, s. 14.)

§ 53A-15. **Tax exemptions and credits.**—(a) An annual excise tax is hereby levied on every corporation organized under this chapter for the privilege of transacting business in this State during the calendar year, according to or measured by its entire net income as defined herein received or accrued from all sources during the preceding calendar year hereinafter referred to as taxable year, at the rate of four and one-half per cent ($4\frac{1}{2}\%$) of such entire net income. The minimum tax assessable to any one such corporation shall be ten dollars (\$10.00). The liability for the tax imposed by this section shall arise upon the first day of each calendar year, and shall be based upon and measured by the entire net income of each such corporation for the preceding calendar year, including all income received from government securities (whether or not taxable under article 4 of the Revenue Act) in such year except for any interest that may be allowed as deductible from gross income under subsection (e) of this section. As used in this section the words "taxable year" shall mean the calendar year next preceding the calendar year for which and during which the excise tax is levied.

(b) The excise tax levied under subsection (a) of this section shall be in lieu of the intangible personal property taxes, the State franchise tax, and the State income tax levied by the Revenue Act.

It is the purpose and intent of the General Assembly to levy taxes on corporations organized pursuant to this chapter so that all such corporations will be taxed uniformly in a just and equitable manner in accordance with the provisions of Article V, § 3, of the Constitution of North Carolina. The intent of this section is to exercise the powers of classification and of taxation on property, franchises, and trades conferred by the above constitutional provision cited in this section.

(c) The words "entire net income" shall mean the gross income of a taxpayer less the deductions allowed by this section.

(d) For purposes of this section the words "gross income" shall mean the income of a corporation received or accrued from whatever source during the taxable year as follows: Interest and discount on loans; interest from bonds, notes, mortgages and other investments, including interest from all government bonds issued direct by any level of government or through any government agency, any exclusion provided in article 4 of chapter 105 of the General Statutes notwithstanding; dividends from securities owned; service charges; collection fees; rents; commissions; gains or profits from the sale or other disposition of property, either real or personal, tangible or intangible; recoveries from losses previously written off or deducted from income in prior taxable years; and all other recoveries, gains, profits, income, or receipts regardless of nature and from whatever source derived, except that gifts received shall be excluded from gross income.

(e) In computing entire net income there shall be allowed as deductions the following items:

- (1) All ordinary and necessary expenses as defined in subsection 1 of G. S. 105-147 paid or accrued during the taxable year.
 - (2) Rental expense as defined in subsection 2 of G. S. 105-147.
 - (3) Unearned discount and interest paid as provided in subsection 3 of G. S. 105-147 for income tax purposes.
 - (4) Taxes paid or accrued except federal income taxes, taxes levied under this section, taxes assessed for local benefit of a kind tending to increase the value of the property assessed and any other taxes not deductible for income tax purposes under the provisions of subsection 4 of G. S. 105-147.
 - (5) Dividends received from stock issued by any corporation to the extent provided under subsection 5 of G. S. 105-147.
 - (6) Losses shall be deductible as provided for income tax purposes in G. S. 105-144, G. S. 105-144.1, G. S. 105-145, and subsection 6 of G. S. 105-147.
 - (7) Loans or debts ascertained to be worthless and actually charged off during the taxable year, if connected with business and, if the amount has previously been included in gross income in a return under this section; or, in the discretion of the Commissioner of Revenue, a reasonable addition to a reserve for bad debts.
 - (8) A reasonable allowance for depreciation and obsolescence as provided for income tax purposes in subsection 8 of G. S. 105-147.
 - (9) Contributions to religious, charitable, educational and like organizations as provided in subsection 9 of G. S. 105-147, provided such contributions not exceed five per cent (5%) of the net income of the corporation without any deduction for such contributions.
 - (10) Contributions to the State of North Carolina, any of its institutions, instrumentalities, agencies, or political subdivisions.
 - (11) Reasonable contributions to employees pension trusts within the taxable year which qualify under subsection 10 of G. S. 105-138.
 - (12) Amortization of premiums paid on bonds, debentures, notes or evidences of debts as provided in G. S. 105-144.3.
 - (13) Interest upon the obligations of the State of North Carolina or a political subdivision thereof received or accrued during the taxable year. Provided, that the deduction of accrued interest shall be permitted only if the taxpayer has included accrued income in his gross income for the taxable year. Provided further, that in the event that any court of competent jurisdiction shall rule that the deduction of the interest of the obligations of the State of North Carolina or a political subdivision thereof from the base of the tax levied by this article violates the Constitution of this State or the Constitution of the United States such deduction shall be disallowed and such interest included in the entire net income of the taxpayer.
 - (14) Payments made to the beneficiaries or to the estate of a deceased employee, paid by reason of the death of the employee as provided under subsection 16 of G. S. 105-147 for income tax purposes.
 - (15) Deduction of accrued expenses, contributions, taxes, rental expense, or interest expense shall be subject to the limitations imposed upon income taxpayers under subsection 12 of G. S. 105-147.
- (f) On or before June 1 of each year, the executive officer or officers of each corporation shall file with the Commissioner of Revenue a full and accurate report of all income as defined in subsection (d) of this section received or accrued during the taxable year, and also an accurate record of the legal deductions in the same calendar year as allowed by subsection (e) of this section to the end that the correct entire net income of the corporation may be determined. This report shall be in such form and contain such information as the Commissioner

of Revenue may specify. At the time of making such report by each corporation, the taxes levied by this section with respect to an excise tax on corporations organized pursuant to this chapter shall be paid to the Commissioner of Revenue.

(g) The initial report and payment for each corporation shall be made on June 1, 1957, and shall be based on the calendar year of 1956, and the provisions of this section shall be applicable with respect to the year 1956 and all subsequent years.

(h) All provisions of subchapter I of Chapter 105 of the General Statutes, not inconsistent with this section, relating to administration, auditing and making returns, the imposition and collection of tax and the lien thereof, assessments, refunds, penalties, and appeal and review, shall be applicable to the tax imposed by this section. The Commissioner of Revenue may, from time to time, make, prescribe, and publish such rules and regulations, not inconsistent with law, as may be needful to enforce the provisions of this section.

(i) The securities, evidences of indebtedness and shares of the capital stock issued by the corporation established under the provisions of this chapter, their transfer, and income therefrom, and deposits of financial institutions invested therein, shall at all times be free from taxation within the State.

(j) Any stockholder, member, or other holder of any securities, evidences of indebtedness, or shares of the capital stock of the corporation who realizes a loss from the sale, redemption, or other disposition of any securities, evidences of indebtedness, or shares of the capital stock of the corporation, including any such loss realized on a partial or complete liquidation of the corporation, and who is not entitled to deduct such loss in computing any of such stockholder's, member's, or other holder's taxes to the State shall be entitled to credit against any taxes subsequently becoming due to the State from such stockholder, member, or other holder, a percentage of such loss equivalent to the highest rate of tax assessed for the year in which the loss occurs upon mercantile and business corporations. (1955, c. 1146, s. 15; 1957, c. 1041, s. 3.)

Cross Reference.—See note to § 53A-9.

Editor's Note. — The 1957 amendment inserted subsections (a) through (h) and designated the two original paragraphs of the section as (i) and (j), after deleting

from (i) the provision that the corporation shall not be subject to taxes based upon or measured by income levied by the State.

§ 53A-16. Duration of corporation.—The period of duration of the corporation shall be fifty years. (1955, c. 1146, s. 16.)

§ 53A-17. Charter void unless business begun; chapter void unless corporation organized.—If a corporation organized pursuant to this chapter shall fail to begin business within three years from the effective date of its charter then said charter shall become null and void. If, within three years from May 20, 1955, no corporation is organized pursuant to this chapter, then and in that event, this chapter shall become null and void. (1955, c. 1146, s. 17.)

§ 53A-18. Credit of State not pledged.—Under no circumstances is the credit of the State pledged herein. (1955, c. 1146, s. 18.)

Chapter 54.
Co-Operative Organizations.

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

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Organization.

Sec.

54-1. Application of terms.

Article 2.

Shares and Shareholders.

54-18.2. Shares acceptable as deposit of securities.

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Under Control of Insurance Commissioner.

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SUBCHAPTER III. CREDIT UNIONS.

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54-88. Rate of interest; authority to deduct interest.

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SUBCHAPTER IV. CO-OPERATIVE ASSOCIATIONS.

Article 16.

Organization of Associations.

54-111.1. [Repealed.]

54-118.1. License taxes.

54-118.2. Franchise taxes.

SUBCHAPTER V. MARKETING ASSOCIATIONS.

Article 19.

Purpose and Organization.

54-143. License taxes.

54-143.1. Franchise taxes.

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

ARTICLE 1.

Organization.

§ 54-1. **Application of terms.** — The terms “building and loan association” and “savings and loan association”, as used in this subchapter, shall apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to their members only, and of enabling their members to acquire real estate, make improvements thereon and remove encumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes. It shall be unlawful for any corporation, company, society, or association doing business in this State not so conducted to use in its corporate name the terms “building and loan association”, “building association” or “savings and loan association” or in any manner or device to hold itself out to the public as a building and loan association or savings and loan association. The terms “building and loan association” and “savings and loan association” in the General Statutes shall be interchangeable and the use of either shall be construed to include the other unless a different intention is expressly provided. (1905, c. 435, s. 16; Rev., s. 3881; C. S., s. 5169; 1959, c. 178.)

Editor's Note. — The 1959 amendment rewrote this section which formerly applied only to building and loan associations.

ARTICLE 2.

Shares and Shareholders.

§ 54-18.2. **Shares acceptable as deposit of securities.**—Notwithstanding any restrictions or limitations contained in any law of this State, shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State may be accepted by any agency, department, or official of the State of North Carolina in any case wherein such agency, department or official acting in its or his official capacity requires that securities be deposited with such agency, department or official. (1959, c. 363.)

ARTICLE 3.

Loans.

§ 54-19. **Manner of making loans; security required.**—At such times as the bylaws shall designate, not less frequently than once a month, the board of directors shall hold meetings at which the funds in the treasury applicable for loans may be loaned: Provided, that between meetings of the board of directors any three members of said board may act as an executive committee and may, by unanimous vote, make such loans. Any loans so made or approved by the executive committee shall be reported to the board of directors at its next meeting. No loans shall be made by such association to anyone not a member thereof. Borrowers shall be required to give real estate security, either by way of mortgage or deed of trust, subject only to mortgages or deeds of trust to secure loans made by the association and undue taxes and special assessments: Provided, that the shares of any such association may be received as security for a loan on such shares of an amount not to exceed the withdrawable value thereof: Provided, further, that bonds issued as general obligations of the United States government and bonds issued as general obligations of the State of North Carolina may be received as security to an amount not exceeding ninety per centum of the face value of such bonds. (1905, c. 435, s. 8; Rev., s. 3890; 1907, c. 959, s. 4; 1919, c. 249; C. S., s. 5182; 1937, c. 11; 1941, c. 65; 1959, c. 158.)

Editor's Note.—

The 1959 amendment deleted from the next to last proviso the words "ninety per centum of the amount paid in as dues on

such shares" and inserted in lieu thereof the words "the withdrawable value thereof."

§ 54-20. **Direct reduction of principal.**

All payments made on a loan under such plan of direct periodical reduction shall be applied first to interest, and then to the principal of advances made for the account of the borrower and charged thereto, and to the principal of the loan. The board of directors may adopt any other direct periodic reduction of principal plan that will require complete repayment of such loans: Provided, no plan of payment shall be adopted that will not mature and pay off the loan within twenty-five years from the date of the making thereof: Provided further, the board of directors may authorize the renewal or extension of the time of repayment of any loan theretofore made. Every person who has obtained or shall obtain a loan upon this or any other plan, or who has assumed or shall assume payment of a loan theretofore made upon this or any other plan or who shall be obligated upon any loan held by an association, shall be by reason thereof a member of the association making or holding such loan and shall be deemed a member until such loan is fully paid or assumed by another person or persons acceptable to the association. Such association may issue certificates of stock or membership to such member, but certificates shall not be necessary or required. (1937, c. 18; 1945, c. 189, s. 1; 1959, c. 367.)

Editor's Note.—

The 1959 amendment substituted "twenty-five" for "twenty" in the first

proviso of the second paragraph. As the first paragraph was not changed by the amendment it is not set out.

§ 54-21.2. Investments.—(a) Any building and loan association or savings and loan association incorporated under the laws of this State is authorized to invest any funds on hand, in excess of the demands of its shareholders, in bonds or evidences of indebtedness of the United States government, or guaranteed by it; in bonds or other evidences of indebtedness of the State of North Carolina; in demand or time deposits with such bank or banks as may be approved by a majority of the board of directors; in stock of a federal home loan bank of which it is a member and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation; in stock or obligations of the National Mortgage Association or any successor or successors thereto; in savings accounts of any association operating under the provisions of this section, or in savings accounts of any federal savings and loan association having its principal office within the State, subject to the maximum amounts insured by any federal agency.

(b) Subject to such regulations and limitations as the Commissioner of Insurance may prescribe, any such association is authorized and permitted to make any loan or investment now or hereafter permitted to be made by any federal savings and loan association whose home office is located in this State.

(c) The rights and powers granted to associations by this section shall be deemed supplementary to and not in substitution for any rights and powers heretofore or hereafter granted such associations in their charters or by the laws of this State. (1945, c. 189, s. 4; 1959, c. 366.)

Editor's Note. — The 1959 amendment rewrote this section.

§ 54-23. Power to borrow money. — Any such association may in its certificate of incorporation, constitution or bylaws authorize the board of directors from time to time to borrow money, and the board of directors may from time to time, by resolution adopted by a vote of at least two-thirds of all the directors and duly recorded in the minutes, borrow money for the association on such terms and conditions as they may deem proper; but the total amount of money so borrowed shall at no time exceed fifty per centum (50%) of the gross assets of such association; provided, however, any such association may borrow without limit from any agency or instrumentality of the United States upon such terms and conditions as such agency or instrumentality may impose. (1905, c. 435, s. 10; Rev., s. 3892; 1909, c. 898; 1911, c. 61; 1913, c. 21; C. S., s. 5184; 1933, c. 18; 1941, c. 66; 1959, c. 159.)

Editor's Note.— The 1959 amendment increased the amount of money borrowable from thirty-five to fifty per centum of the gross assets of the association and added the proviso at the end of the section. It also deleted the former last sentence relating to securing obligations for money borrowed.

ARTICLE 4.

Under Control of Insurance Commissioner.

§ 54-33.1. Commissioner of Insurance to prescribe books, records, etc.; retention, reproduction and disposition of records.—(a) Whenever in his judgment it may appear to be advisable, the Commissioner of Insurance may issue such rules, instructions, and regulations prescribing the manner of preserving books, accounts, and records of associations as will tend to produce uniformity in the books, accounts, and records of associations of the same class.

(b) The following provisions shall be applicable to all building and loan associations and savings and loan associations operating under the provisions of this subchapter:

- (1) Each association shall retain permanently the minute books of meetings of its stockholders and directors and all records which the Com-

missioner of Insurance shall in accordance with the terms of this section require to be retained permanently.

- (2) All other association records shall be retained for such periods as the Commissioner of Insurance shall in accordance with the terms of this section prescribe.
- (3) The Commissioner of Insurance shall from time to time issue regulations classifying all records kept by associations and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed, but any amendment or repeal shall not affect any action taken prior to such amendment or repeal. Prior to issuing any such regulations the Commissioner of Insurance shall consider:
 - a. Actions at law and administrative proceedings in which the production of association records might be necessary or desirable;
 - b. State and federal statutes of limitation applicable to such actions or proceedings;
 - c. The availability of information contained in association records from other sources;
 - d. Such other matters as the Commissioner of Insurance shall deem pertinent in order that his regulations will require associations to retain their records for as short a period as is commensurate with the interest of association customers and stockholders and of the people of this State in having association records available.
- (4) Any association may cause any or all records kept by it to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic process which correctly, accurately, and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material.
- (5) Any such photographic, photostatic or miniature photographic copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.
- (6) Any association may dispose of any record which has been retained for the period prescribed by the Commissioner of Insurance or in accordance with the terms of this section for retention of records for its class.

(c) The provisions of this section with reference to the retention and disposition of records shall apply to any federal savings and loan association operating in North Carolina unless in conflict with regulations prescribed by its supervisory authority. (1957, c. 1106.)

ARTICLE 5A.

Reserves.

§ 54-41.1. Required reserves for losses; profits not otherwise apportioned.—The gross earnings of every building and loan association or savings and loan association shall be ascertained at least semiannually. Before any such association shall apportion profits or declare dividends, the board of directors shall first deduct from the earnings a sufficient sum of money to meet the operating expenses of such association, all of which expenses shall be paid from earnings. The directors, after providing for the operating expenses, shall then

transfer to a reserve fund which shall at all times be available to meet losses arising from any source whatsoever not less than ten per cent (10%) of the net earnings since the last apportionment of profits or declaration of dividends until such reserve for losses is at least five per cent (5%) of the outstanding shares of the association; and thereafter, if at any time such reserve for losses shall become less than five per cent (5%) of the outstanding shares of the association, then at least ten per cent (10%) of the net earnings shall be transferred thereto before the apportionment of any profits or the declaration of any dividends until said reserve fund is restored to five per cent (5%) of the outstanding shares of the association. The reserve fund herein provided is to be considered identical with, and not supplemental to the reserves required to be set up by an association insured by the Federal Savings and Loan Insurance Corporation.

Any profits not otherwise apportioned or set apart by the directors of the association shall be paid to or credited to the accounts of the shareholders semi-annually in conformity with the bylaws of the association. (1959, c. 1126.)

SUBCHAPTER III. CREDIT UNIONS.

ARTICLE 9.

Superintendent of Credit Unions.

§ 54-75. **Duties of the officer.** — The duties of the Superintendent of Credit Unions shall be as follows:

- (1) To organize and conduct, in the State Department of Agriculture, a bureau of information in regard to co-operative associations and rural and industrial credits.
- (2) Upon the application of three persons residing in the State of North Carolina, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any local credit union in the State.
- (3) To maintain an educational campaign in the State looking to the promotion and organization of credit unions; and upon the written request of twelve bona fide residents of any particular locality in this State expressing a desire to form a local credit union at such locality, the Superintendent or one of his assistants shall proceed as promptly as convenient to such locality and advise and assist such organizers to establish the institution in question.
- (4) To examine at least once a year, and oftener if such examination be deemed necessary by the Superintendent or his assistant, the credit unions formed under this subchapter. A report of such examination shall be filed with the State Department of Agriculture, and a copy mailed to the credit union at its proper address.
- (5) The Superintendent of Credit Unions is authorized, empowered, and directed to require that every person employed, appointed or elected by any credit union to any position requiring the receipt, payment or custody of money or personal property owned by a credit union or in its custody or control as collateral or otherwise, to give bond in a corporate surety company authorized to do business in North Carolina. Any such bond or bonds shall be in a form approved by the Superintendent of Credit Unions with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Superintendent of Credit Unions may determine to be reason-

ably appropriate or as elsewhere required by the chapter. Any such bond or bonds shall be in an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the superintendent may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the superintendent may approve the use of a form of schedule or blanket bond which covers all board and committee members and employees of a credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the credit union. The superintendent may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage. No agreement, compromise or settlement of any claim or claims filed by a credit union with any surety or any surety company, for less than the full amount of said claim or claims, shall be entered into or made by the board of directors of any credit union unless and until the said claim or claims shall have been submitted to the Superintendent of Credit Unions and his advice thereon given or transmitted to the board of directors of said credit union. (1915, c. 115, s. 1; C. S., s. 5209; 1925, c. 73, ss. 2, 3, 5, 6; 1935, c. 87; 1957, c. 989, s. 1.)

Editor's Note.—

The 1957 amendment added subsection (5).

ARTICLE 11.

Powers of Credit Unions.

§ 54-87. **Loans.**—1. To Members.—A credit union may lend to its members for such purposes and upon such security and terms as the bylaws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of four hundred dollars: Provided, however, that no member shall be permitted to borrow in excess of two hundred dollars (\$200.00) or ten per centum (10%) of the total paid in shares of the credit union, whichever is greater. An endorsed note shall be deemed to be security within the meaning of this section.

(1955, c. 1135, s. 2.)

Editor's Note. — The 1955 amendment substituted "four hundred dollars" for "fifty dollars" at the end of the first sentence of subsection 1, and added the proviso thereto. As only subsection 1 was affected by the amendment the rest of the section is not set out.

§ 54-88. **Rate of interest; authority to deduct interest.**—No corporation organized pursuant to this subchapter shall directly or indirectly charge or receive any interest, discount or consideration, other than the entrance fee, in excess of one per cent (1%) per month on the unpaid principal of loans. A minimum charge not to exceed fifty cents (50¢) may be made for any loan. The rate of interest and terms of repayment shall appear on each note but the corporation may for the purpose of making loans discount and negotiate promissory notes and deduct in advance, from the proceeds of such loan, interest at a rate not to exceed the rate herein fixed, which shall be the legal rate for corporations organized under this subchapter, and such deduction shall be made upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in such installments. (1915, c. 115, s. 20; C. S., s. 5221; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 2.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 54-90. **Reserve fund.**—All entrance fees, transfer fees, and fines shall, after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year when the reserve fund does not equal five per centum (5%) of the capital and liabilities, or five thousand dollars (\$5,000.00) whichever is greater, there shall be set apart to the reserve fund twenty per centum (20%) of the net income of the credit union which has accumulated during the year. At the end of any fiscal year when the reserve fund equals or is in excess of five per centum (5%) of the capital and liabilities or five thousand dollars (\$5,000.00) whichever is greater, then the board of directors may reduce the amount to be set apart to the reserve fund each year to an amount not less than ten per centum (10%) of the net income of the credit union. When the reserve fund is equal to ten per centum (10%) of the capital and liabilities or ten thousand dollars (\$10,000.00) whichever is the greater, the board of directors shall not be required to make an allocation to the reserve fund. The reserve fund shall not be distributed to the members except upon dissolution of the credit union. Nothing in this section shall be construed as limiting the amount that a credit union may set apart to its reserve fund. The reserve fund shall belong to the credit union and all loans which the board of directors decide are uncollectible may at the option of the board of directors be charged against the reserve fund, undivided profits, or income during the year. (1915, c. 115, s. 21; C. S., s. 5222; 1939, c. 400, s. 2; 1955, c. 1135, s. 1.)

Editor's Note. — The 1955 amendment rewrote all of the section after the first paragraph.

§ 54-91. **Dividends.**—The board of directors of any credit union may declare dividends semiannually or annually as its bylaws provide.

At the close of a fiscal year a credit union may declare a dividend not to exceed six per cent (6%) per annum from the income during the year and which remains after the deduction of expenses, interest on deposits, and the amount required to be set apart to the reserve fund. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal period, but shares which become fully paid by the 10th day of any month of the period may be entitled to a proportional part of such dividend calculated from the first day of the month. (1915, c. 115, s. 22; C. S., s. 5223; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 3.)

Editor's Note. — The 1957 amendment rewrote this section.

§ 54-92. **Voluntary dissolution.**—At any meeting specially called to consider the subject, three-fourths of the members present and represented may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file in the office of the Superintendent of Credit Unions such consent, attested by its secretary or treasurer and its president or vice president, with a statement of the names and residences of the existing board of directors of the corporation and the names and residences of its officers duly verified. The Superintendent of Credit Unions, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation, in duplicate, a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by the corporation in the office of the clerk of superior court of the county in which the corporation has its place of business, and thereupon such corporation shall continue in existence only for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs; and may sue and

be sued for the purpose of enforcing such debts and obligations until its business and affairs are fully adjusted and wound up. The Superintendent of Credit Unions, or an agent appointed by him, shall take possession of the property and business of such corporation and shall proceed to adjust and wind up the business and affairs of the corporation with the power to liquidate its assets and apply the same in discharge of debts, obligations and expenses of such corporation and after paying and adequately providing for the payment of such debts, obligations, and expenses shall pay to the shareholders the balance of the assets, in proportion to the number of shares held by each shareholder. The corporation shall then be dissolved and its certificate of incorporation revoked. The liquidating agent's fee, if any, shall be set by the Superintendent of Credit Unions. (1915, c. 115, s. 24; C. S., s. 5224; 1925, c. 73, ss. 3, 15; 1935, c. 87; 1957, c. 989, s. 4.)

Editor's Note.—

The 1957 amendment rewrote this section.

ARTICLE 13.

Members and Officers.

§ 54-102. **Duties of board of directors.**—(a) Elect Executive Officers.—At their first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their number a president, vice-president, a secretary, and a treasurer, who shall be the executive officers of the corporation. The offices of secretary and treasurer may, if the bylaws so provide, be held by one person.

(b) General Management.—The board of directors shall have the general management of the affairs, funds, and records of the corporation, shall meet as often as may be necessary, and, unless the bylaws shall specifically reserve all or any of these duties to the members, it shall be the special duty of the directors:

- (1) To act upon all applications for membership and the expulsion of members.
- (2) To fix the amount of the surety bond which shall be required of every person employed, appointed or elected by the credit union to any position requiring the receipt, payment or custody of money or personal property owned by the credit union or in its custody or control as collateral or otherwise, in accordance with the provisions of subsection (5) of G. S. 54-75.
- (3) To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.
- (4) To fix the maximum number of shares which may be held by and the maximum amount which may be lent to any one member; to declare dividends; and to recommend amendments to the bylaws.
- (5) To fill vacancies in the board of directors or in the credit committees until the election and qualification of successors.
- (6) To have charge of the investment of the funds of the corporation except loans to members, and to perform such other duties as the members may from time to time authorize.

(c) Compensation.—No member of the board of directors or of the credit or supervisory committees shall receive any compensation for his services as a member of the board or committees. But the officers elected by the board of directors may receive such compensation as the members may authorize. (1915, c. 115, s. 10; C. S., s. 5234; 1957, c. 989, s. 5.)

Editor's Note.—The 1957 amendment rewrote paragraph (2) of subsection (b).

ARTICLE 14.

Supervision and Control.

§ 54-105. **Corporations organized hereunder subject to Superintendent of Credit Unions.**—In addition to any and all other powers, duties and functions vested in the Superintendent of Credit Unions under the provisions of this subchapter, the Superintendent of Credit Unions shall have general control, management and supervision over all corporations organized under the provisions of this subchapter. All corporations organized under the provisions of this subchapter shall be subject to the management, control and supervision of the Superintendent of Credit Unions as to their conduct, organization, management, business practices and their financial and fiscal matters. (1915, c. 115, s. 7; C. S., s. 5237; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 6.)

Editor's Note. — The 1957 amendment rewrote this section.

§ 54-106. **Reports; penalties; fees.**

3. Fees to Be Paid to Office of Superintendent of Credit Unions.—Each credit union subject to supervision and examination by the Superintendent of Credit Unions, including credit unions in process of voluntary liquidation, shall pay into the office of the Superintendent of Credit Unions supervisory fees as follows: (a) Five dollars for the first one thousand dollars (\$1,000.00) of assets, or fraction thereof, and ninety cents (90¢) for each additional thousand dollars (\$1,000.00) of assets up to and including seven hundred fifty thousand dollars (\$750,000.00), and sixty cents (60¢) for each additional thousand dollars (\$1,000.00) of assets in excess of seven hundred fifty thousand dollars (\$750,000.00), payable during the month of July each year on the basis of total assets as shown by its report of condition made to the Superintendent of Credit Unions as of the previous June thirtieth, or the date most nearly approximating same of each year; and (b) five dollars (\$5.00) for the first one thousand dollars (\$1,000.00) of assets or fraction thereof, and ninety cents (90¢) for each additional thousand dollars (\$1,000.00) of assets up to and including seven hundred and fifty thousand dollars (\$750,000.00), and sixty cents (60¢) for each additional thousand dollars (\$1,000.00) of assets in excess of seven hundred and fifty thousand dollars (\$750,000.00), payable during the month of January each year on the basis of total assets as shown by its report of condition made to the Superintendent of Credit Unions as of the previous December thirty-first, or the date most nearly approximating same of each year, provided that the minimum fee shall not be less than ten dollars (\$10.00) for each filing period. No credit union shall be required to pay any supervisory fee until the expiration of twelve months from the date of the issuance of a certificate of incorporation to such credit union.

6. All revenue derived from fees will be placed into a special account to be administered solely for the operation of the credit union division. (1915, c. 115, s. 7; C. S., s. 5238; 1925, c. 73, ss. 3, 7; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, s. 7.)

Editor's Note. — The 1955 amendment rewrote subsection 3 and added subsection 6. The 1957 amendment rewrote subsection 3. As the rest of the section was not changed, only these two subsections are set out.

§ 54-108. **Revocation of certificate; liquidation.**—If any such corporation shall neglect to make its annual report, as provided in this article, or any other report required by the Superintendent of Credit Unions for more than fifteen days, or shall fail to pay the charges required, including the fines for delay in filing reports, the Superintendent of Credit Unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corpora-

tion for such neglect or failure, and if such neglect or failure continues for fifteen days after such notice, the said superintendent shall, at his discretion, personally or by an agent appointed by him, take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided in § 54-92 of this subchapter. (1915, c. 115, s. 7; C. S., s. 5240; 1925, c. 73, ss. 3, 8; 1935, c. 87; 1957, c. 989, s. 8.)

Editor's Note. —

The 1957 amendment rewrote the latter part of the section.

§ 54-109. **Deficits supplied; business discontinued.** — If it shall appear to the superintendent of credit unions by any examination or report that any such corporation is insolvent, or that it has violated any of the provisions of this subchapter or any other law of the State, he may, by an order made over his hand and official seal, after a hearing or an opportunity for a hearing given the accused corporation, direct any such corporation to discontinue the illegal methods or practices mentioned in the order to make good any deficit. A deficit, in the discretion of the superintendent of credit unions, may be made good by an assessment on the members in proportion to the shares held by each member. If any such corporation shall not comply with such order within the time stipulated after the same shall have been delivered in person or shall have been mailed to the last address filed by such corporation in the office of the superintendent of credit unions (provided, that not more than thirty (30) days shall be allowed) the superintendent shall thereupon take possession of the property and business of such corporation and retain such possession until such time as he may permit it to resume business or its affairs be finally liquidated, as provided in § 54-92 of this subchapter. (1915, c. 115, s. 7; C. S., s. 5241; 1925, c. 73, ss. 3, 9; 1935, c. 87; 1957, c. 989, s. 9.)

Editor's Note.—

The 1957 amendment deleted from the end of the section the words "in the bank-
ing law of the State" and inserted in lieu thereof the words "in § 54-92 of this subchapter."

SUBCHAPTER IV. CO-OPERATIVE ASSOCIATIONS.

ARTICLE 16.

Organization of Associations.

§ 54-111. **Nature of the association.**—Any number of persons, not less than five, may associate themselves as a mutual association, society, company, or exchange, for the purpose of conducting any agricultural, housing (including apartment housing), horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business, or purchase, maintain and use fire fighting equipment, on the mutual plan. For the purposes of this subchapter, the words association, company, corporation, exchange, society, or union shall be construed to mean the same; provided that the membership of agricultural organizations incorporated under this subchapter shall consist of producers of agricultural products, handled by such organizations or by organizations owned and controlled by such producers. (1915, c. 144, s. 1; C. S., s. 5242; 1925, c. 179, ss. 1, 2; 1931, c. 447; 1949, c. 1042, ss. 1, 2(a); 1955, c. 746, s. 1; 1959, c. 991.)

Editor's Note.—

The 1955 amendment inserted near the end of the first sentence the words "or purchase, maintain and use fire fighting equipment."
The 1959 amendment inserted in lines three and four the words "(including apartment housing)." It also deleted a proviso that the membership should consist only of veterans.

§ 54-111.1: Repealed by Session Laws 1959, c. 991.

§ 54-116. **Bylaws adopted.**

13. In the case of apartment housing, regulations governing the rental of apartments. (1915, c. 144, s. 5; C. S., s. 5247; 1925, c. 179, s. 4; 1959, c. 991.)

Editor's Note.—

The 1959 amendment added subsection 13. Only this subsection is set out.

§ 54-118.1. **License taxes.**—On and after June 1, 1955, the provisions of article 2, subchapter 1 of chapter 105 of the General Statutes of North Carolina shall apply to an association or corporation organized under the provisions of this subchapter. (1955, c. 1313, s. 1.)

§ 54-118.2. **Franchise taxes.**—On and after July 1, 1955, the provisions of article 3, subchapter 1 of chapter 105 of the General Statutes of North Carolina shall apply to an association or corporation organized under the provisions of this subchapter. (1955, c. 1313, s. 1.)

ARTICLE 18.

Powers and Duties.

§ 54-124. **Nature of business authorized.**—An association created under this subchapter shall have power to conduct any agricultural, housing, horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business, or purchase, maintain and use fire fighting equipment, on the mutual plan. (1915, c. 144, s. 8; C. S., s. 5255; 1925, c. 179, ss. 1, 3; 1949, c. 1042, s. 2; 1955, c. 746, s. 2.)

Editor's Note. — The 1955 amendment tain and use fire fighting equipment" in inserted the words "or purchase, main- line five.

SUBCHAPTER V. MARKETING ASSOCIATIONS.

ARTICLE 19.

Purpose and Organization.

§ 54-143. **License taxes.**—On and after June 1, 1955, the provisions of article 2, subchapter 1 of chapter 105 of the General Statutes of North Carolina shall apply to an association or corporation organized under the provisions of this subchapter. (1921, c. 87, s. 29; C. S., s. 5259(p); 1955, c. 1313, s. 1.)

Editor's Note. — The 1955 amendment rewrote this section.

§ 54-143.1. **Franchise taxes.**—On and after July 1, 1955, the provisions of article 3, subchapter 1 of chapter 105 of the General Statutes of North Carolina shall apply to an association or corporation organized under the provisions of this subchapter. (1955, c. 1313, s. 1.)

ARTICLE 20.

Members and Officers.

§ 54-148. **Stock; membership certificates; when issued; voting; liability; limitation on transfer of ownership.**

(e) No member or stockholder shall be entitled to more than one vote; provided, however, that any association organized hereunder, all of whose members are other associations organized hereunder shall have power to determine by its bylaws the number of votes to which each member association shall be entitled

and to provide for the appointment or election of delegates to cast such votes and to represent the member associations at all members' meetings.

(1955, c. 596.)

Editor's Note. — The 1955 amendment added the proviso to subsection (e). As only subsection (e) was changed by the amendment, the rest of the section is not set out.

ARTICLE 21.

Powers, Duties, and Liabilities.

§ 54-152. **Marketing contract.**

(d) In the event that a member of an association incorporated under this chapter shall have died; and that, at a time more than six (6) months after his death, such co-operative corporation has in its hands moneys not in excess of one hundred dollars (\$100.00) which would have been distributable and payable to such member except for his death; and that there has been appointed no administrator of his estate or that the administration of his estate has been closed at such time; then such corporation, without making any publication of notice, may disburse such moneys (not in excess of one hundred dollars (\$100.00)) in the following order:

- (1) To the widow of the deceased if there is a widow,
- (2) To pay any unsatisfied claims for funeral expenses or reimburse any person for the payment thereof, and
- (3) To any adult person of the class of those nearest of kin to the deceased, for the benefit of all members of such class.

In making such disbursements the said corporation shall be responsible and liable only for the exercise of good faith and reasonable care and shall have no further responsibility or liability with respect to such moneys or their application or disbursement. (1921, c. 87, s. 17; C. S., s. 5259(y); 1959, c. 1174.)

Editor's Note. — The 1959 amendment added subsection (d). As only this subsection was affected the rest of the section is not set out.

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ARTICLE 1.

General Provisions.

§ 55-1. **Title.**—This chapter shall be known and may be cited as the Business Corporation Act. (1955. c. 1371, s. 1.)

Cross Reference.—As to provisions relating to nonprofit corporations, see §§ 55A-1 to 55A-89.

Editor's Note.—Session Laws 1955, c. 1371, inserted this new chapter, numbered 55 and entitled "Business Corporation Act," to replace as of July 1, 1957, former chapter 55 of the General Statutes, entitled "Corporations." By the same act certain sections of the former chapter were transferred to G. S. 1-324.1 through 1-324.7, 1-507.1 through 1-507.11 and 62-102.1 through 62-102.4.

Some of the notes appearing under subsequent sections of this chapter are based on the comments of the corporation law drafting committee of the General Statutes Commission.

For article giving comments of draftsmen of the Business Corporation Act, see 33 N. C. Law Rev. 26.

Cited in Adams v. Flora Macdonald College, 247 N. C. 648, 101 S. E. (2d) 809 (1958); Johns-Manville Sales Corp. v. Townsend, 248 N. C. 687, 104 S. E. (2d) 826 (1958).

§ 55-2. **Definitions.**—As used in this chapter, unless the context otherwise requires, the term:

(1) "Accrued dividends" means, with reference to cumulative preferred shares, the amount by which the aggregate cumulative dividend preferences pertaining to a share of such class for the entire period during which the share was outstanding and cumulative, exceeds all the dividends actually paid thereon. For the purpose of this definition, a dividend is deemed paid if it has been declared and funds for its payment have been set aside.

(2) "Assets" means those properties and rights, other than treasury shares, which in accordance with generally accepted principles of sound accounting prac-

tice, are recognized as being properly entered upon the books and balance sheets of business enterprises in terms of a monetary value.

(3) "Charter" includes the original articles of incorporation, together with all amendments thereto and articles of merger or consolidation, and also includes what have heretofore been designated by law as certificates of incorporation, agreements of merger or of consolidation, or charters. When any provisions of this chapter require a certified copy of a foreign corporation's "charter" to be filed, the corporation may file either certified copies of its articles and all amendments or a certified copy of its integrated articles or a certified copy of a restatement of its articles.

(4) "Corporation" means a corporation for profit or having a capital stock which may have been or may be created and organized under this chapter or any other general or any special act of this State. "Foreign corporation" means any other corporation for profit. Nothing in this definition is intended to preclude the application of this chapter to foreign corporations in those circumstances where the principles of conflicts of laws permit their application.

(5) "Dividend credit" means the aggregate of all yearly dividend credits. "Yearly dividend credit" means with respect to non-cumulative preferred shares, the amount by which the full dividend preference of such a share, to the extent that such preference is earned by the corporation with respect to such a share in a particular fiscal year, exceeds the dividends paid on said share for that year; provided, that no dividend credit shall accrue unless, and only to the extent that, there exists an earned surplus at the end of such fiscal year. Computations of earnings allocable to classes of shares made in good faith by the board of directors in accordance with generally accepted principles of sound accounting practice or made or adopted by them on the bases represented by an independent public accountant or by a certified public accountant or by a firm of such accountants as being in accordance with generally accepted principles of sound accounting practice shall be conclusive. For the purpose of this definition a dividend is deemed paid if it has been declared and funds for its payment have been set aside.

(6) "Dominant shareholder" means a shareholder of a particular corporation, domestic or foreign, who by virtue of his share holdings has legal power, either directly or indirectly or through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors of the said particular corporation.

(7) "Liabilities" means all those debts and claims which either are known to impose a fixed obligation of payment or, if contingent, have sufficient possibility of becoming fixed as to require in accordance with generally accepted principles of sound accounting practice an estimate of their probable amount. Unaccrued obligations under short or long term leases not in default are not, in absence of special circumstances, required to be included as liabilities. Liabilities do not include stated capital or the amount of accrued dividends and dividend credits with respect to shares entitled to preferential dividends except to the extent that dividends have been declared but are unpaid.

(8) "Net assets" means the amount of a corporation's assets in excess of its liabilities.

(9) "Parent corporation" and "subsidiary corporation." "Parent corporation" means a corporation which is a dominant shareholder, as herein defined. A corporation through which, by virtue of its share holdings alone, a parent corporation has power to exercise the control which makes the latter a parent corporation is itself a parent corporation. A corporation with respect to which another corporation is a parent corporation is a "subsidiary corporation."

(10) "Preferred share" means a share of a class, whether or not designated by the term "preferred," entitling its holder to receive dividends before dividends are paid to shares of another class. (1955, c. 1371, s. 1; 1959, c. 1316, s. 1.)

Editor's Note. — The 1959 amendment added the last sentence to subdivision (4).

§ 55-3. **Applicability of chapter.**—(a) The provisions of this chapter shall apply to every corporation for profit, and, so far as appropriate, to every corporation not for profit having a capital stock, now existing or hereafter formed, and to the outstanding and future securities thereof, unless the corporation is expressly excepted from the operation hereof or unless there is other specific statutory provision particularly applicable to the corporation or inconsistent with some provisions of this chapter, in which case that other provision prevails.

(b) Notwithstanding the provisions of subsection (a) of this section, no corporation having a capital stock and formed for religious, charitable, nonprofit, social, or literary purposes shall hereafter be formed under this chapter.

(c) The existence of corporations formed or existing on the date this chapter takes effect shall not be impaired by the enactment of this chapter nor by any change in the requirements for the formation of corporations nor by any amendment or repeal of the laws under which they were formed or created, and, except as otherwise expressly provided in this chapter, the repeal of a prior act by this chapter shall not affect any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. (1955, c. 1371, s. 1; 1957, c. 550, s. 1.)

Editor's Note.—The 1957 amendment substituted "impaired" for "affected" in line two of subsection (c).

§ 55-3.1. **Effect of acquisition of all shares by less than three persons.**—(a) No provision in this chapter, or in any prior act shall be construed as an indication of any legislative intention that the existence of a corporation, hereafter or heretofore formed, is in any respect impaired by the acquisition of all of the shares by one person or by two persons or that by such acquisition the corporation ceases to possess any managerial boards or bodies or any capacities, powers, or authority which it would have possessed with three or more shareholders, or that upon such acquisition the corporation becomes dormant, inactive or incapable of acting as a corporation.

(b) The acquisition, heretofore or hereafter, of all of the shares of a corporation by one person or by two persons is hereby declared to violate no policy or provision of the laws of this State.

(c) Any action heretofore taken by or on behalf of a corporation or a purported corporation and which might have been invalid, defective or ineffective solely in consequence of the ownership or beneficial ownership of all the shares of the corporation or purported corporation by one person or by two persons is hereby declared to be valid and effective.

(d) If any corporation or purported corporation might have been considered dormant or inactive solely in consequence of the acquisition heretofore of all its shares by one or by two persons, such corporation or purported corporation is hereby declared to have had uninterrupted existence and to have possessed uninterrupted capacity to act as a corporation. (1957, c. 550, s. 2.)

Editor's Note.—For comment on this section and the concentration of stock ownership in the one- or two-man corporation, see 36 N. C. Law Rev. 48.

For case decided before the passage of this section and dealing with the effect of

the acquisition of all stock in a corporation by one person, see *Park Terrace, Inc. v. Phoenix Indemnity Co.*, 243 N. C. 595, 91 S. E. (2d) 584 (1956), commented on in 34 N. C. Law Rev. 471, 531.

ARTICLE 2.

Execution and Filing of Certain Corporate Documents.

§ 55-4. **Execution of corporate documents for filing; filing, recording and effectiveness.**—(a) Whenever the provisions of this chapter require any document relating to a corporation to be executed and filed in accordance with this section, unless otherwise specifically stated in this chapter:

(1) There shall be an original executed document and also one conformed copy.

(2) The said original document shall, if required to be executed by the corporation, be signed by the president or a vice president and also by the secretary or an assistant secretary, with or without the corporate seal. In the case of a banking corporation, a cashier or an assistant cashier may act in lieu of a secretary or assistant secretary. If required to be executed by designated individuals, each of them shall sign.

(3) Except where the provisions of this chapter specifically require acknowledgment, the said original document shall be verified by each of the individuals signing, whether in a representative capacity or otherwise, by a statement under oath, made before and certified by an official who is authorized under the laws of this State to take acknowledgments, declaring that he signed the said document, that the statements therein are true, and, in the case of an individual who signed in a representative capacity, declaring the capacity in which he signed and that he was authorized so to sign.

(4) The conformed copy may either extend its conformation with the original document through all the verifications (or acknowledgments, as the case may be) or may in lieu of such extension contain the legend, after the name of the signers substantially as follows: "Original duly verified (acknowledged) by all signers."

(5) The original document so signed and verified (or acknowledged, as the case may be), together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper taxes and fees have been tendered, endorse upon the original the word "filed" and the hour, day, month, and year of the filing thereof and shall file the same in his office. The Secretary of State, shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the corporation or its representative.

(6) The copy, certified as aforesaid, shall, within sixty days after the receipt by the corporation or its representative be delivered to the clerk of the superior court of the county wherein the corporation has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed in a book to be known as the Record of Incorporations. Promptly after the recordation, the clerk shall note the fact of recordation on the said copy and return it to the corporation or its representative.

(b) Any such document required to be filed shall be completely effective when filed by the Secretary of State and the transaction to be effectuated thereby shall thereupon be deemed as completely consummated as if all the required recording had been perfected and, unless otherwise provided in this chapter with respect to some specific document, the failure to deliver it for recording in the office of the clerk of the superior court shall only subject the corporation to a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office or, if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid (1955, c. 1371, s. 1.)

Editor's Note.—Under this section verification has taken the place of acknowledgment for most documents, but G. S. 55-6 requires that articles of incorpora-

tion be acknowledged. Under subsection (b), despite the local recording requirement, the document becomes effective upon filing with the Secretary of State.

ARTICLE 3.

Formation, Name and Registered Office.

§ 55-5. **Purposes.**—Corporations for profit may be organized under this chapter for any lawful purposes. Where by law special provisions are made for the organization of designated classes of corporations such corporations shall be formed under those provisions and not hereunder. (1955, c. 1371, s. 1.)

§ 55-6. **Incorporators.**—Three or more natural persons, whether or not residents of this State, of the age of 21 years or more may act as incorporators of a corporation by signing and acknowledging articles of incorporation, which shall be filed in accordance with the provisions of G. S. 55-4. The acknowledgment shall be before an officer duly authorized under the laws of this State to take the proof or acknowledgment of deeds. (1955, c. 1371, s. 1.)

§ 55-7. **Articles of incorporation.**—The articles of incorporation shall set forth:

- (a) The name of the corporation.
- (b) The period of duration, which may be perpetual. When the articles fail to state the period of duration, it shall be considered perpetual.
- (c) The purpose or purposes for which the corporation is organized.
- (d) With respect to the shares which the corporation shall have authority to issue:

- (1) If the shares are to have a par value, the number of such shares and the par value of each share,

- (2) If the shares are to be without par value, the number of such shares,

- (3) If the shares are to be of both kinds mentioned in paragraphs (1) and (2) of subsection (d) of this section, particulars in accordance with those paragraphs,

- (4) If the shares are to be divided into classes, or into series within a class or preferred or special shares, the articles of incorporation shall also set forth either:

- a. A designation of each class, with a designation of each series if there are to be series fixed by the articles of incorporation within a class, and a statement of the preferences, limitations and relative rights of the shares of each class or series, insofar as such preferences, limitations, and rights are to be fixed in the articles of incorporation; or

- b. A designation of each class and a statement authorizing the board of directors to fix the preferences, limitations and relative rights of each class, or to establish series within a class and to determine the variations between series, insofar as the same are not to be fixed in the articles of incorporation; or

- c. A designation of each class, without the further designation or statements provided for in subparagraphs a and b of this paragraph (4).

To the extent that the preferences, limitations, and relative rights of each class, and provisions for series within a class, are not set out in the articles of incorporation, the same may be fixed by the shareholders or directors in accordance with the provisions of G. S. 55-42.

- (e) The minimum amount of consideration for its shares to be received by the corporation before it shall commence business.

- (f) Any provision limiting or denying to shareholders the pre-emptive right to acquire additional or treasury shares of the corporation.

- (g) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws. No provisions shall make fully paid shares assessable.

- (h) The address, including county and city or town, and street and number, if any, of its initial registered office, which shall be in this State, and the name of its initial registered agent at such address.

(i) The number of directors constituting the initial board of directors (who may be classified in accordance with the provisions of G. S. 55-26) and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first meeting of shareholders or until their successors be elected and qualify.

(j) The name and address, including street and number, if any, of each incorporator

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. (1955, c. 1371, s. 1; 1957, c. 979, s. 5; 1959, c. 1316, s. 1½.)

Editor's Note. — The 1957 amendment inserted the words "county and city or town, and" in line one of subsection (h). The 1959 amendment added the second sentence to subsection (b).

§ 55-8. Corporate existence; filing of articles of incorporation; effect.—Upon the filing of the articles of incorporation in the office of the Secretary of State the corporate existence shall begin, and a copy of the articles certified by the Secretary of State shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this State in a proceeding to annul or revoke the articles of incorporation. (1955, c. 1371, s. 1; 1957, c. 550, s. 3.)

Cross Reference.—See § 55-4.

read: "Corporate existence is not impaired by the acquisition of all the shares by one person."

Editor's Note.—The 1957 amendment deleted the former second sentence which

§ 55-9. Requirement before commencing business.—A corporation shall not transact any business or incur any indebtedness except such as shall be incidental to its organization or to obtaining subscription to or payment for its shares, until a certified copy of the articles of incorporation has been filed and recorded in accordance with the provisions of G. S. 55-4 and until there has been received the amount stated in the articles of incorporation as being the minimum amount of consideration to be received for its shares before commencing business. (1955, c. 1371, s. 1.)

§ 55-10. Exercise of corporate franchises not granted.—The Attorney General may upon his own information or upon complaint of a private party bring an action in the name of the State to restrain any person from exercising corporate franchises not granted. (1955, c. 1371, s. 1.)

§ 55-11. Organization meeting of directors —After the filing of the articles of incorporation in the office of the Secretary of State an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the directors, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days notice thereof by mail to each director so named, which notice shall state the time and place of the meeting, unless notice is waived as hereinafter provided. (1955, c. 1371, s. 1.)

§ 55-12. Corporate name.—(a) The corporate name shall contain the wording "corporation," "incorporated," "limited" or "company" or an abbreviation of one of such words.

(b) The corporate name shall not contain any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its charter.

(c) The corporate name shall not, subject to the provisions of G. S. 55-137 (c), be the same as, or deceptively similar to, the name of any domestic corporation or of any foreign corporation authorized to transact business in this State,

or a name the exclusive right to which is, at the time, reserved to some other person in the manner prescribed in this section.

(d) The exclusive right to a corporate name not prohibited by this section may be reserved for a period of 90 days by:

- (1) Any person intending to organize a corporation under this chapter.
- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this State.
- (4) Any foreign corporation authorized to transact business in this State and intending to change its name, or
- (5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this State

The same name shall not be reserved for two or more consecutive 90-day periods by the same applicant or for the use and benefit of the same applicant; nor shall such consecutive reservations be made of names so similar as to fall within the prohibition of this section.

(e) Any person or corporation acquiring the good will of a domestic corporation or of a foreign corporation authorized to transact business in this State may, on furnishing the Secretary of State satisfactory evidence of such acquisition, reserve the exclusive right to the corporate name of the said corporation for a period of ten years.

(f) The reservation of name, pursuant to subsections (d) and (e) of this section, shall be made by filing with the Secretary of State a verified application therefor and the Secretary of State shall, upon tender of the fee hereinafter prescribed, reserve the name exclusively for the applicant unless he finds that the name is not available under the provisions of this section.

(g) The exclusive right to a specified corporate name reserved hereunder, may, on tender of the fee hereinafter prescribed, be transferred to any other person or corporation by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(h) The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. (1955, c. 1371, s. 1; 1959, c. 1316, s. 28.)

Editor's Note. — The 1959 amendment inserted in lines one and two of subsection (c) the words "subject to the provisions of G. S. 55-137 (c)."

§ 55-13 Registered office and registered agent.—(a) Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office or a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office

(b) A corporation formed prior to July 1, 1957 which has not designated a principal office is required on and after July 1, 1957 to designate a registered office and a registered agent in the manner, as near as may be, provided in G. S. 55-14; other corporations formed prior to July 1, 1957 shall not be required to, but may, designate a registered office and a registered agent in the manner, as near as may be, provided in G. S. 55-14. (1955, c. 1371, s. 1; 1957, c. 979, s. 17.)

Editor's Note.—The 1957 amendment rewrote subsection (b).

§ 55-14. Change of registered office or registered agent.—(a) A corporation may change its registered office or its registered agent or both. To

effectuate such change a statement shall be executed by the corporation and filed, in accordance with the provisions of G. S. 55-4, setting forth:

- (1) The name of the corporation;
- (2) The address, including county and city or town, and street and number, if any, of its then registered office;
- (3) If the address of its registered office be changed, the address, including county and city or town, and street and number, if any, to which the registered office is to be changed;
- (4) The name of its then registered agent;
- (5) If its registered agent be changed, the name of its successor registered agent;
- (6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;
- (7) That such change was authorized by resolution duly adopted by its board of directors.

(b) If the change in the registered office is to another county, a copy of such statement certified by the Secretary of State shall be recorded both in the old county and in the new county, and there shall also be recorded in the new county, in the manner prescribed by G. S. 55-4, a similarly certified copy of the corporation's charter.

(c) If the statement purporting to effectuate such changes is recorded in some but not in all the offices wherein recording is required by this section, persons asserting claims against the corporation may treat as the registered agent or registered office of the corporation either the one newly designated in the statement or the pre-existing one.

(d) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its registered office, or, in the case of a foreign corporation, to the address of the principal office of the corporation in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Secretary of State. If the corporation fails to record said resignation in the county where it has its registered office, any process served upon the agent shall, despite his resignation, be as effective as if he had not resigned, but the agent in such case shall be under no duty to the corporation with respect to such process. (1955, c. 1371, s. 1; 1957, c. 979, ss. 6, 7.)

Editor's Note.—The 1957 amendment "town, and" in paragraphs (2) and (3) of inserted the words "county and city or subsection (a).

§ 55-15. Service of process on corporation.—(a) Service upon the registered agent appointed by a corporation of any process, notice or demand required or permitted by law to be served upon the corporation shall be binding upon the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any such corporation so served shall be in court for all purposes from and after the date of such service on the Secretary of State.

(c) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (1955, c. 1371, s. 1.)

§ 55-16. **Bylaws.**—(a) The initial bylaws may be adopted by the board of directors at its organization meeting. Thereafter bylaws may be adopted, amended or repealed either by the shareholders or by the board of directors, but

(1) No bylaw adopted or amended by the shareholders shall be altered or repealed by the board of directors, except where the charter or a bylaw adopted or approved by the shareholders authorizes the board of directors to adopt, amend or repeal the bylaws;

(2) No bylaw shall be adopted by the directors which shall require more than a majority of the voting shares for a quorum at a meeting of shareholders or more than a majority of the votes cast to constitute action by the shareholders, except where higher percentages are required by law;

(3) No bylaw authorizing compensation of officers measured by the amount of a corporation's income or volume of business shall be valid after five years from its adoption unless renewed by the vote of the holders of a majority of the outstanding shares regardless of limitation on voting rights.

(4) The charter or a bylaw adopted by the shareholders may limit or eliminate the power of the board of directors to adopt, amend or repeal the bylaws or any specific bylaw.

(b) Any bylaw made by the board of directors shall be adopted by an affirmative vote of a majority of the directors then holding office and any bylaw made by the shareholders shall, except as otherwise provided in paragraph (3) of subsection (a) of this section, be adopted by the affirmative vote of the shareholders entitled to exercise a majority of the voting power of the corporation. However, the charter or the bylaws may subject to the provisions of paragraph (2) of subsection (a) of this section, require more than the aforesaid majorities on the part of the directors or of the shareholders, as the case may be.

(c) The bylaws may contain any provisions for the regulation and management of the affairs of the corporation, including the transfer of its shares, and restrictions on such transfer, not inconsistent with the law or the charter. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 2, 3.)

Editor's Note.—This section is consistent with the policy of G. S. 55-7, whereby the directors adopt the initial bylaws.

The 1959 amendment added the exception clause to subdivision (1) of subsection

(a). It also inserted in subsection (c) the words "and restrictions on such transfer."

For article discussing this section, see 34 N. C. Law Rev. 432.

ARTICLE 4.

Powers and Management.

§ 55-17. **General powers.**—(a) Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its charter

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at will, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(5) To make and alter bylaws, not inconsistent with its charter or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(6) To make contributions or gifts to corporations, trusts, community chests, funds, foundations, or associations organized and operated exclusively for religious, charitable, literary, scientific, or educational, cultural or artistic purposes, or for public welfare, or for the prevention of cruelty to children or animals, no

part of the net earnings of which inures to the benefit of any private stockholder or individual, when such contributions or gifts are authorized or approved by its board of directors.

(7) In time of war or engagement of the nation's armed forces in hostile military operations, to transact any lawful business in aid of the United States in connection therewith.

(8) To invest its funds not currently needed in its business.

(9) To cease its corporate activities and surrender its corporate franchise.

(10) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans and other incentive plans for its officers, directors and employees.

(b) In connection with carrying out the purposes stated in its charter, and subject to any limitation prescribed by this chapter or by its charter, every corporation shall also have power:

(1) To acquire, by purchase, lease, gift, will or otherwise, and to own, hold, improve, use and otherwise deal in and with, real and personal property, or any interest therein, wherever situated.

(2) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(3) To enter into contracts of guaranty or suretyship or make other financial arrangements for the benefit of its personnel or customers or suppliers.

(4) To procure for its benefit insurance on the life of any employee, including any officer, whose death might cause financial loss to the corporation, and to this end the corporation is deemed to have an insurable interest in its employees and officers.

(5) To acquire, by purchase, subscription, gift, will or otherwise, and to own, hold, vote, use employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.

(6) To enter into any arrangement with others for the sharing of profits or union of interest with respect to any transaction, operation or venture which the corporation has power to conduct by itself even if such arrangement involves sharing or delegation of control of such transaction, operation or venture with or to others.

(7) To make contracts and incur liabilities, borrow money issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge or other form of security upon all or any of its property, franchises and income.

(8) To lend money for its corporate purposes, invest its funds from time to time, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(9) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter anywhere in the world.

(10) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(c) It shall not be necessary to set forth in the charter any of the powers enumerated in this section. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 4, 5.)

Editor's Note. — The 1959 amendment and inserting the words "cultural or artistic purposes, or for public welfare." It also added subdivision (10).
 changed subsection (a) by striking out the word "purposes" following the word "educational" in line three of subdivision (6)

§ 55-18. Defense of ultra vires.—(a) No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power

to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In an action by a shareholder against the corporation to enjoin the doing of any act or the transfer of real and personal property by or to the corporation, but in any such action the plaintiff shall sustain the burden of proof that he has not at any time prior thereto assented to the act or transfer in question and that in bringing the action he is not acting in collusion with officials of the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if deemed equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as loss or damage sustained.

(2) In an action by the corporation or by its receiver, trustee or other legal representative, or by its shareholders in a derivative suit, against the incumbent or former officers or directors of the corporation.

(3) In an action by the Attorney General, as provided in this chapter, to dissolve the corporation, or in an action by the Attorney General to enjoin the corporation from the transaction of unauthorized business or in a proceeding by the Secretary of State to revoke a certificate of authority of a foreign corporation pursuant to G. S. 55-151.

(b) This section applies to acts, conveyances and transfers done or made by a foreign corporation in this State and to all conveyances to or by a foreign corporation of real property situated in this State, but if the foreign corporation is itself disqualified by this chapter from maintaining an action in this State no action may be brought in this State under paragraph (1) of subsection (a) of this section. (1955. c. 1371, s. 1.)

Editor's Note.—This section represents the modern position on ultra vires including the law of the cases in North Carolina.

§ 55-19 Invalidity of certain exculpatory and indemnification provisions.—(a) Except as indemnification of a director or officer of a corporation is permitted by G. S. 55-20 and 55-21, no provision, hereafter made or adopted, whether contained in the charter, the bylaws, a resolution, a contract or otherwise, whereby the corporation purports to exempt or indemnify any director or officer of a corporation with respect to any liability or litigation expenses arising out of his activities as director or officer shall be valid.

(b) As used in this section and in G. S. 55-20 and 55-21 the term "officer" includes any dominant shareholder engaged to perform services for the corporation, whether as employee or independent contractor. (1955 c. 1371, s. 1.)

§ 55-20. Indemnification of directors and officers in actions by outsiders.—When because of his duties or activities as director or officer of a corporation a present or former director or officer, alone or with others, is prosecuted in a criminal action or is sued in an action or proceeding not brought by the corporation nor brought by any party seeking derivatively to enforce a liability of such director or officer to the corporation, such director or officer shall be entitled to indemnification or reimbursement by the corporation for any expenses, including attorneys' fees, or any liabilities which he may have incurred in consequence of such action or proceeding, under the following conditions:

(1) If such director or officer is wholly successful in his defense on the merits, he shall be entitled to reimbursement from the corporation of all his reasonable expenses of defense, including attorneys' fees.

(2) If such officer or director is wholly successful otherwise than solely on the merits the corporation may pay or agree to pay to him such expenses of defense, including attorneys' fees, as the board of directors in good faith shall deem reasonable, regardless of any adverse interest of any or all of the directors.

(3) If such director or officer is not wholly successful or is unsuccessful in his defense, the corporation may pay or agree to pay, in whole or in part, said expenses of defense and the amount of any judgment, money decree, fine, penalty or settlement for which he may have become liable, if a plan for such payment is sent to the holders of all shares entitled to vote, with notice of a shareholders' meeting, whether annual or special, to be held to take action thereon and if at such meeting a plan is approved by the holders of a majority of such shares, exclusive of the shares held directly or indirectly by any directors or officers to be benefited by the plan if approved. (1955, c. 1371, s. 1.)

§ 55-21. Indemnity for litigation expenses in corporate action.—

(a) When a present or former director or officer of a corporation is sued, alone or with others, in the courts of this State, in any action seeking to establish his liability to the corporation arising out of his alleged dereliction of duty to the corporation, he shall in turn be entitled to indemnification or reimbursement from the corporation for so much of his expenses of defense, including attorneys' fees, as the judge, upon motion for indemnification or reimbursement, duly made in such action in his discretion finds to be reasonable, but only if both of the following conditions are satisfied:

(1) He is successful in whole or in part in the action against him or in any settlement thereof; and

(2) The court finds that his conduct fairly and equitably merits such relief.

(b) When such action is brought in another state and the result thereof is such as would have entitled the defendant officer or director to make a motion in the cause for indemnification or reimbursement of his expenses of defense under subsection (a) of this section if the action had been brought in this State, but no such relief is available in the state in which the action is actually brought, the defendant officer or director may bring a separate action against the corporation in this State for such indemnification or reimbursement as he might have recovered had the suit against him been brought in this State. Notice of said action for indemnification or reimbursement shall be sent, in such form as the court may approve and at the corporation's expense, to the party or parties plaintiff in the prior action who shall be entitled to be heard.

(c) Whenever indemnification or reimbursement as permitted in this section is sought, the court may in its discretion order notice of the claim thereof to be sent to the shareholders in such manner and in such form as it may approve, at the expense of the corporation. All shareholders so notified may be heard in opposition to the relief requested. (1955, c. 1371, s. 1.)

§ 55-22. Loans and guaranties.—(a) A corporation shall not, directly or indirectly, make any loan of money or property to, or guarantee or otherwise secure the obligation of:

(1) Any directors or officers of the corporation; or

(2) Any corporation of which the officers and directors of the lending or securing corporation own more than fifty per cent (50%) of the outstanding securities of any class; or

(3) Any dominant shareholder or any other corporation of which said shareholder is a dominant shareholder, unless that corporation is a subsidiary of the lending or securing corporation; or

(4) Any person upon the security of the shares of any corporation mentioned in subdivisions (2) and (3) of this subsection;

except with the consent of all the shareholders, regardless of their adverse interests or voting rights, or with the consent of the holders of a majority of all the shares outstanding, regardless of limitation on voting rights, other than the

shares held by the adversely interested party. A sale on credit in the ordinary course of business is not a loan within the meaning of this section.

(b) The provisions of this section do not apply to loans, guaranties, or other forms of security extended by banks, industrial banks, building and loan associations, land and loan associations, credit unions or insurance companies, or to loans permitted under any statute regulating any special class of corporations. (1955, c. 1371, s. 1; 1959, c. 1316, s. 6.)

Cross Reference. — For definition of dominant shareholder, parent corporation and subsidiary corporation, see G. S. 55-2, subsections (6) and (9).

Editor's Note. — The 1959 amendment inserted in lines thirteen and fourteen of subsection (a) the words "regardless of their adverse interests or voting rights."

§ 55-23: Omitted.

§ 55-24. **Board of directors.**—(a) Subject to the provisions of the charter, the bylaws or agreements between the shareholders otherwise lawful, the business and affairs of a corporation shall be managed by a board of directors.

(b) No limitation upon the authority which the directors would have in the absence of such limitation, whether contained in the charter or the bylaws or otherwise, shall be effective against other persons without actual knowledge of such limitation.

(c) The directors need not be residents of this State or shareholders of the corporation unless the charter or the bylaws so require. The charter or the bylaws may prescribe other qualifications for directors. (1955, c. 1371, s. 1.)

Cross Reference.—See G. S. 55-73.

§ 55-25. **Number, election and term of directors.**—(a) The number constituting the board of directors shall be not less than three. The number, not less than three, constituting the first board of directors shall be fixed by the articles of incorporation. In the absence of a provision in the articles of incorporation, the charter, or the bylaws fixing the number of directors, the number shall be the same as that fixed in the articles of incorporation for the first board of directors. The articles of incorporation, the charter, or the bylaws may provide for a maximum and minimum number of directors, and, if so, shall designate the manner in which such number shall from time to time be determined. If the fixing of a maximum and minimum number of directors is authorized, the articles of incorporation, the charter, or the bylaws may provide that any directorships not filled by the shareholders shall be treated as vacancies to be filled by and in the discretion of the board of directors.

(b) The number of directors may be increased or decreased from time to time only by amendment to the charter or to the bylaws adopted by the shareholders, but no such decrease shall be made when the number of shares voting against the proposal for decrease would be sufficient to elect a director if such shares could be voted cumulatively at an annual election. Whenever a class or a series of shares is entitled to elect one or more directors under authority granted by the charter, the provisions of this paragraph apply to the vote of that class or series for such election and not to the vote of the outstanding shares as a whole.

(c) The first board of directors shall consist of those named in the articles of incorporation. Thereafter directors shall be elected at the first meeting of the shareholders held for that purpose and at each subsequent annual meeting.

(d) Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(e) If any shareholder so demands election of directors by the shareholders shall be by ballot, unless the charter or the bylaws otherwise provide. (1955, c. 1371, s. 1; 1959, c. 1316, s. 33.)

Editor's Note. — The 1959 amendment rewrote subsection (a).

§ 55-26. Staggered board of directors.—When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, it may be provided in the charter or in the bylaws adopted by the shareholders that the directors be staggered by division into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No such classification of directors shall, unless made in the charter, be effective prior to the first annual meeting of shareholders. Boards of directors may also be classified otherwise than by staggering. Corporations having a lawfully staggered or otherwise classified board of directors when this chapter goes into effect may continue their existing classification even though not conforming to this section. (1955, c. 1371, s. 1; 1959, c. 1316, s. 7.)

Editor's Note. — The 1959 amendment made this section applicable to staggered board of directors.

§ 55-27. Vacancies and removal of directors.—(a) A vacancy in the board of directors exists:

(1) Upon the death or removal of any director, or upon his resignation, which may, if in writing, include terms making it effective at a future date or upon the occurrence of a future event, or

(2) If the authorized number of directors is increased, or

(3) If, at any annual, regular or special meeting of shareholders at which any director is elected, the shareholders fail to elect the full authorized number of directors to be voted for at that meeting, or

(4) If a vacancy is declared as provided in subsection (b) of this section.

(b) The board of directors may declare vacant the office of a director who has been declared of unsound mind by an order of court, or finally convicted of felony, or adjudged a bankrupt.

(c) Unless the charter or the bylaws otherwise provide, vacancies may be filled by a majority of the remaining directors even though less than a quorum or by a sole remaining director. If a vacancy occurs with respect to a director who had been elected by the votes of a particular class of shares voting as a class, the vacancy shall be filled by the remaining directors or the remaining sole director elected by that class. A vacancy created by an increase in the authorized number of directors shall be filled only by election at an annual meeting or at a special meeting of shareholders called for that purpose, except as provided in G. S. 55-25 (a).

(d) The shareholders, or a class thereof if directors are elected by classes of shareholders may elect a director at any time to fill any vacancy not filled by the directors. In the case of a resignation of a director tendered to take effect at a future time the board of directors or the shareholders may at any time after such tender, elect a successor to take office when the resignation becomes effective.

(e) A reduction of the authorized number of directors does not of itself remove any director prior to the expiration of his term of office

(f) Unless the charter or the bylaws otherwise provide, the entire board of directors or any individual director may be removed from office with or without cause by a vote of shareholders holding a majority of the outstanding shares, entitled to vote at an election of directors. However unless the entire board is removed, an individual director shall not be removed when the number of shares

voting against the proposal for removal would be sufficient to elect a director if such shares could be voted cumulatively at an annual election. If any or all directors are so removed, new directors may be elected at the same meeting. Whenever a class or series of shares is entitled to elect one or more directors under authority granted by the charter the provisions of this subsection apply to the vote of that class or series as to those directors and not to the vote of the outstanding shares as a whole.

(g) The superior court of the county where the registered office or the principal place of business in this State is located may, at the suit of shareholders holding at least five per cent (5%) of the number of outstanding shares with or without voting rights, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion in the discharge of his duties to the corporation, and may bar from re-election any director so removed for a period prescribed by the court. The corporation shall be made a party to such actions. (1955, c. 1371, s. 1; 1959, c. 1316, s. 34.)

Editor's Note. — The 1959 amendment added the exception clause at the end of subsection (c).

§ 55-28. Directors' meetings.—(a) Meetings of the board of directors, regular or special, may be held either within or without this State.

(b) Unless the bylaws otherwise provide, special meetings of the board of directors may be called by the president or by any two directors.

(c) Regular meetings of the board of directors may be held with or without notice, as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is provided in the bylaws, or in the absence of any such provision, upon notice sent by any usual means of communication not less than five days before the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed ten days in any one adjournment.

(d) A majority of the number of directors fixed by the charter or bylaws shall constitute a quorum for the transaction of business unless a greater number is required by the charter or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the charter or the bylaws. (1955, c. 1371, s. 1.)

§ 55-29. Informal or irregular action by directors or committees.—

(a) Action taken by a majority of the directors or members of a committee without a meeting is nevertheless board or committee action if:

(1) Written consent to the action in question is signed by all the directors or members of the committee, as the case may be, and filed with the minutes of the proceedings of the board or committee, whether done before or after the action so taken, or if

(2) All the shareholders know of the action in question and make no prompt objection thereto, or if

(3) The directors or committee members are accustomed to take informal action and this custom is generally known to the shareholders and if all the directors or committee members, as the case may be, know of the action in question and no director or committee member makes prompt objection thereto.

(b) If a meeting of directors otherwise valid is held without proper call or notice, action taken at such meeting otherwise valid is deemed ratified by a direc-

tor who did not attend unless promptly after having knowledge of the action taken and of the impropriety in question he files with the secretary or assistant secretary of the corporation his written objection to the holding of the meeting or to any specific action so taken. (1955, c. 1371, s. 1; 1959, c. 1316, s. 8.)

Editor's Note. — The 1959 amendment substituted the words "generally known to the shareholders" in line two of subdivision (3) of subsection (a) for the words "known to all the shareholders." For article discussing this section, see 34 N. C. Law Rev. 432.

§ 55-30. **Director's adverse interest.**—(a) A corporation may, by action of its board of directors or otherwise, compensate its directors for their services as directors, salaried officers or otherwise.

(b) No corporate transaction in which a director has an adverse interest is either void or voidable, if:

(1) With knowledge on the part of the other directors of such adverse interest, the transaction is approved in good faith by a majority, not less than two, of the disinterested directors present even though less than a quorum, irrespective of the participation of the adversely interested director in the approval, or if

(2) After full disclosure of all the material facts to all the shareholders, the transaction is specifically approved by the vote of a majority or by the written consent of all of the voting shares other than those owned or controlled by the adversely interested directors, or if

(3) The adversely interested party proves that the transaction was just and reasonable to the corporation at the time when entered into or approved. In the case of compensation paid or voted for services of a director as director or as officer or employee the standard of what is "just and reasonable" is what would be paid for such services at arm's length under competitive conditions. (1955, c. 1371, s. 1.)

§ 55-31. **Executive committee.**—If the charter or the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the charter, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the charter or the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility or liability imposed upon it or him by law. (1955, c. 1371, s. 1.)

§ 55-32. **Liability of directors in certain cases.**—(a) The liabilities imposed by this section are in addition to any other liabilities imposed by law upon directors of a corporation.

(b) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any lawful restrictions contained in the charter, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount which could have been lawfully paid or distributed.

(c) Directors of a corporation who vote for or assent to the purchase or redemption of its own shares contrary to the provisions of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been lawfully paid.

(d) The liability of directors for violation of subsections (b) and (c) of this section shall not exceed the debts, obligations and liabilities existing at the time

of the violation which are not thereafter paid and discharged, plus any loss sustained from the violation by holders of shares outstanding at the time of the violation other than the shares receiving the payment in question.

(e) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known or reasonably ascertainable debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(f) The directors of a corporation who vote for or assent to the making of any loan or guaranty or other form of security in violation of G. S. 55-22 shall be jointly and severally liable to the corporation for the repayment or return of the money or value loaned, with interest thereon at the rate of six per cent (6%) a year until paid, or for any liability of the corporation upon the guaranty.

(g) If a corporation shall commence business before it has received the minimum amount of consideration for the issuance of shares, as stated in the articles of incorporation, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of said minimum as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received the said minimum consideration.

(h) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. If action taken by an executive committee is not thereafter formally considered by the board, a director may dissent from such action by filing his written objection with the secretary of the corporation with reasonable promptness after learning of such action.

(i) A director shall not be liable under subsections (b), (c) or (e) of this section if he relied and acted in good faith and reasonably upon financial statements of the corporation represented to him to be correct and to be based upon generally accepted principles of sound accounting practice by the president or the officer of such corporation having charge of its books of account, or certified by an independent public accountant or by a certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation.

(j) Any director who is held liable upon and pays a claim asserted against him under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation shall be entitled to reimbursement or exoneration from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this section, in proportion to the amounts received.

(k) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted and in any action against him shall, on motion, be entitled to have such directors made parties defendant.

(l) Except where the properties of a corporation are being administered in liquidation, or under court supervision for the benefit of creditors, or in the event that the official administering such properties refuses to bring an action for violation of this section, any creditor damaged by a violation of this section may in one action obtain judgment against the corporation and enforce the lia-

bility of one or more of the directors to the corporation imposed by this section to the extent necessary to satisfy his claim, or he may in a separate action obtain such judgment and then enforce such liability.

(m) No action shall be brought against the directors for liability under this section after three years from the time when the cause of action was discovered or ought to have been discovered. (1955, c. 1371, s. 1; 1959, c. 1316, s. 35.)

Editor's Note. — The 1959 amendment substituted "this" for "the" in line two of subsection (c).

§ 55-33. Jurisdiction over and service on nonresident director. —

(a) Every nonresident of this State who shall become a director of a domestic corporation shall by becoming such director be subjected to the jurisdiction of the courts of this State in all actions or proceedings brought therein by, or on behalf of, or against said corporation in which said director is a necessary or proper party, or in any action or proceeding by shareholders or creditors against said director for violation of his duty as director. Every nonresident who is a director of a domestic corporation when this chapter becomes effective shall be likewise so subject to the jurisdiction of the courts of this State unless he shall within sixty days of the effective date of this chapter resign his office and file in the office of the Secretary of State a notice of such resignation.

(b) Every nonresident by serving as a director of a domestic corporation at any time after sixty days from the effective date of this chapter shall be subject to the jurisdiction of the courts of this State in any action or proceeding for violation of his duty while in office.

(c) Every resident of this State who shall become a director of a domestic corporation and thereafter removes his residence from this State shall be subject to the jurisdiction of the courts of this State in all actions or proceedings brought therein by, or on behalf of, or against said corporation in which said director is a necessary or proper party, or in any action or proceeding by shareholders or creditors against said director for violation of his duty as a director.

(d) In all actions or proceedings wherein a director or former director is made a party, and cannot with due diligence be found within the State, service of process, notice or demand on said director or former director shall be made by mailing or otherwise delivering duplicate copies thereof to the Secretary of State, who shall be deemed to have been constituted the process agent of such director or former director by the act of such director in becoming a director or continuing as director for the period provided in subsection (a) of this section. When such copies are to be delivered to the Secretary of State the procedure to be followed shall be, as against such director or former director, substantially the same as that set forth in G. S. 55-146 relating to service on foreign corporations by serving the Secretary of State, and service made pursuant to such procedure shall have the same legal force and validity as if the service had been made personally in this State. (1955, c. 1371, s. 1.)

§ 55-34. Officers.—(a) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors or otherwise chosen and at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided either specifically or generally in

the bylaws, or as may be determined by action of the board of directors not inconsistent with the bylaws.

(c) The president has authority to institute or defend legal proceedings when the directors are deadlocked.

(d) Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. (1955, c. 1371, s. 1; 1959, c. 1316, s. 9.)

Editor's Note. — The 1959 amendment inserted in line four of subsection (a) the words "or otherwise chosen and." It also struck out the words "except the offices of president and secretary" at the end of

the subsection and substituted therefor the words "but no officer may act in more than one capacity where action of two or more officers is required."

§ 55-35. Duty of directors and officers to corporation.—Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and to its shareholders and shall discharge the duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions. (1955, c. 1371, s. 1.)

§ 55-36. Execution of corporate instruments; authority and proof.—(a) Notwithstanding anything to the contrary in the bylaws or charter, any deed, mortgage, contract, note, evidence of indebtedness, proxy, or other instrument in writing, or any assignment or indorsement thereof, whether heretofore or hereafter executed, when signed in the ordinary course of business on behalf of a corporation by its president or a vice president and attested or countersigned by its secretary or an assistant secretary, (or, in the case of a bank, attested or countersigned by its secretary, assistant secretary, cashier, or assistant cashier), not acting in dual capacity, shall with respect to the rights of innocent third parties, be as valid as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The foregoing shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation or to the execution of corporate securities which are required, by corporate regulations or resolutions formally adopted, to be signed or countersigned by a transfer agent or registrar who has agreed to act in that capacity.

(b) Any instrument purporting to create a security interest in personal property of a corporation, is sufficiently executed on behalf of the corporation if heretofore or hereafter signed in his official capacity by the president, a vice president, the secretary, an assistant secretary, the treasurer, or an assistant treasurer. Any instrument so executed shall, with respect to the rights of innocent holders, be as valid as if authorized by the board of directors and upon acknowledgment may be ordered to registration as provided by law.

(c) Deeds, mortgages, contracts, notes, evidences of indebtedness and other instruments purporting to be executed, heretofore or hereafter, by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, are prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that such instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(d) The provisions of the foregoing subsections of this section shall apply to all instruments therein mentioned executed on behalf of foreign corporations

when their authorization, admissibility in evidence or legal effect is challenged in any action or other proceeding in this State.

(e) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied or apparent authority, ratification, estoppel or otherwise.

(f) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority.

(g) The Home Owners Loan Corporation or any corporation, the majority of whose stock is owned by the United States government, may convey lands or other property which is transferable by deed which is duly executed by either an officer, manager, or agent of said corporation, sealed with the common seal and has attached thereto a signed and attested resolution, under seal, of the board of directors of said corporation authorizing the said officer, manager or agent to execute, sign, seal, and attest deeds, conveyances or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. All deeds, conveyances or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein. (1955, c. 1371, s. 1.)

§ 55-37. Books and records.—(a) Each corporation shall:

(1) Keep correct and complete books and records of account, and

(2) Keep minutes of the proceedings of its shareholders, its board of directors, and executive committee, if any,

(3) Keep in this State at its registered office or principal place of business or at the office of its transfer agent or registrar a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each, and

(4) Cause a true statement of its assets and liabilities as of the close of each fiscal year and of the results of its operations and of changes in surplus for such fiscal year, all in reasonable detail, including the statement required by G. S. 55-44 (b) when applicable, to be made and filed at its registered office or principal place of business in this State, within four months after the end of such fiscal year, and thereat kept available for a period of at least ten years for inspection on request by any shareholder of record, and shall mail or otherwise deliver a copy of the latest such statement to any shareholder upon his written request therefor.

(b) Any shareholder may apply for a writ of mandamus to compel a corporation and its officers and directors to comply with this section. (1955, c. 1371, s. 1.)

§ 55-38. Examination and production of books, records and information.—(a) For the purpose of this section, a qualified shareholder is a person, natural or corporate, who shall have been a shareholder of record in a corporation, domestic or foreign, for at least six months immediately preceding his demand or who shall be the holder of record of at least five per cent (5%) of its outstanding shares of any class, and the term shareholder includes a holder of a voting trust certificate to the extent of the shares represented by said certificate.

(b) A qualified shareholder, upon written demand stating the purpose thereof, shall have the right, in person, or by attorney, accountant or other agent, at any reasonable time or times, for any proper purpose, to examine at the place where they are kept and make extracts from, the books and records of account, minutes and record of shareholders of a domestic corporation or those of a foreign

corporation actually or customarily kept by it within this State. A qualified shareholder in a parent corporation shall have the aforesaid rights with respect to the books, records and minutes of a domestic subsidiary corporation or those of a foreign subsidiary corporation actually or customarily kept by it within this State. A shareholder's rights under this subsection may be enforced by an action in the nature of mandamus.

(c) Two or more shareholders whose aggregate holdings equal the percentage of holdings required of a qualified shareholder may join in exercising their rights.

(d) Any officer or agent or corporation refusing to mail a statement as required by G. S. 55-37 or refusing to allow a qualified shareholder to examine and make extracts from the aforesaid books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of ten per cent (10%) of the value of the shares owned by such shareholder, but not to exceed five hundred dollars (\$500.00), in addition to any other damages or remedy afforded him by law, but the court may decrease the amount of such penalty on a finding of mitigating circumstances. It shall be a defense to any action for penalties under this section that the person suing therefor has at any time sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation.

(e) Any person, firm, or corporation who sells, offers for sale, or procures for the purpose of sale any list of shareholders of a corporation, or who uses information obtained pursuant to the provisions of G. S. 55-38 for any purposes other than those incident to ownership of the shares as to which such information was obtained, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court.

(f) Notwithstanding the foregoing provisions of this section, upon proof of proper purpose by a shareholder of a domestic or foreign corporation, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him:

(1) The superior court of the county wherein a domestic corporation has its registered office or its principal office may compel the production, for examination by such a shareholder, of the books, documents and records of the corporation, whether or not the same are usually kept within or without the State, and

(2) The superior court of the county wherein a foreign corporation keeps any books, documents and records may compel the production, for examination by such a shareholder, of those books, documents and records that are customarily kept in this State by that corporation, even though they may not be within the State at that time.

(g) In any action or proceeding to which a domestic or foreign corporation is a party, any court of record in this State may, upon notice fixed by the court, and after hearing and proper cause shown, and upon such terms as prescribed by the court, order any or all of the pertinent books, documents and records of such corporation, or transcripts from or duly authenticated copies thereof, to be brought within this State, and kept therein at such place and for such time and for such purposes as may be designated in such order.

(h) Any corporation refusing to comply with any final order made by a court pursuant to subsections (f) and (g) of this section shall, if a domestic corporation, be subject to involuntary dissolution under G. S. 55-122 and, if a foreign corporation, shall be subject to revocation of its certificate of authority; and the offending directors and officers of such domestic or foreign corporation shall be

subject to be punished for contempt of court for disobedience of such order. (1955, c. 1371, s. 1.)

§ 55-39: Omitted.

ARTICLE 5.

Corporate Finance.

§ 55-40. **Authorized shares and restrictions thereon.**— (a) A corporation shall have power to create and issue the number of shares fixed in its charter. Such shares may be divided into one or more classes, any or all of which may consist of shares with or without par value, with such designations, preferences, limitations, and relative rights, not inconsistent with the provisions of this chapter, as shall be fixed in the charter or, as permitted by G. S. 55-42, in resolutions adopted by the shareholders or directors. The charter or said resolutions may limit or deny the voting rights of the shares of any class to the extent not inconsistent with the provisions of this chapter.

Without limiting the foregoing authority, a corporation may, in accordance with its charter or the aforesaid resolutions, issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem at its option any such shares at the price fixed for the redemption thereof.

(2) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any class or into shares of any series of the same or any other class, except into a class of shares or into other securities having prior or superior rights and preferences as to dividends, income or distribution of assets upon liquidation. The provisions setting forth the rights of conversion may include any statement, not repugnant to law, for the protection of such rights against dilution or otherwise.

(b) Unless the provisions of the charter or of resolutions fixing the characteristics of shares, whether heretofore or hereafter issued, clearly indicate otherwise:

(1) If preferred shares cumulative as to dividends are entitled to preferential payments on liquidation or dissolution, the amount of accrued dividends, as defined in this chapter, shall be included in the amount of said preferential payment.

(2) Shares entitled to preferences in payments of dividends or on liquidation or dissolution are not entitled to participate in said payments beyond the amount of their stated preferences.

(c) For the purpose of this and the following subsection, shares entitled to preferential dividends which are not fully cumulative are hereby designated as noncumulative preferred shares, and shares subordinate thereto as to dividends are hereby designated as junior shares.

Notwithstanding any provision in the charter or in any resolution to the contrary, noncumulative preferred shares of a class which has not been issued either wholly or in part until after this chapter becomes effective shall be entitled to a dividend credit, as defined in this chapter, and until such dividend credit is fully discharged no dividend shall be paid to any junior shares.

(d) Unless the provisions of the charter or of resolutions fixing the rights of shares clearly indicate otherwise:

(1) Provisions relative to noncumulative preferred shares already outstanding when this chapter becomes effective shall be interpreted as having the legal effect set forth in subsection (c) of this section.

(2) If noncumulative shares, whether issued before or after the enactment of this chapter, are entitled to preferential payments on liquidation or dissolution, the amount of any then existing dividend credit shall be added to the said preferential payment.

(e) Except in cases falling within G. S. 55-52 (b) (5), no shares shall be hereafter authorized which purport to be redeemable at the election of the holder or which at the election of the holder purport to change his status to that of a creditor either at a designated time or upon a designated contingency. Nothing herein shall invalidate mandatory sinking fund requirements for the application of net earnings to the redemption of shares. This subsection shall not apply to building and loan associations or to land and loan associations. (1955, c. 1371, s. 1.)

§ 55-40.1. Power of directors to issue shares.—Unless the charter or the bylaws otherwise provide, the board of directors of a corporation shall have the power by resolution duly adopted to issue from time to time any part or all of the authorized but unissued shares or dispose of its treasury shares, and to determine the time when, the terms upon which, and the consideration for which the corporation shall issue or dispose of such shares. (1959, c. 1316, s. 10.)

§ 55-41. Issuance of shares of preferred or special classes in series.—If so provided in the charter or in resolutions that are in accordance with G. S. 55-42, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the charter or by resolutions that are in accordance with G. S. 55-42, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series within a class:

- (1) The rate of dividend.
- (2) The price at and the terms and conditions on which shares may be redeemed.
- (3) The amount payable upon shares in event of involuntary liquidation.
- (4) The amount payable upon shares in event of voluntary liquidation.
- (5) Sinking fund provisions for the redemption or purchase of shares.
- (6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion. (1955, c. 1371, s. 1.)

§ 55-42. Determination by shareholders and directors of classification of shares.—(a) If the charter states that the shares are to be divided into classes but does not itself fix and does not expressly authorize the directors to fix the preferences, limitations and relative rights of the shares of each class, the same may, to the extent not fixed by the charter, be fixed by a resolution adopted at a shareholders' meeting by the vote of a majority of the shares of each class outstanding, whether or not such shares are otherwise entitled to vote. Such classes of shares may also by such resolution be divided into series within a class of preferred or special shares. Whenever a class is divided into series and the charter does not fix between the series the variations permitted by this chapter and does not expressly authorize the directors to fix the same, the same may also be fixed by such resolution.

(b) If the charter or a resolution adopted at a shareholders' meeting by the vote prescribed by subsection (a) of this section expressly vests authority in the board of directors so to do, then, to the extent that the charter or shareholders' resolution does not fix the preferences, limitations or relative rights of any classes into which the shares are therein stated to be divided or to the extent that the

charter or shareholders' resolution have not established series or have not fixed between series the variations permitted by this chapter, the board of directors shall have the authority to fix the same by resolution adopted by the board.

(c) No provisions fixed by the shareholders or directors under this section purporting to confer upon any class of shares a priority with respect to dividends or distributions upon liquidation or dissolution over any then outstanding class of shares itself entitled to similar priority over other shares shall be valid.

(d) Nothing herein shall authorize resort to this section to effectuate any change in the preferences, limitations and relative rights, though fixed as permitted in this section, of any shares after their issuance.

(e) Prior to the issuance of any shares of a class or series of which the preferences, limitations or relative rights have been fixed by the shareholders or directors as permitted in this section, a statement of those preferences, limitations and relative rights, entitled Statement of Classification of Shares of (name or corporation), shall be executed by the corporation and filed in accordance with the provisions of G. S. 55-4, setting forth:

(1) The name of the corporation.

(2) The resolution or resolutions of the shareholders or board of directors relating to the fixing of the preferences, limitations and relative rights of the classes, or to the fixing of variations between series within a class.

(3) As to any shareholders' resolution, a statement showing the number of shares of each class outstanding, the number of such shares present or represented at the meeting which adopted the resolution and the number of shares of each class voted for and against the resolution.

(4) The date of the adoption of the foregoing resolution or resolutions. (1955, c. 1371, s. 1.)

§ 55-43. Subscriptions for shares. — (a) A pre-incorporation subscription is a promise or contract to take shares in a corporation to be organized and to pay the agreed price thereof to the corporation or to others for its benefit. A post-incorporation subscription is a contract made with an existing corporation to purchase its shares, whether on original issue or as treasury shares, regardless of whether the status of the purchaser as shareholder is created at the time of making the contract or later.

(b) No pre-incorporation or post-incorporation subscription is valid unless in writing, signed and delivered by the subscriber.

(c) A valid pre-incorporation subscription shall be irrevocable for six months, unless the terms of the subscription otherwise provide, or unless all of the subscribers consent to its revocation. At any time while a pre-incorporation subscription is irrevocable or remains unrevoked, it may be accepted by the corporation and, if otherwise conforming to law, shall thereupon become enforceable.

(d) The increase of stated capital effected by a subscription is determined by G. S. 55-47.

(e) No pre-incorporation or post-incorporation subscription for shares shall contain provisions or be obtained upon oral or written representations that the payment of the shares subscribed is to be made out of subsequent earnings of the corporation or, except in a subscription by an employee, that the corporation (other than an investment company in cases within G. S. 55-52 (b) (5) or a building and loan association) will subsequently repurchase the shares, or that the subscribed shares are entitled to any advantage or preference over other shares of the same class or series. Any such provision or representation, or any oral condition purporting to qualify a written subscription, shall not be a defense against enforcement of the subscription or be grounds for rescission or for any other remedy against the corporation by the subscriber, but any promoter or agent of the corporation making or participating in making any such representation shall be liable to any subscriber for any loss resulting from reliance there-

on, and any officer or director of a corporation who accepts a subscription which contains such provisions or which he knows was induced by such representations shall be similarly liable.

(f) Unless otherwise agreed in writing, it shall be no defense to the enforcement of a pre-incorporation subscription that no notice was given to the subscriber of his right to participate in selecting the first board of directors named in the charter, in adopting the first bylaws or in otherwise perfecting the organization.

(g) Unless otherwise provided in the subscription agreement, all subscriptions for shares shall be paid at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors, pursuant to such determination, for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be.

(h) Regardless of whether the subscription has been created upon making the contract of subscription, either party thereto is entitled, upon default by the other and upon tender of his own performance or circumstances excusing such tender, to receive payment of the subscription price or delivery of the share certificate, as the case may be; and the election of the aggrieved party to assert such right shall, despite any alternative remedy by way of damages, entitle the parties to the same remedies as if the purchaser were the holder of said shares.

(i) In case of default in the payment of any balance, installment or call when such payment is due, the corporation may:

(1) Bring action to collect any sum so due, without prejudice to any subsequent action to collect subsequent installments or calls. Until full payment is made the corporation shall have a lien on the subscribed shares, notwithstanding any judgment against the subscriber for the unpaid balance, and until sale of the shares pursuant to the judgment the lien is not lost by any preliminary or final execution upon said shares.

(2) Bring action against the subscriber for damages for breach of the contract of subscription. If this remedy is pursued, title to any shares which may have passed to the subscriber under the subscription agreement reverts to the corporation upon entry of the judgment in favor of the corporation.

(3) Rescind the subscription and keep as liquidated damages all prior payments up to ten per cent (10%) of the subscription price and in such event the corporation shall remit to the subscriber forthwith any excess of such prior payments beyond said ten per cent (10%).

(j) A subscription, whether unpaid or partly or fully paid, may be rescinded by the subscriber on the ground of fraud unless it is shown that any creditor or investor became such in actual reliance upon such subscription and would be prejudiced thereby, but this subsection shall not apply to representations of the kind designated in subsection (e) of this section.

(k) The board of directors shall have authority, unless otherwise restricted by the charter or bylaws, to determine in good faith whether and upon what terms the obligation of any subscriber shall be released, settled or compromised. The release of a subscription which has been accepted by the corporation is the equivalent of a purchase by the corporation of the shares in question and is subject to the restrictions and liabilities set forth in G. S. 55-32, 55-52 and 55-54 relating to such a purchase.

(l) No provision in any subscription shall, as against creditors, entitle the subscriber to the status of creditor with respect to any amount theretofore or thereafter paid under the terms of the subscription. (1955, c. 1371, s. 1.)

§ 55-44. Conversion rights and option.—(a) Subject to any limitations or restrictions contained in this chapter or in the charter, a corporation may, by action of its board of directors:

(1) In connection with the issuance of its bonds, debentures, notes or other obligations, grant to the holders thereof the right to convert them into shares, and

(2) Either in connection with the issuance of shares or other securities or independently thereof, grant options to purchase any of its shares.

(b) Every corporation shall include in its statement of assets and liabilities required by G. S. 55-37 a statement of the then current conversion ratio of any outstanding securities and a statement of the number of shares covered by any outstanding options and the price at which the options are exercisable.

(c) The instrument evidencing the security entitled to said conversion rights shall set forth, in full or by summary, the provisions and conditions of such rights, or shall be a share certificate complying with provisions of G. S. 55-57.

(d) A corporation may issue stock purchase warrants, subscription warrants, or other evidences of option rights, setting forth the terms, provisions and conditions thereof.

(e) Option rights may be transferable or nontransferable or separable or inseparable from the shares, obligations or other securities of the corporation.

(f) At the time of granting conversion or option rights the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise thereof but the failure of the corporation to do so shall not impair the right to claim damages from the corporation.

(g) The granting of rights to convert into shares which are subject to pre-emptive rights or of options to acquire such shares must be authorized by such action of the shareholders as would be required to release pre-emptive rights under the provisions of this chapter, and such authorization shall operate as such release.

(h) Obligations or shares shall not be converted into shares having a greater aggregate par value than the face amount of the obligation so converted or than the par value of the shares so converted or than the stated capital represented by any no-par shares so converted, unless provision is made for the difference by a transfer from surplus to stated capital. (1955, c. 1371, s. 1; 1959, c. 1316, s. 11.)

Cross References.—See G. S. 55-40 (a) **Editor's Note.** — The 1959 amendment (5). As to employee options, see G. S. 55-45. rewrote subsection (g).

§ 55-45. Sale of shares and options to employees.—(a) Unless otherwise provided in the charter, a corporation may provide for and carry out a plan for the sale of its unissued or treasury shares to its employees or to the employees of its subsidiary corporations or to a trustee on their behalf. Such plan shall be adopted at a special or annual meeting by vote of a majority of the shares entitled to vote. Such plan may include provisions, among others, for: the kind and amount of consideration, payment in installments or at one time; aiding any such employees in paying for such shares by compensation for services, by loans, or otherwise; granting of options, which shall be nontransferable except by operation of law; the fixing of eligibility for participation in the plan; the class and price of shares to be sold under the plan; the number of shares which may be purchased, the method of payment therefor, the reservation of title until full payment; the effect of termination of employment; an option or obligation on the part of the corporation to repurchase the shares; and the time limits and termination of the plan. The term "employees" as used in this section includes officers in the full-time employment of the corporation, but nothing in this section is intended to permit financial aid to such officers in violation of G. S. 55-22.

(b) Unless otherwise provided in the charter, an option to purchase shares otherwise than under a plan as provided in subsection (a) of this section may be granted by action of the board of directors to a person for the purpose of securing or retaining his services as employee, if the option is exercisable at a price not less than one hundred fifty per cent (150%) of the market price of the

shares at the time the option is granted, or without limitation as to price if the action of the board is authorized by a special resolution adopted by vote of a majority of the shares entitled to vote, excluding any shares held by said employee.

(c) Notwithstanding the provisions of other subsections of this section, no corporation shall issue shares that are unlimited as to dividends, or, except in accordance with subsection (b) of this section, grant options for such shares, to any class of persons, whether such class be designated as employees or as managerial personnel, or by any other similar terms or combinations thereof, or otherwise, when it is planned that ten per cent (10%) or more of the shares then being issued or optioned are to go, directly or indirectly, to directors or to dominant shareholders, unless:

(1) The shares are issued or the options are granted with the consent of the holders of two-thirds of the shares that are unlimited as to dividends, excluding the shares owned by said directors or dominant shareholders, or

(2) The shares are issued after making a pre-emptive offer thereof to the holders of the shares of that class.

(d) In any actions by, against, or in behalf of a corporation to challenge the validity of any stock option granted to any employee, the situs of the option is deemed to be at the registered office of the corporation, and such action may be brought as an action quasi in rem with service of process by publication or outside the State as provided by law. Such action may also be brought as an action in personam. If two or more grantees of stock options are necessary or proper parties, they may be joined in accordance with the provisions of law applicable to class actions. (1955, c. 1371, s. 1; 1959, c. 1316, s. 12.)

Editor's Note.— Note the pre-emptive right dispensation in G. S. 55-56 (c) (4).

The 1959 amendment deleted from the second sentence of subsection (a) the words "but no option for such shares shall be granted and no contract of sale

nor any sale of shares, except such sale as occurs in performance or exercise of a valid contract or option, shall be valid if made pursuant to such plan later than two years after its adoption by the shareholders."

§ 55-46. Consideration for shares.—(a) Shares of a corporation shall not be issued as fully or partly paid nor shall treasury shares be disposed of except for:

(1) Money or property, tangible or intangible, actually received by the corporation, or

(2) Labor or services actually rendered to the corporation or for its benefit in its organization or reorganization, or

(3) Shares, securities or other obligations of the corporation actually surrendered, cancelled or reduced, or

(4) Satisfaction of accrued dividends or dividend credits that have arisen with respect to preferred shares, or

(5) Amounts transferred from surplus to stated capital.

(b) Neither promissory notes nor other obligations of a subscriber or purchaser, including any endorsement or guaranty or any obligation of the corporation, shall constitute payment or part payment to a corporation for its shares. An agreement of a person to perform future services as the consideration for shares shall not constitute such a person a shareholder prior to the performance of such services.

(c) Subject to the further restrictions set forth in this section and to the provisions of G. S. 55-53:

(1) Shares having par value, other than treasury shares, shall not be issued for a consideration less than their par value, except that they may be issued as fully paid at such discount from their par value as does not exceed reasonable expense and compensation incurred in the sale or underwriting of such shares.

(2) Shares without par value and treasury shares may be issued or disposed

of for such consideration, expressed in dollars, as the board of directors may determine.

(d) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be pro-rata consideration for the issuance of such shares.

(e) In the event of a conversion or exchange of shares with or without par value into or for the same or into or for a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be:

(1) The stated capital then represented by the shares so exchanged or converted irrespective of the actual value of such shares, and

(2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and

(3) Any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

(f) When shares are issued or disposed of by a corporation, in transactions other than those mentioned in subsection (e) of this section for any consideration other than money or satisfaction of dividend accruals or dividend credits, the board of directors shall state by resolution their determination of the fair value to the corporation of such consideration unless the amount of the consideration is determined by the provisions of this section. In the absence of fraud or bad faith, the judgment of the directors as to the value of the consideration received for shares shall be conclusive. When the consideration for the issuance of shares is the satisfaction of any liquidated indebtedness of the corporation or of any accrued dividends or dividend credits that have arisen with respect to preferred shares, the fair value of the consideration so received may be determined to be the face amount of the indebtedness or of the accrued dividends, or dividend credits so satisfied, and no inference of fraud or bad faith arises from such determination.

(g) Shares issued or disposed of for the kind and amount of consideration prescribed by this section shall be deemed fully paid and nonassessable. (1955, c. 1371, s. 1; 1957, c. 1039; 1959, c. 1316, ss. 13, 14.)

Editor's Note.—The 1957 amendment changed the preliminary paragraph of subsection (a) which formerly read: "Shares of a corporation, including treasury shares, shall not be issued or disposed of by it for any kind of consideration except".

The 1959 amendment deleted "In" formerly constituting the first word of subdivision (4) of subsection (a). It also rewrote subsection (b).

§ 55-47. Determination of stated capital.—(a) As used in this section with respect to shares, the term "issued" refers to all shares that have been subscribed and whose subscribers have the status of shareholders, even though the shares have not been paid in full, and even though no certificate therefor has been issued, but does not include the reissue of treasury shares.

(b) A corporation shall have a stated capital, which except as reduced in accordance with this chapter, shall be an amount in dollars equal to the sum of:

(1) The aggregate par value of all shares having par value which have been issued from time to time, and

(2) The entire amount of the agreed consideration received or to be received by the corporation for all shares without par value which have been issued from time to time, except such portion thereof as the board of directors prior to or at the time of issuance of such shares designates as paid-in surplus, and

(3) Such amounts, not included in paragraph (1) or (2) of this subsection as are transferred from surplus to stated capital upon declaration of a share dividend, and

(4) Such amounts as are transferred from surplus to stated capital represented by shares without par value by resolution of the board of directors without declaration of a share dividend.

(c) If par value shares are issued for a consideration in excess of their par value, the excess shall be credited to paid-in surplus; if issued at a discount as permitted by G. S. 55-46 (c) the amount of the discount may be entered on the books as a debit and be separately shown in financial statements, in accordance with generally accepted principles of sound accounting practice or good business practice.

(d) Whenever the status of shareholder is created by the acceptance of a pre-incorporation subscription or the making of a post-incorporation subscription contract, the corporation shall thereupon credit to its stated capital account such sum as would be so credited upon full payment for the shares in question, and any unpaid balance shall be debited to a separate account designated as balance on unpaid shares or otherwise appropriately designated.

(e) The stated capital of a corporation may be increased from time to time, upon declaration of a share dividend or by resolution of the board of directors directing that all or a part of the surplus be transferred to stated capital. The board of directors may direct that the amount of surplus transferred without declaration of a share dividend shall be allocated as stated capital in respect of any designated class of shares without par value.

(f) When any number of its shares with or without par value are changed, exchanged, converted, subdivided or consolidated for or into any number of shares, with or without par value, any shares thereby surrendered to the corporation shall be deemed to be canceled even if no formal steps to that effect are taken, and, subject to any adjustment to be made if additional consideration is to be paid:

(1) If the stated capital represented by the shares so canceled is the same as that of the shares issued therefor, the aggregate stated capital of the corporation is not changed;

(2) If the stated capital represented by the canceled shares is greater than that represented by the shares issued therefor, no reduction of stated capital is legally effective unless proceedings are taken in accordance with this chapter to reduce the stated capital;

(3) If the stated capital represented by the shares so canceled is less than that represented by the shares issued therefor, the stated capital of the corporation shall be deemed increased accordingly and adjustment of accounts appropriate thereto shall be made.

(g) Notwithstanding any other provisions of this section, if shares are issued in cancellation or satisfaction of dividend accruals or of dividend credits that have arisen with respect to preferred shares, the board of directors shall determine the amount of stated capital to be represented by the shares so issued, which amount shall be not less than the par value, if any, of the shares so issued, and either:

(1) The stated capital of the corporation may remain the same by debiting against the stated capital represented by any then outstanding shares without par value an amount equal to the stated capital represented by the shares so issued, and no proceedings for the reduction of stated capital are thereby required, or

(2) The stated capital of the corporation may be increased by a transfer from any surplus to stated capital of an amount equal to the stated capital represented by the shares being so issued, and if there is no surplus the aforesaid amount may be transferred to stated capital even though a deficit is thereby created or increased, or

(3) The stated capital of the corporation may be reduced, in accordance with the provisions of G. S. 55-48, so as to create a surplus from which an amount can be transferred to stated capital with respect to the shares so issued. (1955, c. 1371, s. 1.)

§ 55-48. Reduction of stated capital.—(a) Whenever, as a result of an amendment of the charter reducing the par value of outstanding shares or of a merger effected in accordance with the provisions of this chapter, the stated

capital of the corporation is reduced, no further proceedings are necessary to consummate a reduction of stated capital.

(b) Subject to the provisions of subsection (d) of this section, the stated capital of a corporation may be reduced by a resolution of the shareholders determining that the stated capital represented by the shares without par value, or any class of such shares, be reduced as stated in the said resolution. The said resolution shall be adopted by the shareholders by such vote and at such meeting and pursuant to such notice thereof, as would be required under G. S. 55-100 for an amendment of the charter if the shares being so reduced were shares having par value.

(c) Subject to the provisions of subsection (d) of this section, the stated capital of a corporation may be reduced, pursuant to action taken by the board of directors to that effect, without assent of the shareholders:

(1) By the cancellation of any shares purchased, redeemed or otherwise acquired by the corporation except shares acquired through exchange of shares or conversion of convertible shares, and thereby the stated capital of the corporation shall be reduced by the amount of stated capital represented by the shares so cancelled; or

(2) By the exchange of shares or conversion of convertible shares for or into shares representing an amount of stated capital less than that represented by the shares surrendered upon such exchange or conversion, in which event the stated capital of the corporation shall be deemed reduced by the difference; or

(3) By the release of shares subject to the limitations of G. S. 55-43 (k), other than treasury shares, from subscription, in which event the stated capital of the corporation shall be deemed reduced by the amount of stated capital represented by the released shares.

(d) To effectuate a reduction of stated capital pursuant to subsections (b) and (c) of this section there shall be executed and filed, in accordance with the provisions of G. S. 55-4, a certificate of reduction of capital, which shall set forth:

(1) The name of the corporation.

(2) A statement that the purpose of the certificate is to consummate a reduction of stated capital and a statement of the manner in which such reduction is being effected.

(3) The number of issued shares, itemized by classes and series, if any, and the amount of stated capital represented thereby, before the reduction.

(4) The number of issued shares, itemized by classes and series, if any, and the amount of stated capital represented thereby, after the reduction.

(5) The total amount by which the stated capital is being reduced by virtue of this certificate.

(6) Either a statement that no action by the shareholders is necessary to effect the foregoing reduction or a statement showing the number of shares outstanding, the number of shares entitled to vote on the reduction, and the number of shares voted for and against the reduction.

(e) If it is desired to take concurrent action to amend the charter and also to effect the reduction of stated capital, whether effected through such an amendment as indicated in subsection (a) of this section or effected otherwise as indicated in subsections (b) and (c) of this section, the statement to be executed by the corporation and filed, in accordance with the provisions of G. S. 55-4, may be designated as articles of amendment and certificate of reduction of stated capital.

(f) Unless made in violation of contract, distributions made to shareholders after a reduction of stated capital and made as authorized in this chapter give rise to no cause of action in favor of creditors, regardless of whether their claims arose before or after the reduction. (1955, c. 1371, s. 1; 1959, c. 1316, s. 15.)

Editor's Note. — The 1959 amendment the words "Unless made in violation of added at the beginning of subsection (f) contract."

§ 55-49. **Surplus, net profits and valuation of assets.**—(a) Surplus is the excess of a corporation's net assets, as defined in this chapter, over its stated capital. Such surplus consists of earned surplus or capital surplus or both, and shall be so classified on the books.

(b) Except where provisions of this chapter specifically require a different standard or impose additional limitations, the assets of a corporation may, for the purpose of determining the lawfulness of dividends or of distributions or withdrawals of corporate assets to or for the shareholders, be carried on the books in accordance with generally accepted principles of sound accounting practice applicable to the kind of business conducted by the corporation.

(c) For the purpose of determining the lawfulness of dividends or of the purchase or redemption of shares, treasury shares shall not be counted as assets.

(d) Earned surplus is the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses, including gains and losses realized from the disposition or destruction of fixed assets (but not including unrealized appreciation in the value of any assets), from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus as permitted by subsection (i) of this section, after deducting subsequent distributions to shareholders and transfers to stated capital and to capital surplus to the extent that such distributions and transfers are made out of earned surplus, all computed in accordance with generally accepted principles of sound accounting practice applicable to the kind of business conducted by the corporation.

(e) Capital surplus is the entire surplus of the corporation other than its earned surplus, and includes, without being limited to, paid-in surplus, surplus arising from reduction of stated capital and surplus arising from a revaluation of assets made in good faith upon demonstrably adequate bases of revaluation. Capital surplus may be classified on a corporation's books and statements according to its derivation.

(f) A surplus arising from the sale of treasury shares at a price in excess of the cost of their acquisition or from the retirement of treasury shares acquired at a price less than the amount of capital reduction to be effected by their retirement is not earned surplus and shall be accounted for as capital surplus or as some classification thereof.

(g) In computing earned surplus or net profits, deduction shall be made for such obsolescence, depletion, depreciation, losses, bad debts and other items as accords with generally accepted principles of sound accounting practice.

(h) No transfer shall be made from earned surplus to capital surplus without the affirmative vote of a majority of the shares that are unlimited as to dividends, except as such transfer is incidental to a share dividend.

(i) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit in the earned surplus account but if there are outstanding shares entitled to preferential dividends, such action must be approved by the vote of a majority of such shares.

(j) A corporation may, by resolution of its board of directors, create or add to a reserve or reserves out of its earned surplus or current net profits for any proper purpose set forth in the resolution, and may abolish or diminish any such reserve upon determination by the board of directors that such reserve is no longer necessary or that it is in excess of the amount required for the purpose for which it was created; but no such reserve shall, except in accordance with generally accepted principles of sound accounting practice applicable to the kind of business conducted by such corporation, diminish the amount of earned surplus or net profits available for dividends.

(k) Whenever two or more corporations are consolidated or merged or whenever a corporation purchases all of the assets of another corporation as a going concern and pays all or substantially all the purchase price by the issuance of

shares of the purchasing corporation, or whenever a corporation is reorganized, the earned surplus appearing on the books of the constituent or merged or purchased corporation or corporations or on the books of a corporation prior to reorganization may, to the extent that it is not capitalized, be entered as earned surplus on the books of the resultant or purchasing or reorganized corporation.

(1) Where a parent corporation acquires and owns a majority of the shares of a subsidiary corporation or where a group of parent corporations in pursuit of a common interest acquires and owns all or substantially all of the shares of a subsidiary corporation, a share dividend received by such a parent corporation or parent corporations out of surplus earned by the subsidiary after said acquisition may be treated by the recipient parent corporation as earned income in an amount corresponding, pro rata, to the amount of earned surplus of the subsidiary which was capitalized by virtue of the share dividend. (1955, c. 1371, s. 1.)

§ 55-50. Dividends in cash or property.—(a) Subject to the restrictions provided in this section, the board of directors of a corporation may declare and pay dividends payable in cash or in property:

(1) Out of the earned surplus of the corporation, or

(2) Out of the amount of net profits earned during the current or preceding accounting period, each said period to be not less than six months or more than one year in duration, regardless of any impairment of stated capital, or

(3) Out of the capital surplus of the corporation, but such dividends from this source may be paid only if the sources in paragraphs (1) and (2) of this subsection are unavailable and then only to shares entitled to preferential dividends and no capital surplus paid in by any class of stock may be used for the payment of dividends on any class junior thereto, or

(4) In partial liquidation as permitted by subsection (e) of this section. A dividend paid from sources other than those indicated in paragraphs (1) and (2) of this subsection to shares not entitled to preferential dividends is a partial liquidation and is subject to the provisions of subsection (e) of this section.

(b) Any provision inserted in any charter or bylaws or resolutions or agreement of the shareholders after this chapter becomes effective purporting to make unavailable the sources mentioned in paragraphs (1), (2) and (3) of subsection (a) of this section for the payment of dividends to shares entitled to preferential dividends shall be null and void, but nothing herein shall invalidate any agreement between a corporation and its creditors restricting the payment of dividends.

(c) No dividend payable in cash or in property may be declared or paid if upon the payment thereof:

(1) There is reasonable ground for believing that the corporation would be unable to meet its obligations as they become due in the ordinary course of business, or

(2) The liabilities of the corporation would exceed the fair present value of its assets, or

(3) The highest aggregate liquidation preferences of shares entitled to such preference over the shares receiving the dividend would exceed the corporation's net assets.

(d) For the purpose of paying a dividend out of earned surplus or net profits as permitted by subsection (a) of this section, a corporation engaged in the business of exploiting natural resources may compute its earned surplus or net profits without deduction for the depletion of such resources. If a dividend is paid from a source so computed, the corporation shall make the disclosure required by subsection (g) of this section.

(e) The board of directors of a corporation may distribute to its shareholders in partial liquidation, out of capital surplus (including a surplus created by re-

duction of stated capital), a portion of its assets, subject to the following provisions:

(1) Except in a case within paragraph (2) of this subsection, the distribution shall be made only upon a determination by the board of directors that the assets of the corporation are in excess of the needs of its business, and upon authorization by a resolution adopted by the holders of a majority of the shares of each class, whether or not otherwise entitled to vote, and the distribution shall be made pro rata to the class or classes of shareholders as specified in the said resolution. Such distribution is not deemed to be a liquidation within the liquidation preferences to which any class of shares may be entitled, unless the charter otherwise provides.

(2) If the corporation is organized for the purpose of liquidating specific assets (otherwise than by the exploitation of natural resources) and is solely engaged in that activity, the distribution may be made as specifically provided in the charter with respect to such a distribution, without the vote of shareholders and without regard to the provisions of subsection (g) of this section.

(3) In addition to all other restrictions upon the payment of dividends imposed by this section, no distribution permitted by this subsection shall be made if thereupon the present fair value of the assets of the corporation is less than twice the amount of its liabilities.

(f) Partly paid shares are entitled to participate in dividends on the basis of the percentage of the consideration actually received by the corporation thereon, unless otherwise provided in the charter or subscription agreement.

(g) Concurrently with the payment of a dividend the corporation shall disclose to the shareholders receiving the same the source from which the dividend is paid if it is paid:

(1) Otherwise than out of earned surplus, or

(2) Out of earned surplus arising from the elimination, within one year prior to the dividend payment, of a deficit in the earned surplus account as permitted by G. S. 55-49 (i), or

(3) Out of earned surplus or net profits computed without deduction for depletion of natural resources.

(h) The provisions of the foregoing subsections shall not apply to banks and insurance companies.

(i) As used in this subsection, net profits mean such net profits as can lawfully be paid in dividends to a particular class of shares after making allowance for the prior claims of shares, if any, entitled to preference in the payment of dividends, but in the determination of such profits the provisions of subsection (d) of this section shall not apply. If during its immediately preceding fiscal period a corporation has paid to any class of shares dividends in cash or property amounting to less than one-third of the net profits of said period allocable to that class, the holder or holders of twenty per cent (20%) or more of the shares of that class may, within four months after the close of said period, make written demand upon the corporation for the payment of additional dividends for that period. After a corporation has received such a demand, the directors shall, during the then current fiscal period or within three months after the close thereof, cause dividends in cash or property to be paid to the shareholders of that class in an amount equal to the difference between the dividends paid in said preceding fiscal period to shareholders of that class and one-third of the net profits of said period allocable to that class, or in such lesser amount as may be demanded. A corporation shall not, however, be required to pay dividends pursuant to such demand insofar as such payment would exceed fifty per cent (50%) of the net profits of the current fiscal period in which such demand is made or insofar as the net profits are being retained to eliminate a deficit. Upon receipt of such a demand a corporation may elect to treat any dividend previously paid in the current fiscal period as having been paid in the preceding fiscal period, in

which event the corporation shall so notify all shareholders. If a dividend is paid in satisfaction of a demand made in accordance with this subsection it shall be deemed to have been paid in the period for which it was demanded, and all shareholders shall be so informed concurrently with such payment.

(j) Nothing in this section shall impair any rights which a shareholder may have on general principles of equity to compel the payment of dividends, but, except for actions started before this chapter becomes effective, all rights previously conferred by statute upon shareholders to force a corporation to pay dividends are hereby abrogated.

(k) Any action by a shareholder to compel the payment of dividends may be brought against the directors, or against the corporation with or without joining the directors as parties. The shareholder bringing such action shall be entitled, in the event that the court orders the payment of a dividend, to recover from the corporation all reasonable expenses, including attorney's fees, incurred in maintaining such action. If a court orders the payment of a dividend, the amount ordered to be paid shall be a debt of the corporation. (1955, c. 1371, s. 1; 1959, c. 1316, s. 16.)

Editor's Note. — The 1959 amendment deleted the words "but such a distribution shall respect the preferential right to dividends to which any class of shares may be entitled" formerly appearing at the end of (e) (1).

For cases decided under former statute, which required the directors of a corporation to pay the whole of its accumulated profits in dividends, subject only to the

limitation that neither the corporation's capital stock nor its working capital should be impaired, see *Steele v. Locke Cotton Mills Co.*, 231 N. C. 636, 58 S. E. (2d) 620 (1950); *Nebel v. Nebel*, 241 N. C. 491, 85 S. E. (2d) 876 (1955).

As to suits in equity to compel declaration and payment of dividends, see *Gaines v. Long Mfg. Co.*, 234 N. C. 331, 67 S. E. (2d) 355 (1951).

§ 55-51. **Share dividends.**—(a) Subject to the restrictions provided in this section, the board of directors of a corporation may declare and pay dividends in its own authorized but unissued shares out of any surplus of the corporation upon the following conditions:

(1) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend. If such shares are issued at more than the par value thereof, an amount of surplus equal to the excess over the aggregate par value of the shares shall be credited to a capital surplus account in accordance with generally accepted principles of sound accounting practice applicable to the kind of business conducted by the corporation.

(2) If a dividend is payable in its own shares without par value, such shares shall be issued at a value to be ascertained and stated by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate value so ascertained and stated in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(b) No dividend payable in shares of any class shall be paid to the holders of shares of any other class nor shall any share dividend be paid to holders of shares entitled to preferential dividends nor shall any share dividend be paid which would change the voting position of different classes of shares with respect to voting for directors, unless:

(1) The share dividend is paid to holders of shares entitled to preferential payment of dividends which by the charter are required or permitted to be paid in a specified number of shares, whether of that same class or of another designated class, or

(2) The share dividend is specifically authorized by the vote of a majority of shares of each class that might be adversely affected by such a share dividend. Such vote may, if so stated in the resolution of the shareholders, be effective authorization to the directors for one year thereafter for the declaration and payment of such a share dividend if the amount of said dividend is specifically fixed or limited for the shares which are to receive it as stated.

(c) Disclosure similar to that required by G. S. 55-50 (g) shall be made if a share dividend is paid from a source which in the case of cash dividends would require disclosure under G. S. 55-50 (g).

(d) A corporation making a distribution of treasury shares among its shareholders shall, concurrently with delivery of the corresponding certificate or script, designate the transaction as a distribution of treasury shares and shall not represent it to be a share dividend.

(e) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 17, 18.)

Editor's Note. — The 1959 amendment substituting "a" for "fair" in line two of changed subsection (a) by adding the second sentence to subdivision (1), and by subdivision (2).

§ 55-52. Acquisition by a corporation of its own shares.—(a) A corporation may acquire its own shares by gift, bequest, merger, consolidation, distribution of the assets of another corporation, exchange of its shares or as permitted in this section by purchase or redemption.

(b) Subject to the provisions of subsection (e) of this section, a corporation may, by action of its board of directors, purchase and pay for its shares, or redeem such shares if redeemable, regardless of any impairment of stated capital, in the following cases:

(1) To collect, settle, compromise or release in good faith a debt of or claim against any shareholder or subscriber of its shares;

(2) To eliminate fractional shares or to avoid their issuance;

(3) To satisfy claims of dissenting shareholders entitled to payment for their shares under the provisions of G. S. 55-113;

(4) To perform its agreement with an employee who has purchased from the corporation shares under an agreement relating to employment which obligates or entitles the corporation to repurchase them;

(5) If the corporation is organized to engage in the business of investing in securities and is engaged in no other business, to perform its agreement to repurchase its shares, at prices substantially equivalent to their proportionate interests in the assets of the corporation;

(6) Subject also to the provisions of subsection (f) of this section, to acquire for retirement, at prices not exceeding their redemption price, its shares that are subject to redemption.

(c) Subject to the provisions of subsections (e) and (f) of this section, a corporation may, by the action of its board of directors, purchase and pay for its shares, but only out of surplus and only in the following cases:

(1) Pro rata from all its shareholders or all of a class of shareholders.

(2) On an organized securities exchange, if the board of directors shall have obtained authorization so to purchase, within a period of one year preceding the purchase, by the vote of the holders of a majority of the shares of the class to be purchased, after full disclosure to them of the specific purpose of the proposed purchase.

(3) From any shareholder of any class, if the board of directors shall have obtained authorization so to purchase, within a period of one year preceding the purchase, by a vote of a majority of the holders of the class of shares of the corporation which are entitled to vote, after full disclosure to the holders of the

class of shares entitled to vote of the specific purpose of the proposed purchase, together with a statement of the class of shares proposed to be purchased. Authorization of the stockholders shall not be required for each specific purchase, provided the total number of shares purchased shall not exceed the maximum number of shares authorized in the authorization of the stockholders.

(4) From any shareholder in the exercise of the corporation's right to purchase the shares pursuant to restrictions upon the transfer thereof.

(5) In connection with stabilizing operations authorized by the Securities and Exchange Commission or other regulatory authority.

(d) A corporation may acquire shares issued by a parent corporation by gift, bequest, merger, consolidation, distribution of the assets of another corporation or otherwise, but not by purchase.

(e) A corporation shall not purchase or redeem its shares if at the time of or as a result of such acquisition:

(1) There is reasonable ground for believing that the corporation would be unable to meet its obligations as they become due in the ordinary course of business, or

(2) The liabilities of the corporation would exceed the fair present value of its assets, or

(3) The highest aggregate liquidation preference of the shares to remain outstanding having prior or equal claims to the assets of the corporation would exceed the net assets of the corporation, or

(4) There exists any unpaid accrued dividends or dividend credits with respect to any shares entitled to preferential dividends ahead of the shares to be purchased, but the provisions of this paragraph (4) shall not apply to purchases made as permitted in paragraphs (1), (2), (3) or (4) of subsection (b) of this section.

(f) A corporation shall not purchase its redeemable shares, otherwise than by redemption or as permitted in paragraphs (1) to (5) inclusive of subsection (b) of this section, at a time when there exists a default in the payment of accrued dividends or any dividend credit upon said shares, unless prior to such purchase notice in writing stating the intention so to purchase and the amount intended to be applied thereto is seasonably mailed to the holders of shares of the class to be purchased or unless adequate publicity of such intention and amounts is otherwise given within a time reasonably calculated to apprise the market of the proposed action.

(g) Unless steps are taken to consummate a reduction of capital as provided in G. S. 55-48, the acquisition of treasury shares shall not be deemed to effect a reduction of stated capital, whether or not the said shares are purportedly kept as treasury shares or are purportedly retired or canceled by the corporation.

(h) Redemption of shares by a corporation may be made either pro rata or by lot as provided in the charter or in resolutions adopted in conformity with G. S. 55-42, as the case may be, or, in the absence of such provision, pro rata or by lot as the board of directors may determine.

(i) Treasury shares shall not carry voting or dividend rights.

(j) This section shall apply also to corporations not formed under this chapter, subject to such further restrictions on the purchase or redemption of shares as may be contained in special statutory provisions applicable to such corporations. (1955, c. 1371, s. 1; 1957, c. 1039; 1959, c. 1316, s. 19.)

Editor's Note.—The 1957 amendment changed subsection (c) by renumbering subdivision (4) as (5) and inserting present subdivision (4). The 1959 amendment rewrote subdivision (3) of subsection (c). For article discussing this section, see 34 N. C. Law Rev. 432.

ARTICLE 6.

Shareholders.

§ 55-53. **Liability of shareholders arising from acquisition of shares.**—(a) As used in this section, the term “watered shares” means shares which:

(1) Were issued for money at less than their par value in contravention of G. S. 55-46 (c); or

(2) Were issued, with or without par value, for a consideration other than money to a person who influenced the corporation to enter the said consideration on its books at an over-valuation, unless the value so entered is conclusive under the provisions of G. S. 55-46 (f); or

(3) Were issued, with or without par value, for property to a person who held such property as constructive trustee for the corporation and who in transferring said property to the corporation received therefor a greater number of shares than his fiduciary duties permitted; or

(4) Were issued, with or without par value, for an amount of consideration which, after giving full recognition to the freedom of business judgment exercised in good faith, substantially and unfairly diluted the holdings of other shareholders and were issued to a person who had knowledge that the directors of the corporation were thereby violating their fiduciary duties to the corporation or to its shareholders. As used in this paragraph shareholders include, but are not limited to, those persons who purchase shares from the corporation or from its promoters in accordance with a plan already entertained by the promoters and who so purchase without adequate disclosure to them that their shares are diluted by the lesser amount of consideration received by the corporation for shares previously issued to promoters.

(b) Every original holder of watered shares shall be subject to:

(1) Liability to the corporation for the excess of the par value of said shares over the price paid for their issuance or, as the case may be, for the amount of over-valuation of the consideration entered upon its books, unless the valuation so entered is conclusive under the provisions of G. S. 55-46 (f), over and above the maximum valuation that could in good faith have been fixed therefor; but this liability exists (a) only if there is reasonable ground to believe that creditors or shareholders may have relied on such excess or over-valuation and (b) only to the extent necessary to pay the claims of such creditors or adjust the equities of such shareholders, or

(2) Cancellation, in an action by the corporation, of such a number of shares as shall cure the dilution or breach of fiduciary duty which made the said shares watered shares; and if cancellation is impossible on the ground that such holder no longer retains the said number of shares, he shall be liable for such an amount in money as will fairly redress the injury to other shareholders occasioned by the said dilution or breach of fiduciary duty.

(c) The remedies in subsection (b) of this section are cumulative, but any money recovery had thereunder shall be deemed to be additional consideration paid for the shares in question.

(d) In any action by the corporation to enforce rights under subsection (b) of this section, the relief granted may include orders for the distribution of any recovery by the corporation to such creditors, shareholders, or former shareholders, as may have been damaged by the transaction upon which the action is based.

(e) Except in the case of watered shares, shareholders shall be subject to no assessment or liability thereon other than that arising from the unpaid balance, if any, of the agreed consideration, even if all the shares are owned by one person.

(f) Every original holder of watered shares or of shares not fully paid as agreed shall continue liable thereon to the corporation notwithstanding any

transfer of such shares. A transferee of such shares shall not be liable thereon if he acquired them in good faith without knowledge or notice that they were watered shares or shares not fully paid as agreed or if he acquired them from a transferor similarly free from liability. The burden of proof that the transferee did not so acquire the shares shall be upon the adverse party.

(g) No pledgees or other holder of shares as collateral security and no executor, administrator, conservator, guardian, trustee, receiver or other fiduciary shall be personally liable as a holder of or subscriber for shares of a corporation except to the extent that the record of shares issued or subscribed in his name without indication of representative capacity may have induced reliance upon his personal responsibility with respect to watered or unpaid shares, but the estate or funds in the hands of such fiduciary shall be liable, as equity may require. Nothing herein shall relieve a fiduciary from liability for breach of trust.

(h) Nothing in this section shall limit any liability that a shareholder may incur on general principles of law or equity arising from the creation or maintenance of an inadequately capitalized incorporated enterprise or other abuse of the privilege of achieving limited liability by incorporation. (1955, c. 1371, s. 1.)

Action by Corporation to Recover Amount Spent to Purchase Stock from Shareholders.—See *Park Terrace, Inc. v. Burge*, 249 N. C. 308, 106 S. E. (2d) 478 (1959), discussing right of creditors to require payment of purchase price under former § 55-65.

§ 55-54. Liability of shareholders for receiving unlawful payments.—Any shareholder who receives any redemptive or purchase price upon the redemption or purchase by a corporation of its shares or who receives any dividend or other withdrawal or distribution from the corporation, either at a time when the corporation is or thereby will be rendered unable to meet its obligations as they mature in the ordinary course of business, or when the shareholder has knowledge that such receipt diminishes assets of the corporation contrary to the provisions of this chapter, shall be liable to the corporation for the amount so received, including the amount of any obligation to the corporation thereby released, but this liability is subject to the same limitation as to time and amount as is contained in subsections (d) and (m) of G. S. 55-32 with respect to the liability of directors. Any number of shareholders may be sued in the same action. (1955, c. 1371, s. 1.)

§ 55-55: Omitted.

§ 55-56. Pre-emptive rights.—(a) The charter may enlarge, limit or deny what would otherwise be the pre-emptive rights of shareholders.

(b) Except as otherwise provided in the charter or in this section, the holders of shares of any class, except shares which are limited as to dividends and liquidation rights, shall have the right, in case of the proposed sale by the corporation for cash of additional shares of the same class as those held by them, to purchase the additional shares in proportion to their then respective holdings at a price substantially no less favorable than the price at which such shares are to be offered to others. Such holders shall have a similar right in case of the granting by the corporation of any option to purchase its shares of the class held by such holders or in case of a proposed sale by the corporation for cash of any securities convertible into or carrying an option to purchase shares of the class held by such holders. Such right exists irrespective of whether the shares to be sold by the corporation are shares authorized in the articles of incorporation as originally filed or are treasury shares or other shares. Nothing herein is meant to give a shareholder the pre-emptive right to buy shares at a price determined by their par value.

(c) Unless otherwise stated in the charter, there shall be no pre-emptive rights with respect to:

(1) Shares issued or to be issued to obtain all or a portion of the capital required to initiate the enterprise, or

(2) Shares issued or to be issued for considerations, other than money, deemed by the board of directors in good faith to be advantageous to the corporation's business, or

(3) Shares released from pre-emptive rights by vote of two-thirds of the shares entitled to such pre-emptive rights, or

(4) Shares sold or agreed to be sold to employees or options for shares granted to employees as provided in G. S. 55-45, or

(5) Shares issued or to be issued as a share dividend, or

(6) Shares issued or to be issued to satisfy conversion rights or option rights theretofore granted by the corporation.

(d) Holders of bonds, notes, debentures or other obligations convertible into shares and holders of shares convertible into shares of another class shall have no pre-emptive rights in shares into which they are convertible unless expressly granted in the charter or in the contract with said holders.

(e) The issuance of shares that are not subject to pre-emptive rights shall not impair any remedy which any shareholder may have for a breach of fiduciary duties on the part of the board of directors with respect thereto. The remedy may include the granting of such pre-emptive rights or the cancellation of such a number of shares or the compulsory issuance by the corporation of such a number of shares, or the allowance of such amount of money damages as the court may order.

(f) The issue or sale by a corporation of shares carrying voting rights does not of itself confer pre-emptive rights upon shareholders whose voting powers are relatively diminished thereby but the issue or sale of such shares for the purpose of creating in a group or combination of shareholders the power to elect a majority of the board of directors is a breach of fiduciary duty within subsection (e) of this section. (1955, c. 1371, s. 1.)

§ 55-57. Share certificates.—(a) No certificate shall be issued for any share until such share is fully paid.

(b) Every shareholder of a corporation shall be entitled to a certificate or certificates for the fully paid shares owned by him. Each certificate shall be signed by the president or a vice president of the corporation and by its treasurer, assistant treasurer, secretary or an assistant secretary, or its cashier or an assistant cashier in case of a bank, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of any such officers upon a certificate may be facsimiles or may be engraved or printed or omitted if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile or other signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

(c) Every share certificate issued by a corporation which is authorized to issue shares for more than one class shall state upon the face or back thereof, in full or in the form of a summary, all of the designations, preferences, limitations, and relative rights, so far as the same have at that time been fixed and determined, of the shares of each class, and of the variations therein between any series of any class, authorized to be issued; and to the extent that the same shall not at that time have been fixed and determined, such share certificate shall state the authority of the shareholders or of the board of directors, as the case may be, to fix and determine the same. In lieu of such statement, however, the certificate may state upon the face or back thereof the designation of each class of shares having preferences or special rights in the payment of dividends, in voting, upon liquidation or otherwise and such other information concerning such

shares as may be desired and shall state that the corporation will upon request furnish any shareholder, without charge, information as to the number of such shares authorized and outstanding and a copy of the portions of the charter or resolutions containing the designations, preferences, limitations and relative rights of all shares and any series thereof. When so requested, the corporation shall promptly so furnish the said information and copy.

(d) Each share certificate shall also state upon the face thereof:

- (1) That the corporation is organized under the laws of this State.
- (2) The name of the person to whom issued.
- (3) The number and class of shares, and the designation of the series, if any, which such certificate represents.
- (4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(e) The board of directors may authorize the issuance of a new share certificate in place of a certificate claimed to have been lost or destroyed without requiring a bond if in the judgment of the directors the circumstances justify omission of a bond, and they shall incur no liability for taking such action in good faith. (1955, c. 1371, s. 1.)

§ 55-58. Issuance of fractional share certificates or script.—A corporation may, but shall not be obligated to, issue a certificate for a fractional share, and, by action of its board of directors, may sell said fractional share in any fair and equitable manner and pay cash equal to the value of said fractional share to the person entitled thereto. In lieu of issuing a certificate for a fractional share, a corporation may issue script in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such script aggregating a full share. A certificate for a fractional share shall, but script shall not unless otherwise provided therein, entitle the holder to exercise proportionate voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such script to be issued subject to the express condition therein that, if not exchanged for certificates representing full shares before a specified date, the shares for which such script is exchangeable may thereupon be sold by the corporation to others, in such fair manner as may be provided therein, or may promptly be purchased by the corporation at the book value as determined upon the aforesaid date, and in either event the proceeds thereof paid to the holders of such script. (1955, c. 1371, s. 1; 1959, c. 1316, s. 20.)

Editor's Note. — The 1959 amendment rewrote the former first sentence to appear as the present first two sentences.

§ 55-59. Recognition of acts of record owners of shares or other securities.—(a) Except where the registration of shares or other securities has been changed by the corporation without surrender of the appropriate instrument and assignment (but regardless of the lack of competency or capacity of the assignor), a corporation may, subject to the further provisions of this section, treat as absolute owner of shares or other securities the person in whose name the shares or other securities stand of record on its books, just as if that person had full competency, capacity and authority to exercise all rights of ownership, irrespective of (1) any knowledge or notice to the contrary or (2) any description indicating a representative, pledge or other fiduciary relation or any reference to any other instrument or to the rights of any other person appearing upon its records or upon the share certificate or other security.

(b) Notwithstanding the provisions of subsection (a) of this section, a corporation shall treat a person as if he were a holder of record of its shares or other securities if that person shall furnish to the corporation proof of his appointment as:

(1) An executor under the last will of a deceased holder of record of its shares or other securities; or

(2) An administrator or collector of the estate of such holder; or

(3) A guardian, committee, trustee or conservator of the estate of a ward, incompetent, or missing person who is a holder of record of its shares or other securities; or

(4) A trustee in bankruptcy of such a holder; or

(5) A statutory or judicial receiver or liquidator of the estate or affairs of such a holder.

(c) When and as any fiduciary other than one described in subsection (b) of this section shall furnish proof satisfactory to the corporation of his authority to exercise any rights with respect to shares or other securities of the corporation which do not stand of record in his name, the corporation may treat such fiduciary as entitled to exercise such rights.

(d) When one or more fiduciaries shall claim to be entitled to the same rights with respect to the same shares or securities, the corporation may refuse to treat any of them as entitled to such rights unless and until proof, satisfactory to it, shall be furnished as to which of such fiduciaries is entitled to the rights in question.

(e) A corporation may treat as absolute owner of shares or other securities the survivor or survivors of persons to whom the same have been or may be issued with the words "as joint tenants," "as joint tenants with right of survivorship" or "as joint tenants with right of survivorship and not as tenants in common" following their names, upon the death of one or more of such persons.

(f) A corporation shall incur no liability to any person by the exercise of any privilege to which it is entitled by this section, nor shall any of its rights be thereby impaired nor shall any of its acts or any corporate meeting be thereby invalidated.

(g) The corporation shall not be obligated to inquire into the existence of, or see to the performance or observance of, any duty or obligation to a third person by a holder of record of any of its shares or other securities or by anyone who it treats, as permitted or required by this section, as the absolute owner thereof.

(h) When in accordance with any of the provisions of this section the corporation shall have treated a minor as entitled to exercise any rights of ownership in its shares or other securities, no subsequent disaffirmance or avoidance shall be effective as against the corporation.

(i) The rights, privileges and immunities afforded to the corporation in this section shall extend also to each transfer agent and to each registrar of its shares or other securities, to its voting inspectors and to all agents of the corporation concerned with the exercise of any rights by any of its shareholders or security holders.

(j) Nothing herein shall enlarge or affect the competency, authority, rights or obligations of any holder of record with respect to any other person than the corporation and its representatives described in the preceding subsection.

(k) Nothing herein shall relieve a corporation from any liability which it otherwise would have for breach by it of a contract to which it is a party or for violation of lawful provisions in its charter or bylaws or for participating in bad faith with a fiduciary in breach of trust.

(l) Nothing herein shall impair the duty of a corporation to abide by any valid judgment or decree or court order terminating or restricting the competency, capacity, authority or rights of ownership of any holder of record of shares or other securities or of a fiduciary thereof if and after a certified copy of that judgment, decree or court order is filed with the corporation or if that judgment,

decree or order is rendered in a proceeding to which the corporation is a party. (1955, c. 1371, s. 1; 1957, c. 1039.)

Cross Reference. — As to transfer of securities by fiduciaries, see §§ 32-14 to 32-24.

Editor's Note. — The 1957 amendment added the exception clause at the beginning of subsection (a).

§ 55-60. Closing of transfer books and fixing record date.—(a) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten full days immediately preceding the date of such meeting.

(b) In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten full days immediately preceding the date on which the particular action, requiring such determination of shareholders, is to be taken.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting or of shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof regardless of its length except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired. (1955, c. 1371, s. 1.)

§ 55-61. Meetings of shareholders.—(a) Meetings of shareholders may be held at such place, either within or without this State, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation or affect otherwise valid corporate acts. Upon such failure, whether from lack of quorum or otherwise, a substitute annual meeting may be called in accordance with the provisions of subsection (c) of this section and any meeting so called may be designated as the annual meeting, or the judge of the superior court of the county where the corporation has its registered office may, upon the application of any shareholder, order a substitute meeting to be held as and for the annual meeting, and may fix the date therefor, fix the record date for determination of the shareholders entitled to vote thereat, and cause notice of the meeting to be given to said shareholders, in such manner as he may order, at the expense of the corporation. Subject to the provisions of G. S. 55-73 (b), at such meeting the shares of stock there represented either in person or by proxy, shall constitute a quorum for the purpose of such meeting, notwithstanding the provisions of any other section of this chapter or any provision of the bylaws or charter to the contrary.

(c) Special meetings of the shareholders may be called by the president or the board of directors or such other officers or persons as may be provided in the charter or the bylaws or, at the written request of the holders of not less than

one-tenth of all the shares entitled to vote at the meeting, by any shareholder. When the meeting is thus called by a shareholder the call shall recite that it is made pursuant to the required request, but failure so to recite shall not invalidate an otherwise valid meeting.

(d) Any matter relating to the affairs of a corporation is a proper subject for action at an annual meeting of shareholders, and unless required by some provision of this chapter, the matter need not be specifically stated in the notice of the meeting. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 21, 22.)

Editor's Note. — The 1959 amendment the provisions of G. S. 55-73 (b).” It also added at the beginning of the last sentence rewrote subsection (d). of subsection (b) the words “Subject to

§ 55-62. Notice of shareholders' meetings.—(a) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the record of shareholders of the corporation, with postage thereon prepaid.

(b) If not less than seven days prior to the date of any forthcoming meeting of shareholders a shareholder mails to the shareholders entitled to vote at that meeting, or if not less than three days prior to said date he delivers to them personally, a written notice of his intention to bring before the meeting any specific proposal, that proposal shall be considered and acted upon at that meeting. The officers of the corporation shall under the penalties of G. S. 55-38, make immediately available to a shareholder seeking to avail himself of this subsection who so requests the voting list prescribed by G. S. 55-64.

(c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than 30 days in any one adjournment it is not necessary, unless the bylaws provide otherwise, to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which the adjournment is taken. (1955, c. 1371, s. 1.)

§ 55-63. Irregular meetings; action without meetings.—(a) The transactions of any meeting of shareholders, however called and with whatever notice, if any, are as valid as though had at a meeting duly held after regular call and notice, if:

(1) All the shareholders entitled to vote are present in person or by proxy and no objection to holding the meeting is made by any shareholder, or if

(2) A quorum is present either in person or by proxy and no objection to holding the meeting is made by anyone so present, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the action taken as shown by the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(b) The absence from the minutes of any indication that a shareholder objected to holding the meeting shall prima facie establish that no such objection was made.

(c) Any action which, under any provision of this chapter, may be taken at a meeting of the shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the persons

who would be entitled to vote upon such action at a meeting and filed with the secretary of the corporation as part of the corporate records. Such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any certificate or document filed with the Secretary of State under this chapter. (1955, c. 1371, s. 1.)

Editor's Note. — For article discussing this section, see 34 N. C. Law Rev. 432.

§ 55-64. **Voting list.**—(a) The officer or agent having charge of the record of shareholders of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The record of shareholders required to be kept by subsection (c) of G. S. 55-37 shall be prima facie evidence as to who are the shareholders entitled to examine such list or the record of shareholders or to vote at any meeting of shareholders.

(b) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(c) An officer or agent having charge of the record of shareholders who shall fail to prepare the list of shareholders, or keep the same on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage, provided such shareholder has made written request therefor at least twenty (20) days prior to such meeting.

(d) Notwithstanding the foregoing provisions of this section, it shall not be necessary to prepare or produce a list of shareholders in any case where the record of shareholders actually presented readily shows, in alphabetical order or by alphabetical index, and by classes or series if such there be, the names of the shareholders entitled to vote, with their address and the amount of their holdings. (1955, c. 1371, s. 1.)

§ 55-65. **Quorum of shareholders.**—(a) Unless otherwise provided in this chapter or in the charter or in bylaws adopted by the shareholders, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the outstanding shares entitled to vote.

(b) Shares shall not be counted to make up a quorum for a meeting if voting of them at the meeting has been enjoined or for any reason they cannot be lawfully voted.

(c) The shareholders at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(d) In the absence of a quorum at the opening of any meeting of shareholders, such meeting may be adjourned from time to time by the vote of a majority of the shares voting on the motion to adjourn, but no other business may be transacted until and unless a quorum is present. (1955, c. 1371, s. 1.)

§ 55-66. **Votes required.**—(a) A majority of the shares voted at a meeting of shareholders, duly held and at which a quorum is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting, unless more than a majority is required by this chapter or by the charter or by bylaws adopted by the shareholders.

(b) Except where other provisions of this chapter expressly make this subsection inapplicable, any corporation may by its charter require for any purpose the concurrence of a greater proportion of the votes of any class or classes of shares than required by this chapter for such purpose. (1955, c. 1371, s. 1.)

Cross Reference.—See G. S. 55-73 (b) and (c).

§ 55-67. Voting of shares.—(a) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as otherwise lawfully provided in the charter and except as otherwise prescribed by subsection (b) of this section. Except as otherwise stated in the charter or in the subscription agreement, shares shall be entitled to full vote notwithstanding that they have not been fully paid. No shares shall be voted upon which an installment of the purchase price due to the corporation is past due and unpaid.

(b) Shares of its own stock owned by a corporation, directly or indirectly, through a subsidiary corporation or otherwise, or held directly or indirectly in a fiduciary capacity by it or by a subsidiary corporation, shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares at a given time.

When shares of its own stock are held by a corporation directly or indirectly in a fiduciary capacity, said shares of stock may be voted by an independent and disinterested trustee appointed by the resident judge by order duly entered pursuant to a duly verified petition filed by the fiduciary and showing the necessity for voting such stock, and after proper notice to each of the beneficiaries. The resident judge shall not give continuing permission to the voting of such stock.

(c) Except where some inconsistent agreement exists for choosing directors, valid under the provisions of G. S. 55-73, at each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares standing of record in his name for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates. This right of cumulative voting shall not be exercised unless some shareholder or proxy holder announces in open meeting, before the voting for directors starts, his intention so to vote cumulatively; and if such announcement is made, the chair shall declare that all shares entitled to vote have the right to vote cumulatively and shall announce the number of shares present in person and by proxy, and shall thereupon grant a recess of not less than one hour nor more than four hours, as he shall determine, or of such other period of time as is unanimously then agreed upon. Stockholders in any corporation now in existence under a charter which does not grant the right of cumulative voting may not exercise this right of cumulative voting when at the time of election the stock transfer book of such corporation discloses, or it otherwise appears, that there is no stockholder who owns or controls more than one fourth of the voting stock of such corporation. (1955, c. 1371, s. 1; 1959, c. 768; c. 1316, s. 23.)

Editor's Note. — The first 1959 amendment added the second paragraph to subsection (b). The second 1959 amendment added the exception clause at the begin-

ning of subsection (c). It also inserted in the second sentence the words "and shall announce the number of shares present in person and by proxy."

§ 55-68. Proxies.—(a) Shares may be voted either in person or by one or more agents authorized by a written proxy executed by the shareholder or by his duly authorized attorney in fact. A telegram, cablegram, wireless message or photogram appearing to have been transmitted by a shareholder, or a photo-

graphic, photostatic or equivalent reproduction of a writing appointing one or more agents shall be deemed a written proxy within the meaning of this section.

(b) A proxy is not valid after the expiration of eleven months from the date of its execution unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy, whether or not coupled with an interest or otherwise irrevocable by law, shall be valid after ten years from the date of its execution, unless renewed or extended at any time for not more than ten years from the date of such renewal or extension.

(c) Any proxy duly executed is not revoked, and continues in full force and effect, until an instrument revoking it, or a duly executed proxy bearing a later date, is filed with the secretary of the corporation. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the corporation. Notwithstanding that a valid proxy is outstanding the powers of the proxy holder are suspended, except in the case of a valid proxy which is by law irrevocable and which states on its face that it is irrevocable, if the person executing the proxy is present at the meeting and elects to vote in person.

(d) If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting, or if only one is present then that one, may exercise all the powers conferred by the proxy; but if the proxy holders present at the meeting are divided as to the right and manner of voting in any particular case and there is no majority, the voting of said shares shall be prorated.

(e) Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. (1955, c. 1371, s. 1; 1959, c. 1316, s. 24.)

Editor's Note. — The 1959 amendment added at the end of subsection (b) the words "unless renewed or extended at any time for not more than ten years from the date of such renewal or extension."

§ 55-69. Voting by corporations, pledgees, life tenants, fiduciaries and co-owners.—(a) The president, any vice president, the secretary or the treasurer of a domestic corporation holding shares of another corporation, domestic or foreign, and any such officer or the cashier or any trust officer of a banking or trust corporation holding shares of another corporation, domestic or foreign, and any like officer of a foreign corporation holding shares of a domestic corporation, shall be deemed by the corporation issuing such shares to have authority to vote such shares and to execute proxies and written waivers and consents in relation thereto, whether such shares are held in a fiduciary capacity or otherwise, unless before a vote is taken or a waiver or consent is acted upon it is made to appear by a certified copy of the bylaws or resolution of the board of directors or executive committee of the corporation holding such shares that such authority does not exist or is vested in some other officer or person. In the absence of such certification or of an instrument executed in accordance with G. S. 55-36 (a), a person executing any such proxies, waivers or consents or presenting himself at a meeting as one of such officers of a domestic or foreign corporation shall for the purposes of this section be prima facie deemed to be duly elected, qualified and acting as such officer and to be fully authorized, and in case of conflicting representation, the corporate shareholder shall be deemed represented by its senior officer, in the order first stated in this section.

(b) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so long as they stand of record in his name.

(c) If shares stand of record in the name of a person as life tenant, the corporation may treat such person as entitled to vote or represent such shares as

if he were absolute owner, unless the record itself shows that he is not entitled to vote or unless G. S. 55-59 (1) is applicable.

(d) A fiduciary may, in person or by proxy, vote and execute waivers, consents or objections in respect of shares standing of record in his name, and a proxy executed by a fiduciary may confer general or discretionary power.

(e) Any fiduciary described in G. S. 55-59 (b), upon satisfactory proof of his appointment and qualification, and any other fiduciary upon satisfactory proof to the corporation of his actual authority to vote, may vote or execute waivers, consents or objections with respect to any shares of a corporation even if the shares stand of record in the name of the person for whom he is such fiduciary, but nothing herein is meant to curtail the privileges and immunities to which a corporation is entitled under G. S. 55-59.

(f) If shares stand of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or otherwise, or if two or more persons shall have the same fiduciary relationship respecting the same shares, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the corporation, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, his act binds all;

(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(3) If more than one vote in person or by proxy but the vote is evenly split on any particular matter, each faction is entitled to vote the shares in question proportionally.

If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

(g) The principle of the preceding subsection shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum. (1955, c. 1371, s. 1; 1959, c. 1316, s. 35.)

Editor's Note. — The 1959 amendment substituted the letter (l) for the Arabic number (1) in line four of subsection (c).

§ 55-70. Voting inspectors.—(a) Unless the charter or the bylaws otherwise provide, the board of directors in advance of any meeting of shareholders may appoint one or three voting inspectors to act at any such meeting or adjournment thereof, and in the absence of such appointment the officer or person acting as chairman of the meeting may, and shall if so requested by any shareholder or proxy holder, make such appointment. Any vacancy, whether from refusal to act or otherwise, may be filled by appointment of the chairman. If there are three inspectors, the decision or certificate of any two shall be effective as the act of all.

(b) The voting inspectors shall determine the number of shares outstanding, the voting power of each, the shares represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies, receive votes, ballots, assents or consents, hear and determine all challenges and questions in any way arising in connection with the vote, count and tabulate all votes, assents and consents, determine and announce the result, and do such acts as may be proper to conduct the election or vote with fairness to all shareholders.

(c) On request, the inspectors shall make a report in writing of any challenge, question or matter determined by them and make and execute a certificate of any fact found by them.

(d) The certificate of the inspectors shall be prima facie evidence of the facts stated therein and of the vote as certified by them, unless overruled by a

vote of a majority of the shares represented at the meeting, exclusive of the shares as to which there is a controversy. (1955, c. 1371, s. 1.)

§ 55-71. Proceeding to determine validity of election or appointment of directors or officers.—(a) Any shareholder or director of a domestic corporation may commence a summary proceeding in the superior court to determine any controversy with respect to any election or appointment of any director or officer of such corporation, and any shareholder or director of a foreign corporation authorized to transact business in this State shall have the same right with respect to any election held within this State.

(b) The proceeding shall be brought in the county in which the registered office of the corporation is located in this State.

(c) The proceeding shall be commenced by filing a verified petition in the superior court directed to the resident judge or any judge holding court in the district.

(d) The petition shall include:

(1) The name of the county and court in which the proceeding is brought, and the title of the proceeding, which shall include as respondents the corporation, the person or persons whose purported election or appointment is questioned, and any person other than the petitioner, whom the petitioner alleges to have been elected or appointed.

(2) A plain and concise statement of the facts constituting the grounds for contesting the validity of the election or appointment, and a prayer for the relief sought.

(e) Upon filing of the petition a notice to the respondents fixing a time and place for the hearing, which place may be anywhere in the district, shall be signed and issued by any petitioner or his counsel. No summons shall be necessary, but a copy of the notice and petition shall be served upon each respondent at least ten (10) days prior to the hearing. If it appears by the petition or separate affidavits to the satisfaction of the judge that the respondent to be served cannot, after due diligence, be found in the State, the judge shall, at the election of the petitioner, either:

(1) Make an order for service by publication and direct that one publication of a notice, which shall include the time and place of the hearing, and statement of the notice of the relief sought be made in a designated newspaper qualified for legal advertising pursuant to G. S. 1-597; or

(2) Make an order for service of the notice and a copy of the petition outside the State pursuant to G. S. 1-104.

In the cases in which service by publication is allowed, the notice and petition is deemed served at the expiration of seven (7) days from the date of the publication, and the party so served is then in court.

(f) Upon or after the filing of the petition and issuance of the notice the judge may, upon application, issue an interlocutory order restraining the directors or officers whose election or appointment is challenged from acting, and may make such other order as he may deem proper with respect to the directors or officers who shall hold the contested offices pending the determination of the matter in controversy.

(g) The petition shall be heard at the time and place fixed in the notice or at such later time or other place in the district as the judge may designate. The hearing may be in chambers and shall be heard upon affidavit or oral testimony or both, in the discretion of the judge.

(h) Upon completion of the hearing the judge, in determining the matter, may:

(1) Declare the result of the election or appointment in controversy;

(2) Order a new election or appointment and may include in such order provisions with respect to the directors or officers who shall hold the contested offices until a new election is held or appointment is made;

(3) Determine the respective voting rights of shareholders and of persons claiming to own shares;

(4) Direct such other relief as may be just and proper.

The order may be signed, either in or out of the district in which the hearing is held. (1955, c. 1371, s. 1.)

§ 55-72. Voting trust.—(a) Any number of shareholders of a corporation may, for any proper business purpose, create a voting trust, revocable or irrevocable, conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing an executed copy of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Trust certificates shall be issued by the trustees for the shares so transferred. The said copy of the voting trust agreement so deposited with the corporation shall be subject to the absolute right of examination by any shareholder of the corporation, in person or by agent, or by any holder of a beneficial interest in the voting trust, either in person or by agent, at any reasonable time.

(b) Such trustee or trustees shall also cause to be kept a record of trust certificate holders similar to the record of shareholders required to be kept by corporations under this chapter and such record shall be made available for inspection by trust certificate holders or by shareholders of the corporation who submit to the trustee or trustees satisfactory proof of their ownership of shares, all subject to the same terms, conditions, qualifications and penalties as are prescribed in G. S. 55-38 with respect to inspection by shareholders of the record of shareholders. The holder of a trust certificate shall be considered to be a shareholder of the shares represented by his trust certificate with respect to his right to inspect corporate books and records.

(c) Notwithstanding the provisions of this section or of G. S. 55-59, the holders of record of the voting trust certificates shall have the same rights as if they were shareholders of record with respect to voting upon any amendment of the charter, amendment of the bylaws, reduction of stated capital, sale of the entire assets, merger, consolidation or dissolution. For this purpose the trustees, upon timely and adequate information and requests from the corporation, shall prepare and furnish the corporation with a list of the trust certificate holders, which shall conform substantially to the requirements of this chapter relating to voting lists of shareholders, and the corporation shall send all proper notices, maintain and make available the said list for inspection and make all appropriate arrangements to permit the trust certificate holders to vote in person or by proxy at the meeting in question as if they were shareholders of record. (1955, c. 1371, s. 1.)

§ 55-73. Shareholders' agreements.—(a) An otherwise valid contract between two or more shareholders that the shares held by them shall be voted as a unit for the election of directors shall, if in writing and signed by the parties thereto, be valid and enforceable as between the parties thereto, but for not longer than ten years from the date of its execution. Nothing herein shall impair the privilege of the corporation to treat the shareholders of record as entitled to vote the shares standing in their names, as provided in G. S. 55-59 nor impair the power of a court to determine voting rights as provided in G. S. 55-71.

(b) Except in cases where the shares of the corporation are at the time or subsequently become generally traded in the markets maintained by securities dealers or brokers, no written agreement to which all of the shareholders have actually assented, whether embodied in the charter or bylaws or in any side agreement in writing and signed by all the parties thereto, and which relates to any phase of the affairs of the corporation, whether to the management of its

business or division of its profits or otherwise, shall be invalid as between the parties thereto, on the ground that it is an attempt by the parties thereto to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate only between partners. Notwithstanding any other provision of this section or of this chapter, the provisions of G. S. 55-59 (a) shall not apply to such an agreement. A transferee of shares covered by such agreement who acquires them with knowledge thereof is bound by its provisions.

(c) An agreement between all or less than all of the shareholders, whether solely between themselves or between one or more of them and a party who is not a shareholder, is not invalid, as between the parties thereto, on the ground that it so relates to the conduct of the affairs of the corporation as to interfere with the discretion of the board of directors, but the making of such an agreement shall impose upon the shareholders who are parties thereto the liability for managerial acts that is imposed by this chapter upon directors. (1955, c. 1371, s. 1.)

Editor's Note. — For article discussing this section, see 34 N. C. Law Rev. 432.

§ 55-74: Omitted.

ARTICLE 7.

Uniform Stock Transfer Act.

§ 55-75. **How title to certificates and shares may be transferred.**—Title to a certificate and to the shares represented thereby can be transferred only:

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or bylaws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (1941, c. 353, s. 1, 1955, c. 1371, s. 2.)

Gift of Stock.—Delivery of the certificate for corporate stock is essential to a valid gift. This was true at common law and is now expressly provided for by the Uniform Stock Transfer Act. *Scottish Bank v. Atkinson*, 245 N. C. 563, 96 S. E. (2d) 837 (1957).

The delivery by the owner of certificates of stock, duly indorsed, to the donees or their agent is sufficient delivery to con-

stitute a valid gift, both as to certificates issued prior to March 15, 1941, and as to certificates issued thereafter, and this notwithstanding any agreement between the corporation and its affiliate that it would not transfer any stock on its books unless the new owners were approved by the affiliate. *Scottish Bank v. Atkinson*, 245 N. C. 563, 96 S. E. (2d) 837 (1957).

§ 55-76. **Powers of those lacking full legal capacity and of fiduciaries not enlarged.**—Nothing in this article shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney. (1941, c. 353, s. 2; 1955, c. 1371, s. 2.)

§ 55-77. Corporation not forbidden to treat registered holder as owner.—Nothing in this article shall be construed as forbidding a corporation:

- (a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or
- (b) To hold liable for calls and assessments a person registered on its books as the owner of shares. (1941, c. 353, s. 3; 1955, c. 1371, s. 2.)

§ 55-78. Title derived from certificate extinguishes title derived from a separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. (1941, c. 353, s. 4; 1955, c. 1371, s. 2.)

§ 55-79. Delivery of certificate by one without authority or right of possession.—The delivery of a certificate to transfer title in accordance with the provisions of § 55-75, is effectual, except as provided in § 55-81, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (1941, c. 353, s. 5; 1955, c. 1371, s. 2.)

§ 55-80. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in § 55-81, though the indorser or transferor:

- (a) Was induced by fraud, duress or mistake, to make the indorsement or delivery, or
- (b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or
- (c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or
- (d) Has received no consideration. (1941, c. 353, s. 6; 1955, c. 1371, s. 2.)

§ 55-81. Rescission of transfer.—If the indorsement or delivery of a certificate

- (a) Was procured by fraud or duress, or
- (b) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

- (c) Without authority from the owner, or
- (d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless,
 - (1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or
 - (2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. (1941, c. 353, s. 7; 1955, c. 1371, s. 2.)

§ 55-82. **Rescission does not invalidate subsequent transfer by transferee in possession.**—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (1941, c. 353, s. 8; 1955, c. 1371, s. 2.)

§ 55-83. **Delivery of unindorsed certificate imposes obligation to indorse.**—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (1941, c. 353, s. 9; 1955, c. 1371, s. 2.)

§ 55-84. **Ineffectual attempt to transfer amounts to a promise to transfer.**—An attempted transfer of title to a certificate or to shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (1941, c. 353, s. 10; 1955, c. 1371, s. 2.)

§ 55-85. **Warranties on sale of certificate.**—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appear, warrants:

- (a) That the certificate is genuine.
- (b) That he has a legal right to transfer it, and
- (c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (1941, c. 353, s. 11; 1955, c. 1371, s. 2.)

§ 55-86. **No warranty implied' from accepting payment of a debt.**—A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (1941, c. 353, s. 12; 1955, c. 1371, s. 2.)

§ 55-87. **No attachment or levy upon shares unless certificate surrendered or transfer enjoined.**—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (1941, c. 353, s. 13; 1955, c. 1371, s. 2.)

§ 55-88. **Creditor's remedies to reach certificate.**—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate

or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (1941, c. 353, s. 14; 1955, c. 1371, s. 2.)

§ 55-89. No lien or restriction unless indicated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any bylaws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (1941, c. 353, s. 15; 1955, c. 1371, s. 2.)

§ 55-90. Alteration of certificate does not divest title to shares.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (1941, c. 353, s. 16; 1955, c. 1371, s. 2.)

§ 55-91. Lost or destroyed certificate.—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issuance of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate: Provided, nothing in this section shall prevent the issuance of a new stock certificate in the place of a lost or destroyed certificate in accordance with the provisions of § 55-57 (e). (1941, c. 353, s. 17; 1955, c. 1371, s. 2.)

§ 55-92. Rules for cases not provided for by this article.—In any case not provided for by this article, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (1941, c. 353, s. 18; 1955, c. 1371, s. 2.)

§ 55-93. Interpretation of article.—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1941, c. 353, s. 19; 1955, c. 1371, s. 2.)

§ 55-94. Definition of indorsement.—A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. (1941, c. 353, s. 20; 1955, c. 1371, s. 2.)

§ 55-95. Definition of person appearing to be the owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person.

and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. (1941, c. 353, s. 21; 1955, c. 1371, s. 2.)

§ 55-96. Other definitions.—(1) In this article, unless the context or subject matter otherwise requires—

“Certificate” means a certificate of stock in a corporation organized under the laws of this State or of another state whose laws are consistent with this article.

“Delivery” means voluntary transfer of possession from one person to another.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes a mortgagee and pledgee.

“Shares” means a share or shares of stock in a corporation organized under the laws of this State or of another state whose laws are consistent with this article.

“State” includes state, territory, district and insular possession of the United States.

“Transfer” means transfer of legal title.

“Title” means legal title and does not include a merely equitable or beneficial ownership or interest.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not. (1941, c. 353, s. 22; 1955, c. 1371, s. 2.)

§ 55-97. Article does not apply to existing certificates.—The provisions of this article apply only to certificates issued after March 15, 1941. (1941, c. 353, s. 23; 1955, c. 1371, s. 2.)

Applied in *Scottish Bank v. Atkinson*, 245 N. C. 563, 96 S. E. (2d) 837 (1957).

§ 55-98. Name of article.—This article may be cited as the Uniform Stock Transfer Act. (1941, c. 353, s. 26; 1955, c. 1371, s. 2.)

ARTICLE 8.

Fundamental Changes.

§ 55-99. Right to amend charter.—(a) Subject to the limitations set forth in G. S. 55-100, 55-101 and 55-103, a corporation may amend its charter at any time in any respect that may be desired, but no amendment shall contain provisions which would be forbidden in original articles of incorporation. No inference shall be drawn from the broad power of amendment conferred by this chapter that the exercise of that power in a particular case is fair and equitable.

(b) In particular, and without limitation upon the foregoing general power of amendment, a corporation may amend its charter from time to time, so as:

(1) To change its corporate name.

(2) To change its period of duration.

(3) To change, enlarge or diminish its corporate purposes.

(4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

(5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(6) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

(7) To change the designation of all or any part of its shares, whether issued or unissued, and to change any rights, preferences or limitations in respect of all or any part of its shares, whether issued or unissued.

(8) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(9) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(11) To cancel or otherwise affect the right of the holders of the shares of any class with respect to accrued dividends or dividend credits as defined in this chapter.

(12) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(13) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(14) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(15) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(16) To limit, deny or grant to shareholders of any class the pre-emptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

(17) To change the corporation into a nonprofit corporation or a cooperative organization.

(c) Any amendment of the charter made pursuant to this chapter extends to all rights theretofore existing under the charter as fully as if this chapter, including such future changes therein as may be made, had been in effect at the time of the filing of the original articles of incorporation. (1955, c. 1371, s. 1; 1959, c. 1316, s. 29.)

Editor's Note. — The 1959 amendment added subdivision (17) to subsection (b).

§ 55-100. Procedure to amend charter.—(a) Before the issuance of any shares, including acceptance of any subscriptions for shares, amendments to the charter may be made, either by the directors named therein or by the incorporators, by preparing and delivering to the Secretary of State articles of amendment complying with the provisions of G. S. 55-103. If any such amendment makes a material change, nonassenting subscribers for shares are entitled to rescind their subscriptions.

(b) After the issuance of any shares, including acceptance of any subscription for shares, amendments to the charter shall be made in the following manner:

(1) The board of directors or the executive committee shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. In lieu thereof, a resolution setting forth a proposed amendment and requesting its submission to such a meeting may be approved in writing by such shareholders as would be entitled to a call of a shareholders' meeting pursuant to the provisions of G. S. 55-61 (c).

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given in or with the notice of the meeting to each shareholder of record entitled to vote thereon. If the amendment would give rise to a dissenter's right of payment for his shares under this chapter, such notice shall contain a statement, displayed with a reasonable prominence, to the effect that dissenting shareholders are entitled, upon compliance with G. S. 55-113 including the twenty-day notice requirement to be paid the fair value of their shares as therein provided, but failure of the notice to contain such a statement shall not invalidate the amendment.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of all the outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of all the outstanding shares of each class of shares entitled to vote thereon as a class and a majority of all the other outstanding shares entitled to vote thereon. The charter may require more than the majority vote herein prescribed, either for all amendments or for a specific amendment, and any such requirement can itself be changed only by the greater vote so prescribed.

(4) There shall be prepared and delivered to the Secretary of State articles of amendment complying with the provisions of G. S. 55-103.

(c) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

(d) At any time before delivery of the articles of amendment to the Secretary of State the board of directors may, in their discretion, abandon an amendment if so empowered in the resolutions of the shareholders adopting the amendment. (1955, c. 1371, s. 1; 1959, c. 1316, s. 25.)

Editor's Note. — The 1959 amendment added the second sentence to subdivision (1) of subsection (b).

§ 55-101. Class voting and objecting shareholders' rights on amendments.—(a) The holders of outstanding shares of a class shall be entitled as a class to vote, whether or not otherwise entitled to vote by the provisions of the charter, upon a proposed amendment which would:

(1) Cancel or otherwise affect their rights to accrued dividends or dividend credits as defined in this chapter,

(2) Reduce the dividend preference thereof,

(3) Make noncumulative, in whole or in part, the dividends thereof which had theretofore been cumulative,

(4) Reduce the redemption price thereof or make them subject to redemption when they are not otherwise redeemable,

(5) Reduce any preferential amount payable thereon upon voluntary or involuntary liquidation,

(6) Eliminate, diminish, or alter adversely conversion rights pertaining thereto,

(7) Eliminate, diminish or alter adversely voting rights pertaining thereto,

either directly or by increasing the relative voting rights per share of the shares of another class,

(8) Diminish or alter adversely any options or rights of the holders thereof to purchase other shares of the corporation,

(9) Change adversely any sinking fund provision relating thereto.

(10) Rearrange the preferences of such outstanding shares so as to make them subject to the preferences of other then authorized shares, issued or unissued, as to distribution by way of dividends or otherwise,

(11) Increase the rights and preferences of any other class of shares having equal or prior or superior rights or preferences, or

(12) Authorize a new class of shares having prior or superior rights or preferences.

(13) Change the corporation into a nonprofit corporation or a cooperative organization.

(b) Any objecting shareholder shall have the right to be paid the value of his shares in accordance with the provisions of G. S. 55-113, if an amendment of the charter would change the corporation into a nonprofit corporation or cooperative organization; and an objecting holder of shares entitled to any preference as to dividends or liquidation shall have the right to be paid the value of his shares in accordance with the provisions of G. S. 55-113 if:

(1) An amendment of the charter would effect the changes in his shares described in paragraphs (1), (2), (3), (4), or (5) of subsection (a) of this section or would to his prejudice create or increase any priority, dividend preference, cumulative dividend right, redemption price or liquidation preference of any other then issued shares, or

(2) Pursuant to a plan of recapitalization involving an offer to shareholders of his class to exchange their shares, on which there are accrued dividends or dividend credits as defined in this chapter, for a new class of shares having preferences as to dividends or liquidation prior to shares of his class, a currently adopted amendment would authorize the corporation to issue shares of such new class, and such plan of recapitalization if consummated. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 30, 31.)

Editor's Note. — The 1959 amendment added subdivision (13) to subsection (a). It also added at the beginning of the introductory paragraph of subsection (b) the words "Any objecting shareholder shall have the right to be paid the value

of his shares in accordance with the provisions of G. S. 55-113, if an amendment of the charter would change the corporation into a nonprofit corporation or cooperative organization; and."

§ 55-102. Offer of exchange of securities for preferred shares; rights of objecting shareholders.—(a) If an offer is made by the corporation to holders of any class of its shares having accrued dividends or dividend credits, as defined in this chapter, to exchange said shares for securities which would be entitled to preference in the receipt of any periodical payment or dividend over said shares, and if the authority of the corporation to issue such securities would require no amendment of the charter, and if the offer is accepted by any shareholder, then any holder of said shares who objects to the terms of the offer shall have the right to be paid the value of his shares in accordance with the provisions of G. S. 55-113.

(b) All such offers shall be in writing and shall contain the statement, displayed with reasonable prominence, to the effect that shareholders objecting to its terms are entitled, upon compliance with the provisions of G. S. 55-113, including the twenty-day notice requirement, to be paid the fair value of their shares

as therein provided, but failure to set forth such a statement shall not invalidate any consummated exchanges. (1955, c. 1371, s. 1.)

Cross References. — See G. S. 55-100 to-dissenter rights on amendments, mergers, consolidations. For effect of failure so (b) (2) and 55-108 (a) for the correspond- to call attention, see G. S. 55-113 (f).
ing requirement calling attention to cash-

§ 55-103. **Articles of amendment.** — (a) The articles of amendment, other than for an amendment under subsection (b) of this section, shall be executed by the corporation and filed, as provided in G. S. 55-4 and shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted. And if the amendment changes the corporation into a nonprofit corporation or a cooperative organization, there shall be included a statement of purpose appropriate for a nonprofit corporation or a cooperative organization as the case may be.

(3) The date of the adoption of the amendment by the shareholders.

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(7) If such amendment effects a change in the amount of stated capital of the corporation, then a statement of the manner in which the same is effected and a statement expressed in dollars, of the amount of stated capital as changed by such amendment. If the amendment would reduce the stated capital of the corporation, the articles may be entitled "Articles of Amendment and Reduction of Capital."

(8) Either, (a) a recital of the statement, if any, contained in the notice to shareholders in forming them, as and if required by G. S. 55-100 (b) (2), of dissenter's rights to payment, or (b) a brief explanation of why the amendment does not give rise to dissenter's rights under G. S. 55-101 (b).

(b) If the amendment is made by the directors or incorporators as permitted by subsection (a) of G. S. 55-100, the articles of amendment shall be executed by the directors or incorporators, as the case may be, and be filed, as provided in G. S. 55-4, and shall set forth the name of the corporation, the amendment so adopted, and the statement that the amendment is made by the directors or incorporators before the issuance of any shares. (1955, c. 1371, s. 1; 1959, c. 1316, s. 32.)

Editor's Note. — The 1959 amendment added the second sentence to subdivision (2) of subsection (a).

§ 55-104. **Effect of amendment.**—No amendment shall affect any existing cause of action in favor of or against such corporation, or its officers or directors, or any pending suit to which such corporation or its officers or directors shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (1955, c. 1371, s. 1.)

§ 55-105. **Restated charter.**—(a) At any time after its charter has been amended a corporation may by action of its board of directors, without necessity

of vote of the shareholders, cause to be prepared a document entitled "Restated Charter," which shall integrate into one document its original articles of incorporation (or articles of consolidation) and all amendments thereto, including those effected by articles of merger, and any statement of classification of shares filed pursuant to G. S. 55-42 (e), except that:

(1) In lieu of the statement in the articles of incorporation regarding the minimum consideration to be received for its shares before commencing business, the restated charter shall set forth the then stated capital of the corporation;

(2) In lieu of the address of the initial registered office and the name of the initial registered agent, the restated charter shall state the address of the then registered office and the name of its then registered agent.

(b) The restated charter shall also set forth that it purports merely to restate but not to change the provisions of the original articles of incorporation as supplemented and amended and that there is no discrepancy, other than as expressly permitted by this section, between the said provisions and the provisions of the restated charter.

(c) The restated charter shall be executed by the corporation and be filed as provided in G. S. 55-4.

(d) A copy of the restated charter certified by the Secretary of State shall be presumed, until otherwise shown, to be the full and true charter of the corporation as in effect on the date when so certified.

(e) A corporation may also integrate its articles of incorporation and all amendments thereto by the procedure provided in this chapter for amending the charter. (1955, c. 1371, s. 1.)

§ 55-106. Procedure for merger.—(a) One or more domestic corporations may merge into another corporation pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The name which the surviving corporation is to have, which name may be that of any of the corporations involved in the merger or any other available name permitted by this chapter.

(3) The terms and conditions of the proposed merger.

(4) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation

(5) A statement of any changes in the charter of the surviving corporation to be effected by such merger.

(6) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1955, c. 1371, s. 1.)

Editor's Note.—This section must be (shareholders' approval) and G. S. 55-109 considered in the light of G. S. 55-108 (filing of "articles of merger").

§ 55-107. Procedure for consolidation.—(a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation. The name of the new corporation may be that of any of the corporations involved in the consolidation or any other available name permitted by this chapter.

(2) The terms and conditions of the proposed consolidation.

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter, except the names and addresses of the incorporators.

(5) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1955, c. 1371, s. 1.)

§ 55-108. Approval of merger or consolidation by shareholders.—

(a) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record, not less than twenty days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and shall state this as a purpose of the meeting, whether the meeting be annual or a special meeting. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. Such notice shall contain a statement, displayed with reasonable prominence, to the effect that dissenting shareholders are entitled, upon compliance with G. S. 55-113, including the twenty-day notice requirement, to be paid the fair value of their shares as provided in that section, but failure of the notice to contain such a statement shall not invalidate the merger or consolidation.

(b) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share otherwise has voting rights. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such corporation, unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class thereon and a majority of all the other outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to the charter, would entitle such class of shares to vote as a class; and if the plan of merger or consolidation contains any provisions which, if contained in a proposed amendment to the charter of a constituent corporation, would require by the express provisions of said charter a greater vote of its shareholders than is herein otherwise required for approval of a merger or consolidation, the said plan requires the approval of the thus prescribed greater vote of the shareholders of that corporation.

(c) After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (1955, c. 1371, s. 1.)

§ 55-108.1. Merger of wholly-owned subsidiary into parent.—Unless otherwise provided in the charter or bylaws, no approval by shareholders of the surviving corporation shall be required for a merger if at the time of approval of the plan of merger by the board of directors of each of the corporations, domestic or foreign, who are parties thereto, the surviving corporation is the owner of all the outstanding shares of the other corporation, or corporations, domestic or foreign, who are parties to the merger, and the plan of merger does

not provide for any changes in the charter of, or the issuance of any shares by, the surviving corporation; and in such case the articles of merger shall contain statements showing compliance with the conditions of this section, and, in lieu of statements relating to the vote of shareholders of the surviving corporation, need only state the approval by its board of directors. (1955, c. 1371, s. 1; 1959, c. 1316, s. 37.)

Editor's Note. — The 1959 amendment between the words "surviving" and "corporation." deleted the word "domestic" in line three

§ 55-109. Articles of merger or of consolidation.—(a) After the approval by the shareholders as required by G. S. 55-108, articles of merger or of consolidation shall be executed by each corporation and be filed as provided in G. S. 55-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the clerk of the superior court of each county wherein the constituent corporations have their registered offices.

(b) The articles of merger or of consolidation shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(c) The time when the merger or consolidation is effected is determined by the provisions of G. S. 55-4. (1955, c. 1371, s. 1.)

§ 55-110. Effect of merger or consolidation.—(a) When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(b) Such surviving or new corporation shall thereupon and thereafter, to the extent consistent with its charter as established or changed by the merger or consolidation, possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(c) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities, obligations and penalties of each of the corporations so merged or consolidated; and any claim existing or action or proceeding, civil or criminal, pending by or against any such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place; and any judgment rendered against any of the merged or consolidated corporations may be enforced against the surviving

or new corporation. Neither the rights of creditors nor any liens upon the property of any merged or consolidated corporations shall be impaired by the merger or consolidation.

(d) In the case of a merger, the charter of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its charter are stated in the plan of merger. In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new corporation. (1955, c. 1371, s. 1.)

A merger does not create new or additional rights. The surviving corporation is vested with all of the rights which each party to the merger could exercise but only those rights. *Good Will Distributors (Northern), Inc. v. Shaw*, 247 N. C. 157, 100 S. E. (2d) 334 (1957), construing former § 55-166.

§ 55-111. **Merger or consolidation of domestic and foreign corporations.**—(a) One or more foreign corporations and one or more domestic corporations may be merged or consolidated into a corporation of this State or of another state if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized.

(b) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(c) If the surviving or new corporation, as the case may be, is a corporation of any state other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this State; and if after the merger or consolidation it transacts no business in this State the courts of this State shall have jurisdiction in actions to enforce any obligation of any constituent corporation of this State and process therein may be served as provided in G. S. 55-145.

(d) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be a corporation of this State. If the surviving or new corporation is to be a corporation of any state other than this State, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

(e) If the new or surviving corporation is not a corporation in this State, then notwithstanding anything in the foregoing provisions of this section:

(1) The rights of any holder of shares in any constituent corporation that is a corporation of this State to receive notice of dissenters' rights, to file his dissent, upon dissent to demand and receive payment of the fair value of his shares or to avail himself of any equitable relief to which he would be entitled if the surviving or new corporation were a corporation of this State shall not be impaired, and

(2) The courts of this State shall have jurisdiction in actions to enforce the aforesaid rights against the surviving or new corporation regardless of whether or not said corporation is otherwise subject to the jurisdiction of the courts of this State and in any such action service of process may be made in the manner provided in this chapter that would be applicable if said corporation were transacting business in this State. (1955, c. 1371, s. 1.)

§ 55-112. **Sale, lease, exchange and mortgage of assets.** — (a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without authorization of the shareholders, unless otherwise provided in the charter or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the charter or in the bylaws adopted by the

shareholders, a sale, lease or exchange of all or substantially all the property and assets of a corporation, not made for shares of the purchasing corporation, foreign or domestic, whether in a single transaction or a series of transactions, may be made by the board of directors without authorization from the shareholders if:

(1) In the judgment of the board of directors the corporation is in a failing condition and a sale for cash or its equivalent is deemed by them advisable in meeting the liabilities of the corporation, or

(2) The corporation was incorporated for the purpose of liquidating such property and assets, or

(3) The sale, lease or exchange is not made to terminate or dispose of the business in which the corporation was organized to engage, but merely as a transaction or one of a series of transactions, whether usual or unusual, to further the said business.

(c) Any other sale (whether for cash or for securities of the purchasing corporation or otherwise), or any other lease or exchange of all or substantially all the property of a corporation requires approval of the shareholders in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease or exchange and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the proposed sale, lease or exchange. If the sale, lease or exchange would give rise to a dissenter's right of payment for his shares under this chapter, such notice shall contain a statement, displayed with reasonable prominence, to the effect that the dissenting shareholders are entitled, upon compliance with G. S. 55-113, including the twenty-day notice requirement, to be paid the fair value of their shares as therein provided, but failure of the notice to contain such a statement shall not invalidate the sale, lease or exchange.

(3) At such meeting the shareholders may authorize such sale, lease or exchange and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not otherwise entitled to vote. Such authorization shall require the affirmative vote of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event such authorization shall require the affirmative vote of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon and two-thirds of all other outstanding shares. Any class of shares shall be entitled to vote as a class if the sale, lease or exchange is for securities of another corporation, foreign or domestic, and such sale, lease or exchange is part of a plan of distribution of such securities that would effectuate such changes in that class of shares as would entitle those shares to vote as a class if the changes were contained in a proposed amendment to the charter.

(d) The board of directors may, if so empowered by such authorization of the shareholders, abandon such sale, lease or exchange, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. (1955, c. 1371, s. 1.)

§ 55-113. Rights of objecting shareholders upon fundamental changes and certain exchanges of shares.—(a) As used in this section:

(1) "Sale of assets for shares" means a sale, exchange or other disposition of all, or substantially all, the property and assets of a corporation, if made for, or substantially for, shares of another corporation, foreign or domestic.

(2) "Corporation" includes, if the context so indicates, the successor corporation which acquires the property of the predecessor corporation upon merger, consolidation or sale of assets for shares.

(3) With respect to offers of exchange of shares which entitle the preferred shareholders designated in G. S. 55-102 to rights under this section, the term "effective date of the exchange" means the date on which the corporation first actually consummated such an exchange of shares or, in case it reserved the right to postpone the operation or effectiveness of all acceptances of its offer of exchange, the date on which it declared the acceptance operative or effective.

(b) Any shareholder designated in G. S. 55-101 (b) as having rights under this section in connection with amendment of the charter or designated in G. S. 55-119 (b) as having rights under this section in connection with dissolution and liquidation of assets in kind, or any shareholder of a corporation effecting a merger, consolidation or sale of assets for shares may give to the corporation, prior to or at the meeting of the shareholders to which the proposal of amendment, dissolution, merger, consolidation or sale of assets for shares is submitted to a vote, written notice that he objects to such proposal. Within twenty days after the date on which the vote was taken, such shareholder may, unless he voted in person or by proxy in favor of the proposal, make written demand on the corporation for payment of the fair value of his shares. Such demand shall state the number and class of shares owned by him. In addition to any other right he may have in law or equity, a shareholder giving such notice shall be entitled, if and when the amendment, dissolution, merger, consolidation or sale of assets for shares is effected, to be paid by the corporation the fair value of his shares, as of the day prior to the date on which the vote was taken, subject only to the surrender by him of the certificate representing his shares.

(c) Any holder of preferred shares designated in G. S. 55-102 as having a right to payment for his shares in connection with an offer of exchange of securities may, within twenty days after the date when the offer was mailed or otherwise reasonably dispatched to him, give to the corporation written notice that he objects to the terms of said offer of exchange and that he demands payment for his shares. Such notice shall state the number and class of shares owned by him. Twenty days after the effective date of the exchange or twenty days after the date of mailing or otherwise reasonably dispatching such notice, whichever date is later, a shareholder giving such notice shall, in addition to any other right he may have in law or equity, be entitled to be paid by the corporation the fair value of his shares as of the day preceding the mailing or otherwise reasonably dispatching of the notice, unless all exchange or agreements to exchange theretofore made shall have been rescinded within the applicable twenty-day period above mentioned, subject only to the surrender by him of his certificate representing his shares.

(d) If within thirty days after the date upon which the objecting shareholder becomes entitled to payment of his shares under subsections (b) and (c) of this section the value of the shares is agreed upon between the shareholder and the corporation, payment therefor shall be made within sixty days after the agreement, upon surrender of the certificate representing the shares, whereupon the shareholder shall cease to have any interest in such shares or in the corporation.

(e) If within the thirty-day period mentioned in subsection (d) of this section the shareholder and the corporation do not agree as to the value of the shares the shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in the superior court of the county of the registered office of the corporation asking for the appointment by the clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the corporation at least ten days prior to the hearing of the petition by the

court. The award of the appraisers, or a majority of them, if no exceptions be filed thereto within ten days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the shareholder upon depositing the proper share certificates in court, shall be entitled to judgment against the corporation for the appraised value thereof as of the date prescribed in this section, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within ten days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in chapter 40 for the trial of cases under the eminent domain law of this State, and with the same right of appeal to the Supreme Court as is permitted in said chapter. The court shall assess the cost of said proceedings as it shall deem equitable. The fair value of any shares entitled to preference on liquidation shall in no event be found to be less than two-thirds of the amount of the preference to which said shares would have been entitled on a voluntary liquidation on the date herein prescribed for determining fair value if under the corporate change giving rise to the preferred shareholder's rights of payment any shares junior thereto retain a participation in the corporation without payment for such retention, or if the participation received by them upon any payment for such retention is found to exceed in value the amount of the said payment. Upon payment of the judgment the shareholder shall cease to have any interest in the shares or in the corporation and the corporation shall be entitled to have said share certificates surrendered to it by the clerk of court for cancellation. Unless the shareholder shall file such petition within the time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder but in that event nothing herein shall impair his status as shareholder.

(f) If in the notices sent to shareholders in connection with the meeting to vote upon a proposed amendment of the charter, dissolution, merger, consolidation or sale of assets for shares or if in the offer of exchange of securities described in G. S. 55-102 no reference is made as required by this chapter to the provisions of this section, any shareholder entitled to but who did not avail himself of the provisions of this section, unless he voted for the proposal or accepted the offer of exchange of securities, is entitled, if he so demands in writing within one year after the effective date of the amendment, dissolution, merger, consolidation, sale of assets for shares or exchange of securities in question, to recover from the corporation any damage which he suffered from failure of the corporation to make the aforesaid reference.

(g) The liability to pay for shares or to pay damages imposed by this section on a corporation extends to the successor corporation which acquires the assets of the predecessor, whether by merger, consolidation or sale of assets for shares.

(h) Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares.

(i) The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporation or corporations, domestic or foreign, participating in the merger and if such merger makes no changes in the relative rights of the shareholders of the surviving corporation. (1955, c. 1371, s. 1.)

Editor's Note. — For note as to bad faith of the majority in close corporations, see 35 N. C. Law Rev. 271.

ARTICLE 9.

Dissolution and Liquidation.

§ 55-114. **Dissolution and its effect.** — (a) A corporation may be dissolved in any of the following ways:

(1) Automatically by expiration of any period of duration to which the corporation is limited by its charter;

(2) By filing in the office of the Secretary of State articles of dissolution in voluntary proceedings for dissolution as prescribed in G. S. 55-116, 55-117 and 55-118;

(3) By entry of a decree of dissolution by the superior court in involuntary proceedings for dissolution by the Attorney General, as prescribed in G. S. 55-122, or in proceedings to liquidate the assets and business of the corporation, as described in G. S. 55-125, or in proceedings under G. S. 55-135;

(4) By suspension of its charter under the provisions of G. S. 105-230 when the time within which the corporation's rights might be restored under G. S. 105-232 has expired; however, the provisions for liquidation of corporate assets in such cases shall be those provided in G. S. 105-232 instead of those provided in this chapter.

(b) A dissolved corporation, however dissolved, nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and distribute its assets, but not for the purpose of continuing business except so far as necessary for winding up its affairs or except where G. S. 55-115 applies. Title to property of a dissolved corporation does not by reason of dissolution vest in its shareholders.

(c) After the end of the tax year in which dissolution occurs a dissolved corporation is not subject to the annual franchise tax unless it engages in business activities not reasonably incidental to winding up its affairs.

(d) The dissolution of a corporation shall not take away or impair any remedy available to or against such corporation for any right or claim, not covered by subsection (f) of this section, existing or for any liability incurred prior to such dissolution if the action or proceeding is commenced within two years after the filing of a certificate of completed liquidation, and the plaintiff or petitioner must allege and prove that the action or proceeding is commenced within such period. Nothing herein shall extend any applicable period of limitation. No action or proceeding, civil or criminal, to which a corporation is a party shall abate by reason of such dissolution or filing. Any action or proceeding by or against a dissolved corporation may be prosecuted or defended by the corporation in its corporate name, and such use of the corporate name is also available to a shareholder prosecuting or defending in a derivative capacity on behalf of a dissolved corporation.

(e) A corporation dissolved under this or any prior act shall have the power to maintain, or to re-establish after failure to maintain, a board of directors and officers to wind up its affairs, and its shareholders, directors and officers shall have the power to take corporate action appropriate to that end.

(f) Even after the filing of a certificate of completed liquidation or the entry of a court order declaring liquidation completed, title to any corporate assets inadvertently omitted from a liquidation purportedly completed shall remain in the corporation and, for the purpose of administering or liquidating any such assets or determining the corporation's interest therein, the dissolved corporation shall have power to sue and defend in legal actions or proceedings and fully to act in its corporate name through either its board of directors and officers maintained or re-established as permitted in this section or through a majority of the last board

of directors then living, however reduced in numbers, acting either directly themselves or through the last officers of the corporation. (1955, c. 1371, s. 1.)

Temporary Suspension of Charter.—Allegations in the complaint to the effect that plaintiff corporation's charter was temporarily suspended under § 105-230 less than a year prior to the institution of

the action do not disclose that the corporation did not have legal capacity to institute the action. *Mica Industries, Inc. v. Penland*, 249 N. C. 602, 107 S. E. (2d) 120 (1959).

§ 55-115. Extension of duration after expiration.—(a) If a corporation has continued to conduct its business after the expiration of its charter, it may at any time amend its charter so as to extend or perpetuate its period of existence. Expiration of a charter does not of itself create any vested right on the part of any shareholder or creditor to prevent such charter amendment.

(b) No acts or contracts of a corporation during the period within which it could have extended its existence as permitted in this section, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of the charter. (1955, c. 1371, s. 1.)

§ 55-116. Voluntary dissolution by directors. — (a) A corporation may be voluntarily dissolved by majority vote of the directors then in office in the following cases:

(1) When the corporation has not commenced business and has not received any payment on any subscription to its shares.

(2) When a corporation has been adjudged to be bankrupt.

(3) When a corporation has made a general assignment for the benefit of creditors.

(4) By leave of court, when a receiver has been appointed in any suit in which the affairs of the corporation are to be wound up.

(5) When substantially all of the assets have been sold at judicial sale or have been sold for the purpose of terminating the business of the corporation.

(b) To effectuate dissolution under this section, articles of dissolution shall be executed by a majority of the directors then in office and shall be filed, in accordance with the provisions of G. S. 55-4, setting forth:

(1) The name of the corporation.

(2) The names and respective addresses of its officers, if any.

(3) The names and respective addresses of its directors.

(4) A statement showing one or more of the grounds of voluntary dissolution mentioned in paragraphs (1) to (5), inclusive, of subsection (a) of this section.

(5) That a majority of the directors have determined by majority vote to dissolve the corporation. (1955, c. 1371, s. 1.)

§ 55-117. Voluntary dissolution by written consent of shareholders—A corporation may be voluntarily dissolved pursuant to the written consent of all of its shareholders. No meeting or notice of meeting is necessary. To effectuate such dissolution, articles of dissolution shall be executed by the corporation and shall be filed, in accordance with the provisions of G. S. 55-4, setting forth:

(1) The name of the corporation.

(2) The names and respective addresses of its officers.

(3) The names and respective addresses of its directors.

(4) A statement that written consent to the dissolution of the corporation has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized, which statement shall have attached thereto such written consent duly signed. (1955, c. 1371, s. 1.)

§ 55-118. Voluntary dissolution by action of directors and shareholders.—(a) A corporation may be voluntarily dissolved by action of the directors and shareholders in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record within the time and in the manner provided in this chapter for giving of notice of meeting of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes is to consider the advisability of dissolving the corporation. If the proposal to dissolve contemplates a plan of liquidation whereby substantially all the assets distributable to the shareholders are to be conveyed, transferred, or assigned to them collectively as co-owners, the notice shall so inform the shareholders and shall contain a statement displayed with reasonable prominence to the effect that dissenting shareholders are entitled, upon compliance with G. S. 55-113, to be paid the fair value of their shares as provided in that section, but failure of the notice to contain such a statement shall not invalidate the dissolution.

(3) At such meeting a vote may be taken on any resolution to dissolve the corporation. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not otherwise entitled to vote. Such resolution shall be adopted upon receiving the affirmative vote of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon and of two-thirds of the other outstanding shares.

(b) To effectuate such dissolution, articles of dissolution shall be executed by the corporation and shall be filed, in accordance with the provisions of G. S. 55-4, setting forth:

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.
- (5) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
- (6) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class and of the other outstanding shares voted for and against the resolution, respectively. (1955, c. 1371, s. 1.)

§ 55-119. Procedure after filing articles of dissolution.—(a) After the filing of articles of dissolution in the office of the Secretary of State, the corporation shall, except in case of dissolution under G. S. 55-116 (a) (2), (3) and (4), immediately cause notice of the dissolution to be mailed to each known creditor of the corporation, and to the Commissioner of Revenue, and such notice shall be published once a week for four successive weeks in a newspaper published in the county wherein the corporation has its registered office, and, if there be no newspaper published in such county, then in some newspaper of general circulation in such county. The corporation shall then proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, including the collection of unpaid subscriptions necessary to equalize the agreed payments by subscribers of its shares. After paying or adequately providing for the payment of all its obligations, the corporation shall distribute the remainder of its assets, either in cash

or in kind, among its shareholders according to their respective rights and interests.

(b) If liquidation is effected by transfer of assets in kind to the shareholders collectively as co-owners, an objecting shareholder so demanding is entitled to be paid the fair value of his shares or damages in accordance with the provisions of G. S. 55-113. (1955, c. 1371, s. 1.)

Bondholders Held General Creditors.—Where payment of interest on bonds issued to preferred stockholders in reorganization of corporation was not restricted to payment out of earnings, but on the contrary the obligation was fixed and certain in the payment of interest out of assets of the corporation, this made and

constituted the holders of such bonds under North Carolina statutory law general creditors. *Bemis Hardwood Lumber Co. v. United States*, 117 F. Supp. 851 (1954), decided under former statute relating to distribution of funds upon dissolution of a corporation.

§ 55-120. Revocation and cancellation of voluntary dissolution proceedings.—(a) At any time after the filing of articles of dissolution and prior to the filing of a certificate of completed liquidation, a dissolution effected under G. S. 55-116, G. S. 55-117 or G. S. 55-118 may be revoked by the filing of a statement of revocation of dissolution. The contents of such a statement and the proceedings taken so as to revoke a dissolution shall conform with such adaptations as are appropriate to revocation to either (1) those prescribed in the section under which the dissolution was effected, or (2) those prescribed in G. S. 55-117 or G. S. 55-118.

(b) Upon the filing of such statement of revocation of dissolution in the office of the Secretary of State, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on business.

(c) If a dissolution has been effected by the filing of articles of dissolution containing false statements of facts which if truthfully stated would not have met the requirements of this chapter for a dissolution, any shareholder may maintain an action to cancel the said articles of dissolution and to restore the charter of the corporation unless liquidation has theretofore proceeded so far as to make such cancellation and restoration impracticable. Such action shall be brought in the county in which the corporation has its registered office or its principal place of business. Upon the filing in the office of the Secretary of State of a decree of cancellation of said articles of dissolution, the corporation's charter and its right to do business thereunder shall be thereby restored. (1955, c. 1371, s. 1.)

§ 55-121. Completion of liquidation in voluntary dissolution proceedings.—(a) When all liabilities and obligations of a dissolved corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders pursuant to G. S. 55-119, a certificate of completed liquidation shall be executed by the corporation and shall be filed in accordance with the provisions of G. S. 55-4, setting forth:

(1) The name of the corporation.

(2) That articles of dissolution have theretofore been filed in the office of the Secretary of State, the date on which articles were filed, and that the dissolution thereby effected has not been revoked.

(3) That all liabilities and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor.

(4) That the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

(b) Upon the filing of such certificate in the office of the Secretary of State in accordance with G. S. 55-4, the existence of the corporation shall cease except as otherwise provided in this article.

(c) The Secretary of State shall not file the certificate of completed liquidation until the receipt by him of a notice from the Commissioner of Revenue to the effect that such corporation has met the requirements with respect to reports and taxes required by the revenue laws of the State of North Carolina. (1955, c. 1371, s. 1.)

§ 55-122. Involuntary dissolution in action by Attorney General.—A corporation may be dissolved involuntarily by a decree of the superior court in an action brought by the Attorney General in the name of the State when it is established that:

(1) The charter of the corporation was procured through fraud; or

(2) The corporation has without justification refused to comply with a final court order for the production of its books, records, or other documents as provided in G. S. 55-38; or

(3) The corporation has, after written notice by the Attorney General given at least twenty days prior thereto, continued to exceed or abuse the authority conferred upon it by law to the injury of the public or of its shareholders, creditors, or debtors; or

(4) The corporation has, after written notice by the Attorney General given at least twenty days prior thereto, failed for thirty days to meet the requirements of G. S. 55-13 with respect to appointing and maintaining a registered agent in this State; or

(5) The corporation has, after written notice by the Attorney General given at least twenty days prior thereto, failed for thirty days after change of its registered office or registered agent to file in the office of the Secretary of State the statement required by G. S. 55-14. (1955, c. 1371, s. 1.)

§ 55-123. Duties of Attorney General with respect to actions for involuntary dissolution.—Whenever the Attorney General has reason to believe that any corporation has given cause for dissolution as provided in G. S. 55-122 and the case involves the public interest, it is the duty of the Attorney General to bring an action under that section. If the cause for dissolution does not involve the public interest, the Attorney General has a duty to bring an action if satisfactory security is given to indemnify the State against the costs and expenses to be incurred thereby. (1955, c. 1371, s. 1.)

§ 55-124. Venue and service of process.—Every action by the Attorney General for the involuntary dissolution of a corporation shall be commenced in the superior court of the county in which the registered office of the corporation is situated. Summons shall issue and be served as in other civil actions. (1955, c. 1371, s. 1.)

§ 55-125. Power of courts to liquidate and decree involuntary dissolution.—(a) The superior court shall have power to liquidate the assets and business of a corporation in an action by a shareholder when it is established that:

(1) The directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, so that the business can no longer be conducted to the advantage of all the shareholders; or

(2) The shareholders are deadlocked in voting power, otherwise than by virtue of special provisions or arrangements designed to create veto power among the shareholders, and for that reason have been unable at two consecutive annual meetings to elect successors to directors whose terms had expired; or

(3) All of the present shareholders are parties to, or are transferees or subscribers of shares with actual notice of a written agreement, whether embodied in the charter or separate therefrom, entitling the complaining shareholder to liquidation or dissolution of the corporation at will or upon the occurrence of some event which has subsequently occurred; or

(4) Liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder.

(b) The superior court shall have power to liquidate the assets and business of a corporation in an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied; or

(2) When the corporation admits in writing that the claim of the creditor is due and it is established that the corporation is unable to pay its debts in the ordinary course of business.

(c) A court that has undertaken the liquidation of the assets and business of a corporation under subsections (a) or (b) of this section may at any time enter a decree dissolving the corporation, and shall upon application of any interested party enter an order declaring liquidation completed.

(d) Actions under this section shall be brought in the county in which the corporation has its registered office or its principal place of business.

(e) Summons shall issue and be served on the corporation as in other civil actions, and it shall not be necessary to make shareholders parties to any such actions unless relief is sought against them personally.

(f) The superior court shall have power to liquidate the assets and business of a corporation when an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its assets and business should precede the entry of a decree of dissolution. (1955, c. 1371, s. 1; 1959, c. 1316, s. 26.)

Editor's Note. — The 1959 amendment inserted in subdivision (2) of subsection (a) the words "otherwise than by virtue of special provisions or arrangements designed to create veto power among the shareholders."

Sufficient Allegations under Subdivision (4) of Subsection (a). — The superior court has authority, in the exercise of its discretion, under subsection (a) (4) of this section, to order the liquidation of a corporation upon application of a stock-

holder alleging that the corporation had been operating at a loss and that to allow it to continue operations would deplete its assets and seriously damage the stockholders. *Royall v. Carr Lumber Co.*, 248 N. C. 735, 105 S. E. (2d) 65 (1958).

As to necessity for service on shareholders in suit under former statute for dissolution of corporation, see *Glod v. Castle Hayne Growers and Shippers, Inc.*, 239 N. C. 304, 79 S. E. (2d) 396 (1954).

§ 55-126. Application for liquidation by court after dissolution.—A corporation, at any time after voluntary dissolution and during the liquidation of its business and affairs, may make application to the superior court of the county in which the registered office or principal place of business of the corporation is situated to have the liquidation conducted or continued under the supervision of the court and, upon the granting of such application, the liquidation shall proceed as provided in this chapter. Similar application may be made after liquidation has been purportedly completed in either voluntary or involuntary dissolution, when it subsequently appears that newly discovered or inadvertently omitted assets require liquidation, and if no director or appropriate officer makes such application, the application may be made by any creditor or any shareholder or any person having an interest in such liquidation, including the University of North Carolina. (1955, c. 1371, s. 1.)

§ 55-127. Procedure in liquidation of corporation by court.—In an action to liquidate the assets and business of a corporation, the court shall appoint receivers and the receivers so appointed shall have such powers and duties as are provided in article 38, chapter 1 of the General Statutes of North Carolina. (1955, c. 1371, s. 1.)

§ 55-128. Discontinuance of liquidation action. — The liquidation of the assets and business of a corporation may be discontinued at any time during

the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the action and direct the redelivery to the corporation of all its remaining property and assets, and shall decree cancellation of any prior dissolution. (1955, c. 1371, s. 1.)

Proceedings on motion by intervening stockholders to vacate an order appointing receivers are without prejudice to the rights of the interveners to petition the court to discontinue liquidation of the corporation under this section. *Royall v. Carr Lumber Co.*, 248 N. C. 735, 105 S. E. (2d) 65 (1958).

§ 55-129. Duties of officials as to decrees and orders concerning dissolution.—A court decree effecting or canceling a dissolution of a corporation or a court order declaring liquidation completed shall contain a direction to the clerk of that court promptly to file one certified copy of such decree or order with the Secretary of State and also to file a certified copy thereof with the clerk of the superior court of the county wherein the corporation has its registered office, unless the decree or order was entered in that court. The fees for the preparation, certificates, and filing of such decree or order shall be taxed as a part of the costs in the action. (1955, c. 1371, s. 1.)

§ 55-130. Disposition of amounts due to unavailable shareholders and creditors.—Upon liquidation of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, shall be reduced to cash and deposited with the clerk of the superior court of the county of the registered office of the corporation to be held three months for the persons respectively entitled thereto, as and when satisfactory evidence of their right to the same is furnished. After the clerk has held the unclaimed cash for the aforesaid period of three months, he shall pay such assets to the University of North Carolina, to be held without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (1955, c. 1371, s. 1.)

§ 55-130.1. Voluntary surrender of corporate rights and franchises by incorporators.—The incorporators named in the articles of incorporation may, before the payment of any part of the capital stock, and before beginning the business for which the corporation was created, surrender the existing corporate rights and franchises, by filing a certificate in the office of the Secretary of State in the manner prescribed by G. S. 55-4, verified by oath, that no part of the capital stock has been paid and received by the corporation and such business has not been begun, and surrendering all rights and franchises. Thereupon the corporation becomes nonexistent and is cancelled as if such corporation had never been created. (1959, c. 1316, s. 26½.)

ARTICLE 10.

Foreign Corporations.

§ 55-131. Right to transact business.—(a) A foreign corporation shall procure a certificate of authority from the Secretary of State before it shall transact business in this State. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this State any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State.

(b) Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State for the purpose of this chapter, by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts.

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State.

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same.

(8) Transacting business in interstate commerce.

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

(c) No part of this section applies to insurance companies except subsection (b) (6). (1955, c. 1371, s. 1.)

§ 55-132. Powers of foreign corporation.—(a) A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but not greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued.

(b) A foreign corporation, however, is not eligible or entitled to qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of his death. (1955, c. 1371, s. 1.)

§ 55-133. Dismissal of actions against foreign corporations.—(a) No action in the courts of this State shall be dismissed solely on the ground that it involves the internal affairs of a foreign corporation but the court may in its discretion dismiss such an action if it appears that more adequate relief can be granted or that the convenience of the parties would be better served by an action brought in the jurisdiction of its incorporation or in the jurisdiction where the corporation has its executive or managerial headquarters or, because of the circumstances, in some other jurisdiction.

(b) Any action upon a cause of action not arising out of business transacted or activities performed in this State brought against a foreign corporation by a nonresident of this State may in the discretion of the court be dismissed if it appears that the convenience of the parties would be better served by an action brought in some other jurisdiction (1955, c. 1371, s. 1.)

Action to Compel Declaration of Dividend by Foreign Corporation.—Whether the courts of North Carolina will entertain an action to compel the declaration of a dividend by a foreign corporation rests on expediency and convenience under subsection (a) of this section, and

where in such action it appears that the foreign corporation is doing business in North Carolina, that the question of declaring dividends had heretofore been determined by its directors in regular meetings in this State, and that the court has power to enforce any decree it may render

by order directed to a majority of the directors of the corporation who reside in the State, a motion to dismiss the action for want of jurisdiction was properly de-

nied. *Belk v. Belk's Dept. Store of Columbia, S. C., Inc.*, 250 N. C. 99, 108 S. E. (2d) 131 (1959).

§§ 55-134 to 55-136: Omitted.

§ 55-137. **Corporate name of foreign corporation.**—(a) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation shall contain the wording "corporation," "incorporated," "limited," or "company," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this State, add at the end of its name one of such words or an abbreviation thereof

(b) The corporate name shall not contain any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its charter.

(c) The corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation or any foreign corporation authorized to transact business in this State whether for profit or not for profit, or a name the exclusive right to which is, at the time, reserved in the manner prescribed in G. S. 55-12, except that the Secretary of State may in his discretion issue a certificate of authority to a foreign corporation which has a corporate name similar to that of some other domestic corporation or foreign corporation authorized to transact business in this State when he finds that: The similarly named corporations are engaged in dissimilar types of business; and further that the previously incorporated or authorized corporation consents in writing to the issuance of the certificate of authority to do business under the similar name.

(d) Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall not be deemed to permit the use in its business in this State of the new name nor shall any new certificate of authority be granted to it under the new name. (1955, c. 1371, s. 1; 1959, c. 1316, s. 27.)

Editor's Note. — The 1959 amendment added the exception clause at the end of subsection (c).

§ 55-138. **Application for certificate of authority.**—(a) A foreign corporation, in order to procure a certificate of authority to transact business in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "incorporated," "limited," or "company," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated

(5) The address, including county and city or town, and street and number, if any, of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement of the aggregate number of shares which the corporation has

authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value and series if any, within a class.

(10) A statement that, in consideration of the issuance of a certificate of authority to transact business in this State, the corporation appoints the Secretary of State of North Carolina as its agent to receive service of process, notice, or demand whenever the corporation fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office.

(b) Such application shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such application. (1955, c. 1371, s. 1; 1957, c. 979, s. 8.)

Cross References.—As to required filing of corporate charter, see G. S. 55-139. As to limitations on authority of Secretary of State to act as process agent, see G. S. 55-143.

Editor's Note. — The 1957 amendment inserted the words "including county and city or town, and street and number, if any" in paragraph (5) of subsection (a).

The location of the principal office and place of business of a corporation is a fact. The instrument a foreign domesticated corporation is required to file in the office of the Secretary of State under this section is merely notice of that fact. It is not required for the benefit of the corporation but for the information of the public. And it does not, in and of itself, fix the location of the place of busi-

ness of the corporation which files the same. *Noland Co. v. Laxton Constr. Co.*, 244 N. C. 50, 92 S. E. (2d) 398 (1956), construing former § 55-118.

Venue of Action against Domesticated Foreign Corporation. — Where it was found that defendant was a domesticated foreign corporation doing extensive business in the middle district of North Carolina and maintained warehouses in Salisbury, High Point, Asheboro, Greensboro and Durham from which it distributed in the middle district its products, under both the State law and federal rules of procedure the venue was properly placed in the middle district of North Carolina. *Graham v. Taylor Biscuit Co.*, 157 F. Supp. 496 (1957), construing former § 55-118.

§ 55-139. Filing of application for certificate of authority.—(a) The application of the corporation for a certificate of authority and one conformed copy thereof shall be delivered to the Secretary of State, together with one copy of its articles of incorporation and all amendments thereto or where that is permitted by the laws of the place of its incorporation, one copy of its restated or integrated or consolidated charter, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

(b) If the Secretary of State finds that the application conforms to law he shall, when all taxes and fees have been tendered as in this chapter prescribed:

(1) Endorse on each of such documents the word "filed" and the hour, day, month, and year of the filing thereof.

(2) File in his office the application and the copy of the articles of incorporation and amendments thereto or of one of the substitute documents mentioned in subsection (a) of this section.

(3) Issue a certificate of authority to transact business in this State to which he shall affix the conformed copy of the application.

(4) Send to the corporation or its representative the certificate of authority, together with the conformed copy of the application affixed thereto. (1955, c. 1371, s. 1.)

§ 55-140. Effect of certificate of authority.—Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to transact business in this State for those purposes set forth in its application, subject however, to the right of this State to suspend or to revoke such authority as provided in this chapter. (1955, c. 1371, s. 1.)

§ 55-141. Registered office and registered agent of foreign corporation.—Each foreign corporation authorized to transact business in this State shall establish and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business in this State.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office. (1955, c. 1371, s. 1.)

§ 55-142. Change of registered office or registered agent of foreign corporation.—(a) A foreign corporation authorized to transact business in this State may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The address, including county and city or town, and street and number, if any, of its then registered office.

(3) The address of its registered office be changed, the address, including county and city or town, and street and number, if any, to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent be changed, the name of its successor registered agent.

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(b) Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing the statement.

(c) If the Secretary of State finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective. (1955, c. 1371, s. 1; 1957, c. 979, ss. 9, 10.)

Editor's Note.—The 1957 amendment inserted the words "county and city or town, and" in paragraphs (2) and (3) of subsection (a).

Effect of Failure to File Notice of Change of Residence.—A foreign corporation which neglected for a period of 18 days to file notice of change of its residence could not take advantage of its own delay by filing a suit in the county of its

old residence. *Noland Co. v. Laxton Constr. Co.*, 244 N. C. 50, 92 S. E. (2d) 398 (1956), decided under former statute, requiring a foreign corporation to file certain information, including the location of its principal office in this State, with the Secretary of State as a prerequisite to obtaining permission to do business in this State.

§ 55-143. Suits against foreign corporations authorized to transact business in this State.—(a) The registered agent appointed by a foreign corporation authorized to transact business in this State shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a foreign corporation authorized to transact business in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon any process, notice, or demand may be served.

(c) Service on any such agent may be made in a suit upon any cause of action, whether or not arising in this State or arising out of business transacted in

this State, and whether or not the cause of action runs in favor of a resident of this State. (1955, c. 1371, s. 1.)

Cross References. — As to validity of service of Secretary of State in suit by nonresident against foreign corporation, see § 1-97. As to what constitutes doing business in State, see annotation under § 55-144.

Editor's Note. — This section changes the rule of *Hamilton v. Atlantic Greyhound Corp.*, 220 N. C. 815, 18 S. E. (2d) 367 (1942), and *Central Motor Lines, Inc. v. Brooks Transp. Co.*, 225 N. C. 733, 36 S. E. (2d) 271, 162 A. L. R. 1419 (1945).

Constitutionality. — A former statute, similar to this and the following section, was held constitutional. *Harrington v. Croft Steel Products, Inc.*, 244 N. C. 675, 94 S. E. (2d) 803 (1956).

§ 55-144. Suits against foreign corporations transacting business in the State without authorization.—Whenever a foreign corporation shall transact business in this State without first procuring a certificate of authority so to do from the Secretary of State or after its certificate of authority shall have been withdrawn, suspended, or revoked, then the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand in any suit upon a cause of action arising out of such business may be served. (1955, c. 1371, s. 1.)

Cross Reference.—See note to § 55-145.

Editor's Note.—The cases in the following annotation which were decided prior to 1958 were decided under the former statute upon which this section was based.

For note on jurisdiction over foreign corporations, see 35 N. C. Law Rev. 546.

Constitutionality.—The former statute, similar to this section and § 55-143, was held constitutional. *Harrington v. Croft Steel Products, Inc.*, 244 N. C. 675, 94 S. E. (2d) 803 (1956).

This section requires more "contacts" in North Carolina than § 55-145, which provides for service on foreign corporations even though not transacting business in this State. *Worley's Beverages, Inc. v. Bubble Up Corp.*, 167 F. Supp. 498 (1958).

Effect of Change from "Doing Business" to "Transacting Business." — Prior to 1955, the statute comparable to the present section required that a foreign corporation be "doing business" in this State, and most of the decisions of the North Carolina Supreme Court are under this earlier statute. However, it is generally considered that changing the statute from "doing business" to "transacting business" only had the effect of liberalizing it. *Worley's Beverages, Inc. v. Bubble Up Corp.*, 167 F. Supp. 498 (1958).

What Constitutes Doing Business.—The expression "doing business in this State,"

Service on Process Agent of Subsidiary Owned by Foreign Corporation.—A foreign corporation, which contracted with and sold farm equipment to dealers in North Carolina for resale through a wholly owned subsidiary, was not doing business in the State and was not subject to suit in North Carolina by virtue of process served on the process agent of the subsidiary corporation. *Harris v. Deere & Co.*, 128 F. Supp. 799 (1955), aff'd in 223 F. (2d) 161 (1955), decided under former statute, similar to this section and § 55-144.

For other case applying former statute, see *Housing Authority v. Brown*, 244 N. C. 592, 94 S. E. (2d) 582 (1956).

as used in a former statute of similar import, means engaging in, carrying on or exercising, in this State, some of the things, or some of the functions, for which the corporation was created. *Radio Station v. Eitel-McCullough*, 232 N. C. 287, 59 S. E. (2d) 779 (1950); *Troy Lumber Co. v. State Sewing Machine Corp.*, 233 N. C. 407, 64 S. E. (2d) 415 (1951); *Harrington v. Croft Steel Products, Inc.*, 244 N. C. 675, 94 S. E. (2d) 803 (1956); *Worley's Beverages, Inc. v. Bubble Up Corp.*, 167 F. Supp. 498 (1958).

Where a corporation is engaging in, carrying on, and exercising in this State some of the functions for which it was created, which are of such character and extent as to warrant the inference that it has subjected itself to the jurisdiction and laws of the State, the statute providing for substituted service on the Secretary of State is applicable. *Troy Lumber Co. v. State Sewing Machine Corp.*, 233 N. C. 407, 64 S. E. (2d) 415 (1951).

Same—Within the State. — A foreign corporation cannot be held to be doing business in a state, and therefore subject to its laws, unless it shall be found as a fact that such corporation has entered the state in which it is alleged to be doing business and there transacted, by its officers, agents or other persons authorized to act for it, the business in which it is au-

thorized to engage by the state under whose laws it was created and organized. The presence within the state of such officers, agents or other persons, engaged in the transaction of the corporation's business with citizens of the state, is generally held as determinative of the question as to whether the corporation is doing business in the state. *Radio Station v. Eitel-McCullough*, 232 N. C. 287, 59 S. E. (2d) 779 (1950), citing *Commercial Inv. Trust v. Gaines*, 193 N. C. 233, 136 S. E. 609 (1927).

Same—Question of Due Process under United States Constitution.—Whether a foreign corporation is doing business in North Carolina, so as to subject it to the jurisdiction of the State's courts, is essentially a question of due process of law under the United States Constitution, Amendment 14, which must be decided in accord with the decisions of the United States Supreme Court. *Putnam v. Triangle Publications, Inc.*, 245 N. C. 432, 96 S. E. (2d) 445 (1957).

Same—Mere Incidental Services.—Mere incidental services not substantially of the character of the business carried on by a foreign corporation are not of the nature to subject it to the control and regulation of the state law or to invoke state law for its protection. *Radio Station v. Eitel-McCullough*, 232 N. C. 287, 59 S. E. (2d) 779 (1950); *Worley's Beverages, Inc. v. Bubble Up Corp.*, 167 F. Supp. 498 (1958).

Same—Taking Orders and Delivering Goods in State.—A foreign corporation which merely takes orders in this State to be transmitted to its home office for acceptance and shipment of its goods into this State by common carrier is not doing business here within the meaning of the former statute similar to this section and § 55-143, but if it transports its goods to this State in its own trucks and thus completes the transaction by making deliveries here, it performs here one of its essential purposes and is doing business here within the purview of the statute. *Harrington v.*

Croft Steel Products, Inc., 244 N. C. 675, 94 S. E. (2d) 803 (1956).

Same—Foreign Publishing Company Shipping Magazines into State.—A foreign publishing company which delivers to a common carrier in another state magazines for shipment to a wholesale dealer in this State for resale in this State by the dealer, with provision for credit to the dealer for unsold magazines, and which employs sales promotion representatives who make occasional visits in this State, is held not doing business in this State for the purpose of service of process by service upon the Secretary of State. *Putnam v. Triangle Publications, Inc.*, 245 N. C. 432, 96 S. E. (2d) 445 (1957).

Same—Corporation Not Doing Business in State.—Findings that a foreign corporation, engaged in the business of manufacturing certain goods and selling them direct to retail distributors in this State, maintained a sales representative here to aid in promotion of sales to dealer representatives and facilitate sales directly to customers in company with dealer representatives, and an agent to investigate complaints by purchasers who is without authority to compromise or adjust them, its established procedure being for the customer to return defective merchandise directly to the corporation, and also an agent here to facilitate the collection of delinquent or slow accounts owed by dealer representatives, without evidence that such agent had authority to collect or receive money on behalf of the corporation were held insufficient to support the conclusion that it was doing business in this State for the purpose of service of summons under a formal statute of similar import. *Radio Station v. Eitel-McCullough*, 232 N. C. 287, 59 S. E. (2d) 779 (1950).

Same—Subject to Review.—Whether a corporation is "doing business" in this State is an inference of law and of fact to be drawn from the specific facts found, and is subject to review on appeal. *Radio Station v. Eitel-McCullough*, 232 N. C. 287, 59 S. E. (2d) 779 (1950).

§ 55-145. Jurisdiction over foreign corporations not transacting business in this State.—(a) Every foreign corporation shall be subject to suit in this State, by a resident of this State or by a person having a usual place of business in this State, whether or not such foreign corporation is transacting or has transacted business in this State and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:

- (1) Out of any contract made in this State or to be performed in this State; or
- (2) Out of any business solicited in this State by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the State; or

(3) Out of the production, manufacture, or distribution of goods by such corporation with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed, or sold or whether or not through the medium of independent contractors or dealers; or

(4) Out of tortious conduct in this State whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

(b) Whenever a foreign parent corporation is subject to liability for any obligations of a subsidiary corporation that is subject to suit in this State, the parent corporation is itself so subject in any action to enforce the said liability. In any such action against a foreign corporation, service may be made on any person who could be served in an action against such subsidiary corporation.

(c) Any foreign corporation subject to suit under this section may, even though it is not transacting business in this State, appoint and maintain a registered agent, which agent may be either an individual resident in this State, or a domestic corporation, or a foreign corporation authorized to transact business in this State. Such appointment shall take place by filing in the office of the Secretary of State a statement setting forth the name and address of the corporation and the address of its principal office, and the name and address in this State of the registered agent. The registered agent appointed by a foreign corporation pursuant to this section shall be an agent of the corporation upon whom any process, notice, or demand in any cause of action arising under this section may be served. In any case where a foreign corporation is subject to suit under this section and has failed to appoint and maintain a registered agent upon whom process might be served, or whenever such registered agent cannot with reasonable diligence be found at the address given, then the Secretary of State shall be an agent of such corporation upon whom any process in any such cause of action may be served. (1955, c. 1371, s. 1.)

Editor's Note.—The cases in the following annotation which were decided prior to 1958 were decided under a former statute, which was the same as this section.

The statutes relating to foreign corporations have no application to individuals. *Edwards v. Scott & Fetzer, Inc.*, 154 F. Supp. 41 (1957).

Section 55-144 requires more "contacts" in North Carolina than this section. *Worley's Beverages, Inc. v. Bubble Up Corp.*, 167 F. Supp. 498 (1958).

Validity of Subsection (a) (3).—Subsection (a) (3) of former § 55-38.1, identical to subsection (a) (3) of this section, was unconstitutional as applied to an action for libel against a foreign publishing corporation which delivered magazines to a common carrier for shipment to a wholesale dealer in this State for resale by the dealer, and which employed sales promotion representatives who made only occasional visits in this State, since such corporation had no contacts, ties or relations within this State so as to make it amenable to service of process here for the purpose of a judgment in personam. *Putnam v. Triangle Publications, Inc.*, 245 N. C. 432, 96 S. E. (2d) 445 (1957).

Subsection (a) (3) of former § 55-38.1, which was identical to subsection (a) (3)

of this section was invalid insofar as it attempted to subject a New York corporation to the jurisdiction of North Carolina for a single sale of goods consummated in New York "with the reasonable expectation that those goods are to be used in [North Carolina] and are so used and consumed." *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F. (2d) 502 (1956).

The constitutionality of subsection (a) (3) of this section involves a question of due process of law, to be determined in accordance with the decisions of the Supreme Court of the United States, and in this connection *International Shoe Co. v. Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A. L. R. 1057 (1945) is decisive. The subsection is not violative of any provision of the North Carolina Constitution. *Shepard v. Rheem Mfg. Co.*, 249 N. C. 454, 106 S. E. (2d) 704 (1959), distinguishing *Putnam v. Triangle Publications, Inc.*, 245 N. C. 432, 96 S. E. (2d) 445 (1957) and *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F. (2d) 502 (1956) on the facts.

The Supreme Court of North Carolina has only ruled that subsection (a) (3) of this section was invalid on the basis of the facts presented. It has not held that under a different set of facts the statute

could not be constitutionally applied. Measuring the facts found in the present case, it is abundantly clear that the defendant was "transacting business" in North Carolina, as referred to in § 55-144, and that validity of service of process should also be sustained under this section for the reason that the litigation grows out of (1) a contract made in this State and to be performed in this State, (2) business solicited in this State by the defendant, and (3) the production, manufacture and distribution of goods by the defendant with the reasonable expectation that those goods were to be used or consumed in this State. *Worley's Beverages, Inc. v. Bubble Up Corp.*, 167 F. Supp. 498 (1958).

Application of (1), (2) and (4) of subsection (a).—A foreign publishing corporation purchased an article from a nonresident and published same in its magazine. Its magazines were delivered by it to a common carrier in another state for shipment to wholesale dealers in this State. Plaintiff brought a suit for libel based upon the article. It was held that the tortious act was not committed in this State, and therefore paragraph (4) of subsection (a) of former § 55-38.1 was inapplicable and did not authorize service of process on the corporation by service on the Secretary of State. Paragraphs (1) and (2) of subsection (a) were also inapplicable to the facts of the case. *Putnam v. Triangle Publications, Inc.*, 245 N. C. 432, 96 S. E. (2d) 445 (1957).

A foreign corporation selling home appliances to wholesalers in North Carolina is subject to service of process under subsection (a) (3) of this section in an action by a resident of this State to recover for personal injury allegedly resulting from a defective appliance manufactured by the foreign corporation, notwithstanding that title to appliances sold by the corporation in this State passes to the wholesalers at the point of shipment outside of this State and notwithstanding that the foreign corporation maintains no agents or employees here except agents for the solicitation of orders which are subject to approval by the home office, and such service subjects the foreign corporation to a judgment in personam. *Shepard v.*

Rheem Mfg. Co., 249 N. C. 454, 106 S. E. (2d) 704 (1959).

Tortious Acts Committed in State Sufficient to Support Service on Secretary of State.—In an action against a nonresident corporation for wrongfully taking plaintiff's property by duress and threats of arrest without legal process and for invasion of privacy and public humiliation findings of fact that the tortious acts were committed in this State were sufficient to support adjudication that service of process on it by service on the Secretary of State was valid. *Painter v. Home Finance Co.*, 245 N. C. 576, 96 S. E. (2d) 731 (1957).

An agent through whom the corporation may be served with process is one who exercises some control over and discretionary power in respect to the corporate functions of the company. He is one who stands in the shoes of the corporation in relation to the matters of the corporation committed to his care. He must represent it in a general or limited capacity. He is the alter ego of the corporation. *Edward v. Scott & Fetzer, Inc.*, 154 F. Supp. 41 (1957).

A mere salesman or broker who takes orders and sends them to a foreign corporation for acceptance, or a distributor who buys and takes title to the chattels, is not a managing or local agent and does not result in the corporation doing business in this State. *Edwards v. Scott & Fetzer, Inc.*, 154 F. Supp. 41 (1957).

Where title to machines passed from foreign corporation to North Carolina distributor on cash purchases or C. O. D. order with draft attached and he was in full control of the ways and means of reselling them, he was not an agent of the corporation for service of process. *Edwards v. Scott & Fetzer, Inc.*, 154 F. Supp. 41 (1957).

Effect of Entry of Corporation's Agent into State.—If a corporation had insufficient contact or relations with North Carolina to warrant the assertion of jurisdiction over it the entry of its agent on an isolated occasion to discuss the claim could not supply the necessary tie to give the State power. *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F. (2d) 502 (1956).

§ 55-146. Service on foreign corporations by service on Secretary of State.—(a) Service on the Secretary of State, when he is agent of a foreign corporation as provided in this chapter, of any process, notice or demand shall be made by the sheriff delivering to and leaving with the Secretary of State duplicate copies of such process, notice or demand. Service of process on the foreign corporation shall be deemed complete when the Secretary of State is so served.

The Secretary of State shall endorse upon both copies the time of receipt and shall forthwith send one of such copies by registered mail with return receipt requested addressed to such corporation at its principal office as it appears in the records of the Secretary of State or, if there is no address of the corporation on file with the Secretary of State, then to said corporation at its office as shown in the official registry of the state of its incorporation. The Secretary of State may require the plaintiff or his attorney to furnish such address. A copy of the complaint or order of the clerk extending the time for filing the complaint must be mailed to the corporation with the copy of the summons. When a copy of the complaint is not mailed with the summons, the Secretary of State shall mail a copy of the complaint when it is served on him in the same manner as the copy of summons is required to be mailed.

(b) Upon the return to the Secretary of State of the requested return receipt showing delivery and acceptance of such registered mail, or upon the return of such registered mail showing refusal thereof by such foreign corporation, the Secretary of State shall note thereon the date of such return to him and shall attach either the return receipt or such refused mail including the envelope, as the case may be, to the copy of the process, notice or demand theretofore retained by him and shall mail the same to the clerk of the court in which such action or proceeding is pending and in respect of which such process, notice or demand was issued. Such mailing, in addition to the return by the sheriff, shall constitute the due return required by law. The clerk of the court shall thereupon file the same as a paper in such action or proceeding.

(c) Service made under this section shall have the same legal force and validity as if the service had been made personally in this State. The refusal of any such foreign corporation to accept delivery of the registered mail provided for in subsection (a) of this section or the refusal to sign the return receipt shall not affect the validity of such service; and any foreign corporation refusing to accept delivery of such registered mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(d) Whenever service of process is made upon the Secretary of State as herein provided the defendant foreign corporation shall have thirty (30) days from the date when the defendant receives or refuses to accept the registered mail containing the copy of the complaint sent as in this section provided in which to appear and answer the complaint in the action or proceeding so instituted. Entries on the defendant's return receipt or the refused registered mail shall be sufficient evidence of such date. If the date of acceptance or refusal to accept the registered mail cannot be determined from the entries on the return receipt or from notations of the postal authorities on the envelope, then the date when the defendant accepted or refused to accept the registered mail shall be deemed to be the date that the return receipt or the registered mail was received back by the Secretary of State.

(e) The court in which the action is pending shall order such additional time as may be necessary to afford the defendant reasonable opportunity to answer the complaint and defend the action.

(f) The Secretary of State shall keep a summarized record of all processes, notices, and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

(g) Nothing herein contained shall limit or affect the right to serve any process, notice or demand to be served upon a corporation in any other manner now or hereafter permitted by law. (1955, c. 1371, s. 1.)

§ 55-147. Amendment to charter of foreign corporation.—Whenever the charter of a foreign corporation authorized to transact business in this State is amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the Secretary of State a copy of such

amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself amend its certificate of authority. (1955, c. 1371, s. 1.)

§ 55-148. Merger of foreign corporation authorized to transact business in this State.—Whenever a foreign corporation authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this State unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to pursue in this State. (1955, c. 1371, s. 1.)

Cited in *East Carolina Lumber Co. v. West*, 247 N. C. 699, 102 S. E. (2d) 248 (1958).

§ 55-149. Amended certificate of authority.—(a) A foreign corporation authorized to transact business in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Secretary of State.

(b) The requirements in respect to the form, the manner of its execution, the filing of the application and the conformed copy thereof with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. The contents of such application need not be the same as in the case of an original application for a certificate of authority provided the application sets forth information as to the changes proposed. (1955, c. 1371 s. 1.)

§ 55-150. Withdrawal of foreign corporation.—(a) A foreign corporation authorized to transact business in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal.

(b) In order to procure such certificate of withdrawal such foreign corporation shall deliver to the Secretary of State an application for withdrawal, together with a conformed copy thereof, which shall set forth:

(1) The name and post-office address of the principal office of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not transacting business in this State.

(3) That the corporation surrenders its authority to transact business in this State.

(4) That the corporation either continues its registered agent in this State or revokes his authority to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) If required by the Commissioner of Revenue, such additional information as may be necessary or appropriate in order to determine and assess any unpaid taxes and fees payable under the laws of this State.

(c) The application for withdrawal shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such application, or, if the corporation is in

the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

(d) If the Secretary of State finds that such application conforms to law, he shall, when notified by the Commissioner of Revenue that such corporation has met the requirements with respect to reports and taxes required by the revenue laws of this State:

(1) Endorse on each of such documents the word "filed," and the hour, day, month and year of the filing thereof.

(2) File the application in his office.

(3) Issue a certificate of withdrawal to which he shall affix the conformed copy.

(e) The certificate of withdrawal, together with the conformed copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease. (1955, c. 1371, s. 1.)

§ 55-151. Revocation of certificate of authority.—(a) The certificate of authority of a foreign corporation to transact business in this State may be revoked by the Secretary of State upon the conditions prescribed in this section when:

(1) The corporation has failed for a period of 30 days to establish and maintain a registered office as required by G. S. 55-141; or

(2) The corporation has failed for a period of 30 days to appoint and maintain a registered agent in this State as required by G. S. 55-141; or

(3) The corporation has failed for a period of 30 days after change of its registered office or registered agent to file in the office of the Secretary of State a statement of such change pursuant to G. S. 55-142; or

(4) The corporation has failed to file in the office of the Secretary of State any amendment to its charter or any articles of merger within the time prescribed by G. S. 55-147 and 55-148; or

(5) A willful misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter; or

(6) The corporation has, without justification, refused to comply with a court order made pursuant to G. S. 55-38; or

(7) The corporation is exceeding the authority conferred upon it by this chapter.

(b) On the happening of any of the events set out in subsection (a) of this section, the Secretary of State shall give not less than twenty days written notice to the corporation that he intends to revoke the certificate of authority of such corporation for one of the said causes, specifying the same. Such notice shall be given by mail duly addressed to the corporation at its registered office in this State and at its principal office outside the State, as shown by the records in the office of the Secretary of State. If, before the expiration of the time stated in the notice, the corporation establishes to the satisfaction of the Secretary of State the fact that the stated cause for the revocation of its certificate of authority did not exist as of the time the notice was mailed or, if it did exist at said time, has been cured, then the Secretary of State shall take no further action. Otherwise, on the expiration of the time stated in the notice, he shall revoke the certificate of authority.

(c) Nothing herein shall be deemed to repeal or modify any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign corporations for failure to comply with the provisions thereof. (1955, c. 1371, s. 1.)

§ 55-152. Issuance of certificate of revocation.—(a) To revoke any such certificate of authority, the Secretary of State shall:

(1) Issue a certificate of revocation in triplicate.

(2) File one of such certificates in his office.

(3) Mail one of such certificates to such corporation at its registered office in this State and one to the corporation at its principal office in the state or country under the laws of which it is incorporated, as shown by the records in the office of the Secretary of State.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this State shall cease. (1955, c. 1371, s. 1.)

§ 55-153. Application of this chapter to foreign corporations heretofore domesticated in this State.—(a) Subject to the provisions of subsection (d) of this section, foreign corporations which have been duly domesticated in this State at the time this chapter takes effect shall be entitled to all the rights and privileges applicable to foreign corporations procuring authority to transact business in this State under this chapter, and from the time this chapter takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring under this chapter authority to transact business in this State.

(b) Foreign corporations heretofore domesticated in this State which have not designated a principal office are required on and after July 1, 1957 to designate a registered office and appoint a registered agent in the manner, as near as may be, provided in G. S. 55-142.

(c) If any foreign corporation has, prior to the effective date of this chapter, filed with the Secretary of State a statement designating a principal office within this State and agent in charge thereof and has continued to maintain the same, it shall not be required to, but it may, designate a new registered office and agent in the manner, as near as may be, provided in G. S. 55-142.

(d) If there is no office and agent registered in the office of the Secretary of State, then service of process may be made on the Secretary of State, as provided in G. S. 55-146 when there is no registered agent, until such time as a registered office is designated and a registered agent appointed.

(e) No foreign corporation which has been domesticated under the provisions of prior acts before this chapter becomes effective shall hereafter have greater immunity from local jurisdiction than foreign corporations hereafter procuring a certificate of authority to transact business in this State and, to this end, every such domesticated foreign corporation, by continuing as a domesticated corporation in this State for a period of 90 days after this chapter becomes effective, shall be deemed to have expressly appointed the Secretary of State as its agent to receive service of process as fully as if it had made an application for a certificate of authority pursuant to the requirements of G. S. 55-138. (1955, c. 1371, s. 1; 1957, c. 979, ss. 18, 19.)

Editor's Note.—The 1957 amendment re-wrote subsection (b) and substituted in subsection (c) the words “in the manner, as near as may be, provided in G. S. 55-142” for the words “as provided in subsection (b) of this section.”

§ 55-154. Transacting business without certificate of authority.—(a) No foreign corporation transacting business in this State without permission obtained through a certificate of authority under this chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless such corporation shall have obtained a certificate of authority prior to trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the transaction of business by such corporation in this State until:

(1) A certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired substantially all of its assets, or

(2) Substantially all of its assets have been acquired by a domestic corporation or one or more individuals.

An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action or proceeding in any court of this State.

(c) A foreign corporation failing to obtain permission to transact business in this State as required by this chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without such permission in an amount equal to all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such permission plus interest and all penalties imposed by law for failure to pay such fees and taxes, plus five hundred dollars (\$500.00) and costs. The Attorney General shall bring actions to recover all amounts due the State under the provisions of this section.

(d) The Secretary of State is hereby directed to require that every foreign corporation transacting business in this State comply with the provisions of this chapter. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this article and for making such investigations as shall be necessary to ascertain foreign corporations now transacting business in this State which may have failed to comply with the provisions of this chapter. (1955, c. 1371, s. 1.)

Attorney General as Party to Declaratory Judgment Action.—In a proceeding for a declaratory judgment against the Attorney General and the Secretary of State relative to the application of the registration provisions of former statute, upon which this section was based in part, to plaintiff, a foreign corporation, the Attorney General was not a real party defend-

ant, but, being charged with the enforcement of the statute, he should be retained as a nominal defendant along with the Secretary of State where the constitutionality of the statute was being challenged. *National Ass'n for Advancement of Colored People v. Eure*, 245 N. C. 331, 95 S. E. (2d) 893 (1957).

ARTICLE 11.

Fees and Taxes.

- § 55-155. **Fees.**—(a) The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:
- (1) For filing an application to reserve a corporate name (G. S. 55-12(f)), \$5.00
 - (2) For filing a notice of transfer of a reserved corporate name (G. S. 55-12(g)), 5.00
 - (3) For filing articles of incorporation (G. S. 55-7), 5.00
 - (4) For filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing a certificate of authority (G. S. 55-138), 5.00
 - (5) For filing a statement of classification of shares (G. S. 55-42(e)), 5.00
 - (6) For filing a statement of the change of a registered office or registered agent, or both, of a domestic or foreign corporation (G. S. 55-14, G. S. 55-142, G. S. 55-153), 3.00
 - (7) For filing a notice of resignation of a registered agent (G. S. 55-14(d)), 1.00
 - (8) For filing a notice of resignation of a nonresident director under G. S. 55-33(a), 1.00
 - (9) For filing a certificate of reduction of capital (G. S. 55-48), 5.00
 - (10) For filing articles of amendment (G. S. 55-103), 5.00
 - (11) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State (G. S. 55-147), 5.00

(12) For filing a restated charter (G. S. 55-105),	5.00
(13) For filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority (G. S. 55-149),	5.00
(14) For filing articles of merger or consolidation (G. S. 55-109), ..	5.00
(15) For filing a statement of merger or consolidation of a domestic and foreign corporation (G. S. 55-111),	5.00
(16) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this State (G. S. 55-148),	5.00
(17) For filing a statement setting forth the name and address in this State of the registered agent of a foreign corporation not transacting business in this State (G. S. 55-145),	5.00
(18) For receiving any service of process as statutory agent either of a corporation or of a director of a corporation (G. S. 55-15(b), G. S. 55-33(d), G. S. 55-146),	1.00
which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.	
(19) For issuing a certificate of revocation of authority of a foreign corporation (G. S. 55-152),	5.00
(20) For filing a certificate extending the period of existence of a corporation (G. S. 55-99(b)),	5.00
(21) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G. S. 55-150),	5.00
(22) For filing articles of voluntary dissolution by directors (G. S. 55-116),	5.00
(23) For filing articles of voluntary dissolution by written consent of shareholders (G. S. 55-117),	5.00
(24) For filing articles of voluntary dissolution by action of directors and stockholders (G. S. 55-118),	5.00
(25) For filing a statement of revocation of dissolution (G. S. 55-120),	2.00
(26) For filing a certificate of completed liquidation (G. S. 55-121),	2.00
(27) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G. S. 55-4(c)):	
For the first page thereof,	1.00
For each additional page,40
For affixing his certificate and official seal thereto,	2.00
(28) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation:	
For each page,20
For affixing his certificate and official seal thereto,	2.00
(29) For filing any other document not herein specifically provided for,	5.00
(b) The filing fees hereinbefore prescribed do not include copies or certified copies and the fees for such copies are those prescribed by subdivisions (27) and (28) of subsection (a) of this section.	
(c) For recording and copying any corporate document or paper required by this chapter to be recorded in his office, the clerk of superior court shall collect such amounts as are prescribed by G. S. 2-26 or other applicable laws. (1957, c. 1180.)	

§ 55-156. **Taxes.**—(a) On filing any of the following certificates or papers relative to corporations in the office of the Secretary of State, the following taxes shall be collected by the Secretary of State, and remitted to the State Treasurer for the use of the State:

(1) Articles of incorporation:	
For each \$1,000.00 of the total amount of capital stock authorized,	\$.40
but in no case less than	40.00
nor more than	1,000.00
(2) Articles of amendment which include an authorization to increase capital stock:	
For each \$1,000.00 of the total increase authorized,40
but in no case less than	40.00
nor more than	1,000.00
(3) Articles of amendment which do not include an authorization to increase capital stock,	40.00
(4) Articles of dissolution,	5.00
(5) Application by foreign corporation for certificate of authority to transact business in this State:	
For each \$1,000.00 of its authorized capital stock,40
but in no case less than	40.00
nor more than	500.00
(6) Articles of merger or consolidation which increase the authorized capital stock which the surviving or new corporation, domestic or foreign, will have authority to issue above the aggregate authorized capital stock which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this State had authority to issue:	
For each \$1,000.00 of the total amount of such increase ..	.40
but in no case less than	40.00
nor more than	1,000.00
(7) Articles of merger or consolidation which do not increase the authorized capital stock which the surviving or new corporation, domestic or foreign, will have authority to issue above the aggregate authorized capital stock which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this State had authority to issue,	40.00

(b) For the purpose of computing taxes under this section, shares of no par value shall be treated as if they were of one hundred dollar (\$100.00) par value. (1957, c. 1180.)

ARTICLE 12

Curative Provisions.

§ 55-157. **Curative act; amendments prior to 1901.**—All amendments to the plan of incorporation of any corporation organized under the provisions of the general laws of North Carolina prior to the passage of the act entitled “An act to revise the corporation law of North Carolina,” being chapter two, public laws of nineteen hundred and one, are declared to be valid in all respects, whether such amendments were made in accordance with the provisions of chapter three hundred and eighty of the public laws of eighteen hundred and ninety-three or in accordance with the provisions of chapter two of the public laws of nineteen hundred and one; but no amendment shall be validated by this section unless it is an amendment of such nature as is authorized to be made under the provisions of chapter two of the public laws of nineteen hundred and one. (1905, c. 316; Rev. s. 1248; C. S., s. 1134; 1955, c. 1371, s. 2.)

§ 55-158. **Certain corporate conveyances validated**—All deeds and conveyances of land in this State, made by any corporation of this State prior to

January first, one thousand nine hundred fifty-seven, executed in its corporate name and signed and attested by its proper officers, from which the corporate seal was omitted, shall be good and valid, notwithstanding the failure to attach said corporate seal. (1939, c. 23; 1949, c. 436; 1955, c. 1371, s. 2; 1957, c. 500, s. 2.)

Editor's Note.—The 1957 amendment substituted "fifty-seven" for "forty-eight" in line three.

§ 55-159. **Certain deeds executed by banks validated.**—All deeds heretofore executed by banks and attested by the cashier, assistant cashier, secretary or assistant secretary thereof, which deeds are otherwise regular and valid, are hereby validated. (1943, c. 219, s. 1½; 1955, c. 1371, s. 2.)

§ 55-160 **Certain conveyances of corporations now dissolved validated.**—All deeds and conveyances of land in this State, made by any corporation of this State prior to January 1, 1939, executed in its corporate name and signed by either its president, vice-president, or secretary, and sealed with the common seal of the corporation, where said corporation has been dissolved for at least seven years, and said deed or conveyance has been on record for at least seven years, shall be good and valid, notwithstanding the failure of one of such officers to sign such instrument. (1949, c. 825; 1955, c. 1371, s. 2.)

§ 55-161. **Conveyances by corporations owned by the United States government**—The Home Owners Loan Corporation and any corporation, the majority of whose stock is owned by the United States government, may convey lands, and/or other property which is transferable by deed which is duly executed by either an officer, manager, or agent of said corporation, sealed with the common seal and has attached thereto a signed and attested resolution under seal of the board of directors of said corporation authorizing the said officer, manager or agent to execute, sign, seal and attest deeds, conveyances and/or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority.

All deeds, conveyances or other instruments which have been executed prior to March 15, 1951, in the manner prescribed above, if otherwise sufficient, shall be valid, and shall have the effect to pass the title to the real and/or personal property described therein. (1941, c. 294; 1951, c. 395; 1955, c. 1371, s. 2.)

§ 55-162. **Validation of amendments to corporate charters extending corporate existence.**—In every case where a private corporation, chartered under the general laws of the State of North Carolina, has continued to act and do business as a corporation after the expiration of its period of existence as theretofore fixed in its charter, and has thereafter filed in the office of the Secretary of State an amendment to its charter to extend or renew its corporate existence, such amendment is hereby validated and made effective for all intents and purposes to the same extent and with the same effect as if such amendment had been made within the period of such corporation's existence as theretofore fixed in its charter. (1947, c. 504, s. 1; 1955, c. 1371, s. 2.)

§ 55-163. **Limitation of actions attacking validity of corporate action on grounds amendment not filed during corporate existence.**—No action or proceeding shall be brought or defense or counterclaim pleaded later than one year after the ratification of this article in which either the continued existence of such corporation or the validity of any of the contracts, acts, deeds, rights, privileges, powers, franchises and titles of such corporation is attacked or otherwise questioned on the grounds that such amendment was not filed within the period of such corporation's existence as theretofore fixed in its charter. (1947, c. 504, s. 2; 1955, c. 1371, s. 2.)

§ 55-164. **Clarification of intent of preceding section.**—In no event shall the limitation provided in § 55-163 bar any action, proceeding, defense or counterclaim based upon grounds other than those mentioned in § 55-163, unless the grounds set out in § 55-163 are an essential part thereof. (1947, c. 504, s. 3; 1955, c. 1371, s. 2.)

§ 55-164.1. **New corporations organized to succeed to rights in corporate charter forfeited.**—Wherever a corporation created under the laws of the State of North Carolina has, on account of failure to make reports to the different State authorities, for such a length of time as to lose its charter and where thereafter, under the laws of the State of North Carolina, a new charter is issued, in the same name as the original corporation, and on behalf of the same corporation, such new corporation shall succeed to the same properties, to the same rights as the original corporation before losing its charter on account of neglect hereinbefore mentioned.

Whenever such new corporation shall have been created, under the laws of this State, all the title, rights and emoluments to the property held by the original corporation shall inure to the benefit of the newer corporation and the new corporation shall issue its stock to the stockholders in the defunct corporation, in the same number and with the same par value held by the stockholders of the defunct corporation.

Such new corporation shall have the rights and privileges of maintaining any action or cause of action which the defunct corporation might maintain, bring or defend and to all intents and purposes the new corporation shall take the place of the defunct corporation to the same intent and purposes as if the defunct corporation has never expired by reason of its failure to make the reports hereinbefore referred to. (1959, c. 1316, s. 28½.)

ARTICLE 13.

Miscellaneous Provisions.

§ 55-165. **Interrogatories by Secretary of State.**—The Secretary of State may propound to any corporation, domestic or foreign which he has reason to believe is subject to the provisions of this chapter, and to any officer or director thereof, such written interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation is subject to the provisions of this chapter or has complied with all the provisions of this chapter applicable to it. Such interrogatories shall be answered within thirty days after the mailing therefor, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter, requiring or permitting action by the Attorney General. (1955, c. 1371, s. 1.)

§ 55-166. **Penalties imposed upon corporations, officers and directors for failure to answer interrogatories.**—(a) Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the Secretary of State

in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor.

(b) Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the Secretary of State which is known to such officer or director to be false in any material respect, shall be guilty of a misdemeanor. (1955, c. 1371, s. 1.)

§ 55-167. **Information disclosed by interrogatories.**—Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action or proceedings by this State. (1955, c. 1371, s. 1.)

§ 55-168. **Powers of Secretary of State.**—The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him. (1955, c. 1371, s. 1.)

§ 55-169. **Certificates and certified copies to be received in evidence.**—All certificates issued by the Secretary of State in accordance with the provisions of this chapter, and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. (1955, c. 1371, s. 1.)

Cross Reference.—See G. S. 55-8.

§ 55-170. **Forms of documents required to be filed in office of Secretary of State.**—Any document required to be filed in the office of the Secretary of State shall be made in such form, if any, as may be prescribed by the Secretary of State pursuant to the provisions of this chapter. (1955, c. 1371, s. 1.)

§ 55-171. **Photostatic copies of documents acceptable for filing or recording.**—When any document is required or permitted to be filed or recorded by this chapter, a photostatic or other photographic copy of such document may be filed or recorded in lieu of the original instrument. Such filing or recording shall have the same force and effect as if the original instrument had been so filed or recorded. (1955, c. 1371, s. 1.)

§ 55-172. **Waiver of notice.**—Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the charter or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. (1955, c. 1371, s. 1.)

§ 55-173. **Notice to director or shareholder outside the United States.**—Any requirement of this chapter or of the charter or bylaws, with respect to the giving or sending of any notice or communication to any shareholder or director as such whose address as it appears upon the records of the corporation is outside of the United States, shall be dispensed with, and no action taken shall be affected or invalidated by the failure to give or send any such notice or communication, insofar as compliance with any such requirement is at the time prohibited by, or dependent upon, the obtaining of a license or consent under,

any act of Congress or any rules, regulations, proclamations, or executive orders purported to be issued under authority of any such act. (1955, c. 1371, s. 1.)

§ 55-174. **Reserve power.**—The General Assembly reserves the power to amend or repeal the charter of any corporation hereafter or heretofore formed and to amend or repeal this chapter or any part thereof, and the rights of any corporation or of any shareholder, director or officer in any corporation are subject to this reservation. This chapter, including this reservation, is a part of the charter contract between the shareholders. The power so reserved includes the power to authorize charter amendments which are to be effectuated pursuant to consent by the shareholders in the manner permitted by this chapter, as now enacted or as subsequently amended. (1955, c. 1371, s. 1.)

§ 55-175. **Cross references.**—Whenever in this chapter, as enacted or as hereafter amended, whether by enactment of additional provisions or otherwise, reference is made to a section of this chapter or of any other chapter of the statutes of this State, such reference shall, unless otherwise provided, extend to and include any amendment of the section so referred to or any section hereafter enacted in lieu of the section so referred to. (1955, c. 1371, s. 1.)

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ARTICLE 1.

General Provisions.

§ 55A-1. **Title.**—This chapter shall be known and may be cited as the Non-Profit Corporation Act. (1955, c. 1230.)

Editor's Note. — Session Laws 1955, c. 1230, inserting this chapter to become effective July 1, 1957, repealed as of said date all provisions relating to non-profit corporations in chapter 55 of the General Statutes, as the same appears in Volume 2B and former supplements thereto, ex-

cept as the provisions apply to hospital service corporations regulated by chapter 57 of the General Statutes.

Cited in *Adams v. Flora Macdonald College*, 247 N. C. 648, 101 S. E. (2d) 809 (1958).

§ 55A-2. **Definitions.**—As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a non-profit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a non-profit corporation organized under laws other than the laws of this State.

(3) "Non-profit corporations" means a corporation intended to have no income or intended to have income none of which is distributable to its members, directors, or officers, and includes all marketing associations without capital stock formed under chapter 54 of the General Statutes or under any act or acts replaced thereby.

(4) "Charter" includes the original articles of incorporation and all amendments thereto, including articles of merger.

(5) "Bylaws" means rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means one having membership rights in a corporation in accordance with the provisions of its charter or bylaws.

(7) "Board of directors" means the group of persons vested by the corporation with the management of its affairs whether or not such group is designated as directors in the charter.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs. (1955, c. 1230; 1959, c. 1161, s. 4.)

Editor's Note. — The 1959 amendment rewrote subdivision (7).

§ 55A-3. **Applicability of chapter.**—(a) The provisions of this chapter relating to domestic corporations shall apply to:

(1) All corporations hereafter organized under this chapter.

(2) All non-profit corporations heretofore organized under any act hereby repealed, except non-profit corporations having capital stock.

(3) All non-profit corporations without capital stock heretofore or hereafter organized under any other act, unless there is some other specific statutory provision particularly applicable to such corporations or inconsistent with some provisions of this chapter, in which case that other provision prevails. Nothing herein shall apply to hospital and medical service corporations regulated by chapter 57 of the General Statutes or repeal or modify the provisions of G. S. 54-138.

(b) The provisions of this chapter relating to foreign corporations shall apply to all such corporations conducting affairs in this State for purposes for which a corporation might be organized under this chapter. (1955, c. 1230.)

ARTICLE 2.

Execution and Filing of Certain Corporate Documents.

§ 55A-4. **Execution of corporate documents for filing; filing, recording and effectiveness.**—(a) Whenever the provisions of this chapter require any document relating to a corporation to be executed and filed in accordance with this section, unless otherwise specifically stated in this chapter:

(1) There shall be an original executed document and also one conformed copy.

(2) The said original document shall, if required to be executed by the corporation, be signed by the president or a vice president and also by the secretary or an assistant secretary, with or without the corporate seal. If required to be executed by designated individuals, each of them shall sign.

(3) Except where the provisions of this chapter specifically require acknowledgement, the said original document shall be verified by each of the individuals signing, whether in a representative capacity or otherwise, by a statement under oath, made before and certified by an official who is authorized under the laws of this State to take acknowledgments, declaring that he signed the said document, that the statements therein are true, and, in the case of an individual who signed in a representative capacity, declaring the capacity in which he signed and that he was authorized so to sign.

(4) The conformed copy may either extend its conformation with the original document through all the verifications (or acknowledgments, as the case may be) or may in lieu of such extension contain the legend, after the names of the signers, substantially as follows:

“Original duly verified (acknowledged) by all signers.”

(5) The original document so signed and verified (or acknowledged, as the case may be), together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper taxes and fees have been tendered, endorse upon the original the word “filed” and the hour, day, month, and year of the filing thereof, and shall file the same in his office. The Secretary of State shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the corporation or its representative.

(6) The copy, certified as aforesaid, shall be promptly delivered to the clerk of the superior court of the county wherein the corporation has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed in a book to be known as the Record of Incorporations. Promptly after recordation, the clerk shall note the fact of recordation on the said copy and return it to the corporation or its representative.

(b) Any such document required to be filed shall be completely effective when filed by the Secretary of State and the transaction to be effectuated thereby shall thereupon be deemed as completely consummated as if all the required recording has been perfected and, unless otherwise provided in this chapter with respect to some specific document, the failure to deliver it for recording in the office of the clerk of the superior court shall only subject the corporation to a fine of one hundred dollars (\$100.00) to be collected by the Secretary of State.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office or, if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid. (1955, c. 1230.)

ARTICLE 3.

Formation, Name and Registered Office.

§ 55A-5. **Purposes.**—Non-profit corporations may be organized under this chapter for any lawful purposes. Where by law special provisions are made for the organization of designated classes of non-profit corporations, such corporations shall be formed under those provisions and not hereunder. (1955, c. 1230.)

§ 55A-6. **Incorporators.**—Three or more natural persons, whether or not residents of this State, of the age of 21 years or more may act as incorporators of a corporation by signing and acknowledging articles of incorporation, which shall be filed according to G. S. 55A-4. The acknowledgment shall be before an officer duly authorized under the laws of this State to take the proof or acknowledgment of deeds. (1955, c. 1230.)

§ 55A-7. **Articles of incorporation.**—(a) The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual.
- (3) The purpose or purposes for which the corporation is organized.
- (4) If the corporation is to have no members, a statement to that effect.
- (5) If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members and stating the qualifications and rights of the members of each class.

(6) If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed, in which case provision may be made for their election by other designated associations, corporations or individuals or by any combination of the votes of such persons. In lieu thereof, the charter may provide that the method of election of directors be left to the bylaws.

(7) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the charter (including, if desired, provisions with respect to the relative rights or interests of the members as among themselves or in the property of the corporation, the manner of termination of membership in the corporation, the rights, upon such termination, of the corporation, the terminated member and the remaining members, the transferability or non-transferability of memberships, and the distribution of assets on liquidation or for subordinating and subjecting the corporation to the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, foundation, federation or other non-profit corporation, society, organization or association).

(8) The address, including county and city or town, and street and number, if any, of its initial registered office, which shall be in this State, and the name of its initial registered agent at such address.

(9) The number of persons constituting the initial board of directors, by whatever name called, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial board.

(10) The name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. (1955, c. 1230; 1957, c. 979, s. 11; 1959, c. 1161, s. 5.)

Editor's Note.—The 1957 amendment inserted the words "county and city or town, and" in paragraph (8) of subsection (a). The 1959 amendment rewrote subdivision (9) of subsection (a).

§ 55A-8. **Filing of articles of incorporation; effect.**— Upon the filing of the articles of incorporation in the office of the Secretary of State the corporate existence shall begin, and a copy of the articles certified by the Secretary of State shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this State in a proceeding to annul or revoke the articles of incorporation. (1955, c. 1230.)

§ 55A-9. **Organization meeting of directors.**—After the filing of the articles of incorporation in the office of the Secretary of State an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the directors, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days notice thereof by mail to each director so named, which notice shall state the time and place of the meeting, unless notice is waived as hereinafter provided. (1955, c. 1230.)

§ 55A-10. **Corporate name.**—The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its charter.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any law of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State. (1955, c. 1230.)

§ 55A-11. **Registered office and registered agent.**—(a) Each corporation shall have and continuously maintain in this State:

(1) A registered office may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, having an office identical with such registered office.

(b) A corporation formed prior to July 1, 1957 which has not designated a principal office is required on and after July 1, 1957 to designate a registered office and a registered agent in the manner, as near as may be, provided in G. S. 55A-12; other corporations formed prior to July 1, 1957 shall not be required to, but may, designate a registered office and a registered agent in the manner, as near as may be, provided in G. S. 55A-12. (1955, c. 1230; 1957, c. 979, s. 20.)

Editor's Note.—The 1957 amendment rewrote subsection (b).

§ 55A-12. **Change of registered office or registered agent.**—(a) A corporation may change its registered office or its registered agent or both. To effectuate such change, a statement shall be executed by the corporation and filed, in accordance with the provisions of G. S. 55A-4 setting forth:

(1) The name of the corporation.

(2) The address, including county and city or town, and street and number, if any, of its then registered office.

(3) If the address of its registered office be changed, the address, including county and city or town, and street and number, if any, to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent be changed, the name of its successor registered agent.

(6) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

(7) That such change was authorized by resolution duly adopted by its board of directors.

(b) If the change in the registered office is to another county, a copy of such statement certified by the Secretary of State shall be recorded both in the old county and in the new county, and there shall also be recorded in the new county, in the manner prescribed by G. S. 55A-4, a similarly certified copy of the corporation's charter.

(c) If the statement purporting to effectuate such changes is recorded in some but not in all the offices wherein recording is required by this section, persons asserting claims against the corporation may treat as the registered agent or registered office of the corporation either the one newly designated in the statement or the pre-existing one.

(d) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its registered office, or, in the case of a foreign corporation, to the address of the principal office of the corporation in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Secretary of State. (1955, c. 1230; 1957, c. 979, ss. 12, 13.)

Editor's Note.—The 1957 amendment town, and" in paragraphs (2) and (3) of subsection (a).

§ 55A-13. **Service of process on corporation.**—(a) Service upon the registered agent appointed by a corporation of any process, notice or demand required or permitted by law to be served upon the corporation shall be binding upon the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any such corporation so served shall be in court for all purposes from and after the date of such service on the Secretary of State.

(c) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (1955, c. 1230.)

§ 55A-14. **Bylaws.**—The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the charter or the bylaws. The initial bylaws adopted by the directors or any bylaws adopted by the members may contain any provisions, not inconsistent with law or the charter, with respect to: Voting rights and the manner of conducting votes on any matter, the relative rights or interests of the members as among themselves or in the property of the corporation, the manner of termination of

membership in the corporation, the rights, upon such termination, of the corporation, the terminated member and the remaining members, and the transferability or non-transferability of memberships. Any bylaws lawfully adopted may contain any additional provisions, not inconsistent with law or the charter, for the regulation and management of the affairs of the corporation, including any provision for penalties for violation of its rules. (1955, c. 1230.)

ARTICLE 4.

Powers and Management.

§ 55A-15. **General powers.**—(a) Every corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its charter.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(5) To make and alter bylaws, not inconsistent with its charter or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(6) If the charter so provides, to make donations for the public welfare or for religious, charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(7) If the charter so provides, to lend money to its employees other than its officers and directors and otherwise to assist its employees, officers, and directors.

(8) Subject to any restrictions in the charter, to indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise.

(9) To cease its corporate activities and surrender its corporate franchise.

(b) In connection with carrying out the purposes stated in its charter, and subject to any limitation prescribed by this chapter or in its charter, every corporation shall also have power:

(1) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(2) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(3) To acquire, by purchase, subscription gift, will or otherwise, and to own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, domestic or foreign business corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.

(4) To make contracts and incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(5) To procure for its benefit insurance on the life of any employee, including any officer, or, in case of a religious, educational, or charitable corporation, any sponsor, contributor, student or former student, whose death might cause financial loss to the corporation, and to this end the corporation has an insurable interest in the lives of each of such persons.

(6) To lend money for its corporate purposes, invest its funds from time to time, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(7) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter anywhere in the world.

(8) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. (1955, c. 1230; 1957, c. 783, s. 7.)

Editor's Note.—The 1957 amendment inserted "religious" in paragraph (6) of subsection (a).

§ 55A-16. Special powers; public parks and drives and certain recreational corporations.—Any corporation heretofore or hereafter formed for the purpose of creating and maintaining public parks and drives shall have full power and authority to lay out, manage, and control parks and drives within the State, under such rules and regulations as the corporation may prescribe, and shall have power to purchase and hold property and take gifts or donations for such purpose. It may hold property and exercise such powers and trust for any town, city, township, or county, in connection with which said parks and drives shall be maintained. Any city, town, township, or county, holding such property, may vest and transfer the same to any such corporation for the purpose of controlling and maintaining the same as public parks and drives under such regulations and subject to such conditions as may be determined upon by such city, town, township, or county. All such lands as the corporation may acquire shall be held in trust as public parks and drives, and shall be held open to the public under such rules, laws, and regulations as the corporation may adopt through its board of directors, and it shall have power and authority to make and adopt all such laws and regulations as it may determine upon for the reasonable management of such parks and drives. All property owned by it and appropriated exclusively for public parks and drives shall not be subject to taxation. The terms "public parks and drives" as used in this section shall be construed so as to include playgrounds, recreational centers, and other recreational activities and facilities which may be provided and established under the sponsorship of any county, city, town, township, or school district in North Carolina and constructed or established with the assistance of the government of the United States or any agency thereof. (1955 c. 1230.)

Exclusion of Negroes from Golf Course Operated by Nonprofit Corporation.—A city cannot own and operate a golf course for the public and exclude negro citizens from the privileges thereof on account of their color. Nor can negroes be excluded from a golf course owned by the city and

leased to a nonprofit corporation which was organized solely for the purpose of taking the lease and maintaining and operating the course as a public golf course. *Simkins v. Greensboro*, 149 F. Supp. 562 (1957).

§ 55A 17. Defense of ultra vires.—No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In any action by a member or a director against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the

corporation, but in any such action the plaintiff shall sustain the burden of proof that he has not at any time prior thereto assented to the act or transfer in question and that in bringing the action he is not acting in collusion with officials of the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if deemed equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as loss or damage sustained.

(2) In an action by the corporation or by its receiver, trustee or other legal representative, or by its members in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In an action by the Attorney General, to dissolve the corporation, or in an action by the Attorney General to enjoin the corporation from the transaction of unauthorized business, or in a proceeding by the Secretary of State to revoke a certificate of authority of a foreign corporation, pursuant to G. S. 55A-73. (1955, c. 1230.)

§ 55A-18. Loans to directors and officers prohibited.—No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. (1955, c. 1230.)

§ 55A-19. Board of directors.—The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless the charter or the bylaws so require. The charter or the bylaws may prescribe other qualifications for directors. (1955, c. 1230.)

§ 55A-20. Number, election and term of directors.—(a) The number constituting the board of directors of a corporation shall be not less than three. The number shall be determined by the charter or bylaws except that the number constituting the first board of directors shall be determined by the articles of incorporation. In the absence of a bylaw determining the number of directors, the number shall be the same as that stated in the charter.

(b) The number of directors may be increased or decreased from time to time only by amendment to the bylaws, unless the charter provides that a change in the number of directors shall be made only by amendment of the charter. No decrease in number shall have the effect of shortening the term of any incumbent director.

(c) The first board of directors shall consist of those named in the articles of incorporation. Thereafter, if the corporation has members, directors shall be elected by the members entitled to vote at the first annual meeting and at each subsequent annual meeting of the members. Such election may be by mail if the bylaws so provide. If the corporation does not have members or members entitled to vote, directors shall be elected or appointed in the manner and for the terms as provided in the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(d) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(e) Election of directors by the members shall be by ballot unless the charter or the bylaws otherwise provide.

(f) A director may be removed from office pursuant to any procedure therefor set forth in a charter provision, including one adopted by amendment after he was elected or appointed as director. (1955, c. 1230.)

§ 55A-21. **Vacancies.**—Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the charter or the bylaws provide that a vacancy or directorship so created shall be filled in some manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. (1955, c. 1230.)

§ 55A-22. **Quorum of directors.**—A majority of the number of directors fixed by the charter or bylaws, shall constitute a quorum for the transaction of business unless otherwise provided in the charter or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. If the number of directors of a non-profit corporation without members falls below the number necessary for a quorum, the remaining directors, however reduced in number, shall have authority to fill all vacancies in the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the charter, or the bylaws. (1955, c. 1230.)

§ 55A-23. **Committees.**—If the charter or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the charter or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility or liability imposed upon it or him by law. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. (1955, c. 1230.)

§ 55A-24. **Place and notice of directors' meeting.**—(a) Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the bylaws may prescribe.

(b) Unless the bylaws otherwise provide, special meetings of the board of directors may be called by the president or by any two directors.

(c) Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

(d) Unless the bylaws otherwise provide, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or written waiver of notice of such meeting. (1955, c. 1230.)

§ 55A-25. **Officers.**—(a) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner, and for such terms not

exceeding three years, as may be prescribed in the charter or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The charter or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such additional titles as may be provided in the charter or the bylaws. (1955, c. 1230.)

§ 55A-26. Removal of officers.—Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights. (1955, c. 1230.)

§ 55A-27. Books and records.—Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors. It shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote and may keep all other books, records, and minutes without this State. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time. (1955, c. 1230.)

§ 55A-28. Shares of stock and dividends prohibited.—A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and may make distributions upon dissolution or final liquidation as permitted by this chapter. (1955, c. 1230.)

ARTICLE 5.

Members.

§ 55A-29. Members.—(a) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the charter or in the initial bylaws adopted by the directors or in any bylaws adopted by the members. A corporation may issue certificates evidencing membership therein which may be transferable or nontransferable, as stated in the charter or bylaws.

(b) Unless the charter or bylaws contain provisions which adequately safeguard the property rights of expelled members, upon expulsion of a member who would be entitled to a distributive share of the corporation's assets upon its liquidation the corporation shall pay to the expelled member an amount equal to what the expelled member would receive if the corporation's assets were liquidated at the time of the expulsion. If the parties cannot agree upon this amount, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The three appraisers shall, by majority action, after notice and hearing to both parties, determine the value of the expelled member's distributive share and the corporation shall immediately pay the amount thereof to the expelled member. If either party by registered letter addressed to the correct address of the other party requests in writing the appointment of appraisers and names the appraiser whom he appoints and indicates the amount which he believes to be the value of the expelled member's share, upon failure of the other party to appoint an appraiser within 30 days from receipt of, or refusal to receive the registered letter, the

amount so indicated shall be the value of the share of the expelled members. (1955, c. 1230.)

§ 55A 30. Meetings of members.—(a) Meetings of members may be held at such place, either within or without this State, as may be provided in the bylaws. In the absence of any such provision all meetings shall be held at the registered office of the corporation in this State.

(b) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the charter or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting. (1955, c. 1230.)

§ 55A-31. Notice of members' meetings.—Unless the charter or bylaws otherwise provide, written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. (1955, c. 1230.)

§ 55A 32. Voting.—(a) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the charter. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) A member may vote in person or, unless the charter or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(c) The charter or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates. (1955, c. 1230.)

§ 55A 33. Quorum.—The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the charter or the bylaws. (1955, c. 1230.)

ARTICLE 6.

Fundamental Changes.

§ 55A-34. **Right to amend charter.**—A corporation may amend its charter from time to time in any and as many respects as may be desired, so long as its charter as amended contains only such provisions as are lawful under this chapter. (1955, c. 1230.)

§ 55A-35. **Procedure to amend charter.**—(a) Amendments to the charter shall be made in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment, and, except as otherwise provided in this paragraph, directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(b) Any number of amendments may be submitted and voted upon at any one meeting. (1955, c. 1230.)

§ 55A-36. **Articles of amendment.**—The articles of amendment shall be executed by the corporation and filed as provided in G. S. 55A-4, and shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted.

(3) Where there are members having voting rights a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. (1955, c. 1230.)

§ 55A-37. **Effect of certificate of amendment.**—No amendment shall affect any existing cause of action in favor of or against such corporation, or its officers or directors, or any pending action to which such corporation, or its officers or directors, shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason. (1955, c. 1230.)

§ 55A-38. **Procedure for merger.**—(a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The name which the surviving corporation is to have, which name may be

that of any of the corporations involved in the merger or any other available name permitted by this chapter.

(3) The terms and conditions of the proposed merger.

(4) A statement of any changes in the charter of the surviving corporation to be effected by such merger.

(5) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1955, c. 1230.)

§ 55A-39. Procedure for consolidation.—(a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation. The name of the new corporation may be that of any of the corporations involved in the consolidation or any other available name permitted by this chapter.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter, except the names and addresses of the incorporators.

(4) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1955, c. 1230.)

§ 55A-40. Approval of merger or consolidation.—(a) A plan of merger or consolidation shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan, and, except as otherwise provided in this paragraph, directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at each such meeting.

(2) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(b) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (1955, c. 1230.)

§ 55A-41. Articles of merger or consolidation.—(a) Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation and filed as provided in G. S. 55A-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the clerk of the superior court of each county wherein the constituent corporations have their registered offices.

(b) The articles of merger or consolidation shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation, a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was

present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

(c) The time when the merger or consolidation is effected is determined by the provisions of G. S. 55A-4. (1955, c. 1230.)

§ 55A-42. Effect of merger or consolidation.—When such merger or consolidation has been effected:

(1) The several corporations, parties to the plan of merger or consolidation, shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter, to the extent consistent with its charter as established or changed by the merger or consolidation, possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities, obligations, and penalties of each of the corporations so merged or consolidated; and any claim existing or action or proceeding, civil or criminal, pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place; and any judgments rendered against any of the merged or consolidated corporations may be enforced against the surviving or new corporation. Neither the rights of creditors nor any liens upon the property of any merged or consolidated corporations shall be impaired by such merger or consolidation.

(6) In the case of a merger, the charter of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its charter are stated in the plan of merger. In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new corporation. (1955, c. 1230.)

§ 55A-43. Sale, lease, exchange, or mortgage of assets.—A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights, the board of directors

shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting. After such authorization by a vote of members, the board of directors, nevertheless, may, if so empowered by such authorization of the members, abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. (1955, c. 1230.)

ARTICLE 7.

Dissolution and Liquidation.

§ 55A-44. **Voluntary dissolution.**—(a) A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(b) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. (1955, c. 1230.)

§ 55A-45. **Distribution of assets.**—The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the charter or the bylaws to the extent that the charter or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this chapter. (1955, c. 1230.)

§ 55A-46. **Plan of distribution.**—A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office. (1955, c. 1230.)

§ 55A-47. **Revocation of voluntary dissolution proceedings.**—(a) A corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of State, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(b) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. (1955, c. 1230.)

§ 55A-48. **Articles of dissolution.**—If the voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed and filed in accordance with the provisions of G. S. 55A-4, setting forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. (1955, c. 1230.)

§ 55A-49. **Effect of filing of articles of dissolution; certificate of dissolution.**—After the filing of articles of dissolution in the office of the Secretary of State he shall issue a certificate of dissolution and cause the same to be delivered to the corporation. Upon issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter. (1955, c. 1230.)

§ 55A-50. **Involuntary dissolution in action by Attorney General.**—A corporation may be dissolved involuntarily by a decree of the superior court in an action brought by the Attorney General in the name of the State when it is established that:

(1) The corporation procured its charter through fraud; or

(2) The corporation has, after written notice by the Attorney General given at least 20 days prior thereto, continued to exceed or abuse the authority conferred upon it by law, to the injury of the public, or of its members, creditors, or debtors; or

(3) The corporation has, after written notice by the Attorney General given at least 20 days prior thereto, failed for 30 days to appoint and maintain a registered agent in this State, as required by G. S. 55A-11; or

(4) The corporation has, after written notice by the Attorney General given at least 20 days prior thereto, failed for 30 days after change of its registered office or registered agent to file in the office of the Secretary of State a statement of such change, as required by G. S. 55A-12; or

(5) The corporation has without justification refused to comply with a final court order for the production of its books, records, or other documents as required to be kept by G. S. 55A-27. (1955, c. 1230.)

§ 55A-51. **Duties of Attorney General with respect to actions for involuntary dissolution.**—Whenever the Attorney General has reason to believe that any corporation has given cause for dissolution as provided in G. S. 55A-50 and the case involves the public interest, it is the duty of the Attorney General to bring an action under that section. If the cause for dissolution does not involve the public interest, the Attorney General has a duty to bring an action if satisfactory security is given to indemnify the State against the costs and expenses to be incurred thereby. (1955, c. 1230.)

§ 55A-52. **Venue and service of process.**—Every action by the Attorney General for the involuntary dissolution of a corporation shall be commenced in the superior court of the county in which the registered office of the corporation is situated. Summons shall issue and be served as in other civil actions. (1955, c. 1230.)

§ 55A-53. **Power of court to liquidate assets and affairs of corporation.**—(a) The superior court shall have power to liquidate the assets and affairs of a corporation:

(1) In an action by a member or director when it is made to appear:

a. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation or the public is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

b. That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

c. That the corporate assets are being misapplied or wasted; or

d. That the corporation is unable to carry out its purposes.

(2) In an action by a creditor:

a. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

b. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation to have its voluntary dissolution continued under the supervision of the court.

(4) When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

(b) A court that has undertaken the liquidation of the assets and affairs of a corporation under subsection (a) of this section may at any time enter a decree dissolving the corporation, and shall upon application of any interested party enter an order directing liquidation completed.

(c) Actions under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

(d) Summons shall issue and be served on the corporation as in other civil actions, and it shall not be necessary to make directors or members parties to any such action unless relief is sought against them personally.

(e) The superior court shall have power to liquidate the assets and affairs of a corporation in an action brought by the Attorney General under G. S. 55A-51. (1955, c. 1230.)

§ 55A-54. **Procedure in liquidation of corporation by court.**—In an action to liquidate the assets and affairs of a corporation, the court shall appoint receivers and the receivers so appointed shall have such powers and duties as are provided in article 38, chapter 1 of the General Statutes of North Carolina. (1955, c. 1230.)

§ 55A-55. **Discontinuance of liquidation action.**—The liquidation of the assets and affairs of a corporation may be discontinued at any time during

the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the action and direct the redelivery to the corporation of all its remaining property and assets, and shall decree cancellation of any prior dissolution. (1955, c. 1230.)

§ 55A-56. Duties of officials as to decrees and orders concerning dissolution.—A court decree effecting or canceling a dissolution of a corporation or a court order declaring liquidation completed shall contain a direction to the clerk of that court promptly to file one certified copy of such decree or order with the Secretary of State and also to file a certified copy thereof with the clerk of the superior court of the county wherein the corporation has its registered office, unless the decree or order was entered in that court. The fees for the preparation, certificates, and filing of such decree or order shall be taxed as a part of the costs in the action. (1955, c. 1230.)

§ 55A-57. Disposition of amounts due certain creditors, members, and other persons.—(a) Except as provided in subsection (b) of this section upon liquidation of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found shall be reduced to cash and deposited with the clerk of the superior court of the county of the registered office of the corporation to be held three months for the persons entitled thereto, as and when satisfactory evidence of his right to the same is furnished. After the clerk has held the unclaimed cash for the aforesaid period of three months, he shall pay such assets to the University of North Carolina, to be held without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

(b) In proceedings to liquidate the assets and affairs of a corporation, any asset held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements. If the donor or designated transferee cannot be found, then such asset shall be disposed of as provided in subsection (c) of this section.

(c) In case of assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation, pursuant to a plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct. (1955, c. 1230.)

ARTICLE 8.

Foreign Corporations.

§ 55A-58. Right to conduct affairs.—(a) A foreign corporation shall procure a certificate of authority from the Secretary of State before it shall conduct affairs in this State. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this State any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State.

(b) Without excluding other activities which may not constitute conducting

affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State, for the purpose of this chapter by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions.

(4) Making or investing in loans with or without security provided no related office or agency is maintained in this State.

(5) Taking security for or collecting debts due to it or enforcing any rights in property securing the same. (1955, c. 1230.)

§ 55A-59. **Powers of foreign corporation.**—(a) A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but not greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

(b) A foreign corporation, however, is not eligible or entitled to qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of his death. (1955, c. 1230.)

§ 55A-60. **Corporate name of foreign corporation.**—(a) No certificate of authority shall be issued to a foreign corporation whose name contains any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its charter.

(b) The corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation or any foreign corporation authorized to conduct affairs in this State, whether for profit or nonprofit, or a name the exclusive right to which is, at the time, reserved in the manner prescribed by law.

(c) Whenever a foreign corporation which is authorized to conduct affairs in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall not be deemed to permit the use in its affairs in this State of the new name nor shall any new certificate of authority be granted to it under the new name. (1955, c. 1230.)

§ 55A-61. **Application for certificate of authority.**—(a) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) The date of incorporation and the period of duration of the corporation.

(3) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(4) The address, including county and city or town, and street and number, if any, of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(5) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this State.

(6) The names and respective addresses of the directors and officers of the corporation.

(7) A statement that, in consideration of the issuance of a certificate of authority to conduct affairs in this State, the corporation appoints the Secretary of State of North Carolina as its agent to receive service of process, notice, or demand whenever the corporation fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office.

(b) Such application shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such application. (1955, c. 1230; 1957, c. 979, s. 14.)

Editor's Note.—The 1957 amendment city or town, and street and number, if inserted the words "including county and any" in paragraph (4) of subsection (a).

§ 55A-62. Filing of application and certificate of authority.—(a) The application of the corporation for a certificate of authority and one conformed copy thereof shall be delivered to the Secretary of State, together with one copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

(b) If the Secretary of State finds that the application conforms to law he shall, when all taxes and fees have been tendered as in this chapter prescribed:

(1) Endorse on each of such documents the word "filed" and the hour, day, month, and year of the filing thereof.

(2) File in his office the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to conduct affairs in this State to which he shall affix the conformed copy of the application.

(4) Send to the corporation or its representative the certificate of authority, together with the conformed copy of the application affixed thereto. (1955, c. 1230.)

§ 55A-63. Effect of certificate of authority.—Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to conduct affairs in this State for those purposes set forth in its application, subject, however, to the right of this State to suspend or to revoke such authority. (1955, c. 1230.)

§ 55A-64. Registered office and registered agent of foreign corporation.—Each foreign corporation authorized to conduct affairs in this State shall establish and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, having an office identical with such registered office. (1955, c. 1230.)

§ 55A-65. Change of registered office or registered agent of foreign corporation.—(a) A foreign corporation authorized to conduct affairs in this State may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The address, including county and city or town, and street and number, if any, of its then registered office.

(3) If the address of its registered office be changed, the address, including county and city or town, and street and number, if any, to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent be changed, the name of its successor registered agent.

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(b) Such statements shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing the statement.

(c) If the Secretary of State finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective. (1955, c. 1230; 1957, c. 979, ss. 15, 16.)

Editor's Note.—The 1957 amendment town, and" in paragraphs (2) and (3) of inserted the words "county and city or subsection (a).

§ **55A-66. Suits against foreign corporations authorized to conduct affairs in this State.**—(a) The registered agent appointed by a foreign corporation authorized to conduct affairs in this State shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a foreign corporation authorized to conduct affairs in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any process, notice or demand may be served.

(c) Service on any such agent may be made in a suit upon any cause of action, whether or not arising in this State or arising out of affairs conducted in this State, and whether or not the cause of action runs in favor of a resident of this State. (1955, c. 1230.)

§ **55A-67. Suits against foreign corporations conducting affairs in the State without authorization.**—Whenever a foreign corporation shall conduct affairs in this State without first procuring a certificate of authority so to do from the Secretary of State or after its certificate of authority shall have been withdrawn, suspended, or revoked, then the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand in any suit upon a cause of action arising out of such affairs may be served. (1955, c. 1230.)

§ **55A-68. Service on foreign corporation by service on Secretary of State.**—Service of any process, notice or demand on a foreign corporation by service on the Secretary of State shall be made as provided in G. S. 55-146 and the provisions of that section shall apply to nonprofit corporations. (1955, c. 1230.)

§ **55A-69. Amendment to charter of foreign corporation.**—Whenever the charter of a foreign corporation authorized to conduct affairs in this State is amended, such foreign corporation shall, within 30 days after such amendment becomes effective, file in the office of the Secretary of State a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself amend its certificate of authority. (1955, c. 1230.)

§ **55A-70. Merger of foreign corporation authorized to conduct affairs in this State.**—Whenever a foreign corporation authorized to conduct

affairs in this State shall be a party to a statutory merger permitted by the laws of the state or country under which it is incorporated, and such corporation shall be the surviving corporation, it shall, within 30 days after such merger becomes effective, file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this State unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to pursue in this State. (1955, c. 1230.)

§ 55A-71. **Amended certificate of authority.**—(a) A foreign corporation authorized to conduct affairs in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Secretary of State.

(b) The requirements in respect to the form, the manner of its execution, the filing of the application and the conformed copy thereof, with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. The contents of such application need not be the same as in the case of an original application for a certificate of authority provided the application sets forth information as to the changes proposed. (1955, c. 1230.)

§ 55A-72. **Withdrawal of foreign corporation.**—(a) A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal.

(b) In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, together with a conformed copy thereof, which shall set forth:

(1) The name and post-office address of the principal office of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs in this State.

(4) That the corporation either continues its registered agent or revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) If required by the Commissioner of Revenue, such additional information as may be necessary or appropriate in order to determine and assess any unpaid taxes and fees payable under the laws of this State.

(c) The application for withdrawal shall be on forms prescribed by the Secretary of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

(d) If the Secretary of State finds that such application conforms to law, he shall when notified by the Commissioner of Revenue that such corporation has met the requirements with respect to reports and taxes required by the revenue laws of this State:

(1) Endorse on each of such documents the word "filed", and the hour, day, month, and year of the filing thereof.

(2) File the application in his office.

(3) Issue a certificate of withdrawal to which he shall affix the conformed copy.

(e) The certificate of withdrawal, together with the conformed copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease. (1955, c. 1230.)

§ 55A-73. Revocation of certificate of authority.—(a) The certificate of authority of a foreign corporation to conduct affairs in this State may be revoked by the Secretary of State upon the conditions prescribed in this section when:

(1) The corporation has failed for a period of 30 days to establish and maintain a registered office as required by G. S. 55A-64; or

(2) The corporation has failed for a period of 30 days to appoint and maintain a registered agent in this State as required by G. S. 55A-64; or

(3) The corporation has failed for a period of 30 days after change of its registered office or registered agent to file in the office of the Secretary of State a statement of such change pursuant to G. S. 55A-65; or

(4) The corporation has failed to file in the office of the Secretary of State any amendment to its charter or any article of merger within the time prescribed by G. S. 55A-69 and 55A-70; or

(5) A willful misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter; or

(6) The corporation has, without justification, refused to comply with a court order directing it to produce for inspection its books and records; or

(7) The corporation is exceeding the authority conferred upon it by this chapter.

(b) On the happening of any of the events set out in subsection (a) of this section, the Secretary of State shall give not less than 20 days' written notice to the corporation that he intends to revoke the certificate of authority of such corporation for one of said causes, specifying the same. Such notice shall be given by mail duly addressed to the corporation at its registered office in this State and at its principal office outside the State, as shown by the records in the office of the Secretary of State. If, before the expiration of the time stated in the notice, the corporation establishes to the satisfaction of the Secretary of State the fact that the stated cause for the revocation of its certificate of authority did not exist as of the time the notice was mailed or, if it did exist at said time, has been cured, then the Secretary of State shall take no further action. Otherwise, on the expiration of the time stated in the notice, he shall revoke the certificate of authority.

(c) Nothing herein shall be deemed to repeal or modify any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign corporations for failure to comply with the provisions thereof. (1955, c. 1230.)

§ 55A-74. Issuance of certificate of revocation.—(a) To revoke any such certificate of authority, the Secretary of State shall:

(1) Issue a certificate of revocation in triplicate.

(2) File one of such certificates in his office.

(3) Mail one of such certificates to such corporation at its registered office in this State and one to the corporation at its principal office in the state or country under the laws of which it is incorporated, as shown by the records in the office of the Secretary of State.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in this State shall cease. (1955, c. 1230.)

§ 55A-75. Application of this chapter to foreign corporations heretofore domesticated in this State.—(a) Subject to the provisions of subsection (d) of this section, foreign corporations which have been duly domesticated in this State at the time this chapter takes effect shall be entitled to all the rights and privileges applicable to foreign corporations procuring authority to conduct affairs in this State under this chapter, and from the time this chapter takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring under this chapter authority to conduct affairs in this State.

(b) Foreign corporations heretofore domesticated in this State which have not designated a principal office are required on and after July 1, 1957 to designate a registered office and appoint a registered agent in the manner, as near as may be, provided in G. S. 55A-65.

(c) If any foreign corporation has, prior to the effective date of this chapter, filed with the Secretary of State a statement designating a principal office within this State and agent in charge thereof, and has continued to maintain the same, it shall not be required to, but it may, designate a new registered office and agent in the manner, as near as may be, provided in G. S. 55A-65.

(d) If there is no office and agent registered in the office of the Secretary of State then service of process may be made on the Secretary of State, as provided in G. S. 55A-68 when there is no registered agent, until such time as a registered office is designated and a registered agent appointed.

(e) No foreign corporation which has been domesticated under the provisions of prior acts before this chapter becomes effective shall hereafter have greater immunity from local jurisdiction than foreign corporations hereafter procuring a certificate of authority to conduct affairs in this State and, to this end, every such domesticated foreign corporation, by continuing as a domesticated corporation in this State, for a period of 90 days after this chapter becomes effective, shall be deemed to have expressly appointed the Secretary of State as its agent to receive service of process as fully as if it had made an application for a certificate of authority pursuant to the requirements of G. S. 55A-61. (1955, c. 1230; 1957, c. 979, ss. 21, 22.)

Editor's Note.—The 1957 amendment rewrote subsection (b), and changed subsection (c) by substituting the words "in the manner, as near as may be, provided in G. S. 55A-65" for the words "as provided in subsection (b) of this section."

§ 55A-76. Conducting affairs without certificate of authority.—(a) No foreign corporation conducting affairs in this State without permission obtained through a certificate of authority under this chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless such corporation shall have obtained a certificate of authority prior to the trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the conduct of affairs by such corporation in this State until (1) a certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired substantially all of its assets, or (2) substantially all of its assets have been acquired by a domestic corporation or one or more individuals. An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action or proceeding in any court of this State.

(c) A foreign corporation failing to obtain permission to conduct affairs in this

State as required by this chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it conducted affairs in this State without such permission in an amount equal to all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such permission plus interest and all penalties imposed by law for failure to pay such fees and taxes, plus five hundred dollars (\$500.00) and costs. The Attorney General shall bring actions to recover all amounts due the State under the provisions of this section.

(d) The Secretary of State is hereby directed to require that every foreign corporation conducting affairs in this State comply with the provisions of this chapter. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this article and for making such investigations as shall be necessary to ascertain foreign corporations now conducting affairs in this State which may have failed to comply with the provisions of this chapter. (1955, c. 1230.)

ARTICLE 9.

Fees and Taxes.

§ 55A-77. **Fees.**—(a) The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

- (1) For filing articles of incorporation (G. S. 55A-7), \$5.00
- (2) For filing an application of a foreign corporation for a certificate of authority to conduct affairs in this State and issuing a certificate of authority (G. S. 55A-61), 5.00
- (3) For filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this State and issuing an amended certificate of authority (G. S. 55A-71), 5.00
- (4) For filing articles of amendment (G. S. 55A-36), 5.00
- (5) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State (G. S. 55A-69), 5.00
- (6) For filing articles of merger or consolidation (G. S. 55A-41), .. 5.00
- (7) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State (G. S. 55A-70), 5.00
- (8) For receiving any service of process as statutory agent of a corporation (G. S. 55A-13, G. S. 55A-68, G. S. 55A-75), 1.00
which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.
- (9) For filing a notice of resignation of a registered agent (G. S. 55A-12(d)), 1.00
- (10) For filing a statement of the change of registered office or registered agent of a domestic or foreign corporation (G. S. 55A-65, G. S. 55A-75, G. S. 55A-12), 3.00
- (11) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G. S. 55A-72), 5.00
- (12) Issuance of a certificate of revocation of authority (G. S. 55A-74), 5.00
- (13) For filing articles of dissolution (G. S. 55A-48), 5.00
- (14) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G. S. 55A-4(c)):
for the first page thereof, 1.00

- for each additional page,40
- for affixing his certificate and official seal thereto, 2.00
- (15) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation:
 - for each page,20
 - for affixing his certificate and official seal thereto, 2.00
- (16) For filing any other document not herein specifically provided for, 5.00
- (b) The filing fees hereinbefore prescribed do not include copies or certified copies and the fees for such copies are those prescribed by subdivisions (14) and (15) of subsection (a) of this section.
- (c) For recording and copying any corporate document or paper required by this chapter to be recorded in his office, the clerk of superior court shall collect such amounts as are prescribed by G. S. 2-26 or other applicable laws. (1957, c. 1179.)

§ 55A-78. **Taxes.**—(a) On filing articles of incorporation in the office of the Secretary of State, a tax in the amount of fifteen dollars (\$15.00) shall be collected by the Secretary of State, and remitted to the State Treasurer for the use of the State.

(b) On filing in the office of the Secretary of State an application of a foreign corporation for a certificate of authority to conduct affairs in this State, a tax in the amount of forty dollars (\$40.00) shall be collected by the Secretary of State and remitted to the State Treasurer for the use of the State. (1957, c. 1179.)

ARTICLE 10.

Miscellaneous Provisions.

§ 55A-79. **Interrogatories by Secretary of State.**—The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such written interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within 30 days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter, requiring or permitting action by the Attorney General. (1955, c. 1230.)

§ 55A-80. **Penalties imposed upon corporations, officers and directors for failure to answer interrogatories.**—(a) Each corporation, foreign or domestic, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the Secretary of State, in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor.

(b) Each officer and director of a corporation, domestic or foreign who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this chapter, or who signs any articles, statement, report,

application or other document filed with the Secretary of State which is known to such officer or director to be false in any material respect, shall be guilty of a misdemeanor. (1955, c. 1230.)

§ 55A-81. **Powers of Secretary of State.**—The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him. (1955, c. 1230.)

§ 55A-82. **Certificates and certified copies to be received in evidence.**—All certificates issued by the Secretary of State in accordance with the provisions of this chapter, and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. (1955, c. 1230.)

§ 55A-83. **Forms of documents required to be filed in office of Secretary of State.**—Any document required to be filed in the office of the Secretary of State shall be made in such form, if any, as may be prescribed by the Secretary of State pursuant to the provisions of this chapter. (1955, c. 1230.)

§ 55A-84. **Photostatic copies of documents acceptable for filing or recording.**—When any document is required or permitted to be filed or recorded by this chapter, a photostatic or other photographic copy of such document may be filed or recorded in lieu of the original instrument. Such filing or recording shall have the same force and effect as if the original instrument had been so filed or recorded. (1955, c. 1230.)

§ 55A-85. **Waiver of notice.**—Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the charter or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. (1955, c. 1230.)

§ 55A-86. **Action by members without a meeting.**—(a) Any action required by this chapter to be taken at a meeting of the members or directors of the corporation, or any action which may be taken at a meeting of the members or directors, or of a committee of directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee of directors, as the case may be.

(b) Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this chapter. (1955, c. 1230.)

§ 55A-87. **Reserve power.**—The General Assembly reserves the power to amend or repeal the charter of any corporation hereafter or heretofore formed and to amend or repeal this chapter or any part thereof, and the rights of any corporation or any member, director or officer in any corporation are subject to this reservation. This chapter, including this reservation, is a part of the charter contract between members. The power so reserved includes the power to authorize charter amendments which are to be effectuated pursuant to consent by the members in the manner permitted by this chapter, as now enacted or as subsequently amended. No amendment or repeal of this chapter or any part thereof shall impair any liability previously incurred. (1955, c. 1230.)

§ 55A-88. **Certain religious, etc., associations deemed incorporated.**—In all cases where a religious, educational or charitable association has been

formed prior to January first, one thousand eight hundred and ninety-four, and has since said date been acting as a corporation, exercising the powers and performing the duties of religious, educational or charitable corporations as prescribed by the laws of this State, then such association shall be conclusively presumed to have been duly and regularly organized and existing as a corporation under the laws of this State on January first, one thousand eight hundred and ninety-four, and all of its acts as a corporation from and after said date, if otherwise valid, are hereby declared to be valid corporate acts. (1955, c. 1230.)

§ 55A-89. **Cross references.**—Whenever in this chapter, as enacted or as hereafter amended, whether by enactment of additional provisions or otherwise, reference is made to a section of this chapter or of any other chapter of the statutes of this State, such reference shall, unless otherwise provided, extend to and include any amendment of the section so referred to or any section hereafter enacted in lieu of the section so referred to. (1955, c. 1230.)

ARTICLE 11.

Curative Provisions.

§ 55A-89.1. **Validation of amendments to corporate charters extending corporate existence; limitation of actions; intent.**—(a) In every case where a corporation chartered under either the general or private laws of the State of North Carolina, has continued or shall continue to act and conduct affairs as a corporation after the expiration of its period of existence as theretofore fixed in its charter and has thereafter filed in the office of the Secretary of State an amendment to its charter to extend or renew its corporate existence, such amendment is hereby validated and made effective for all intents and purposes to the same extent and with the same effect as if such amendment had been made within the period of such corporation's existence as theretofore fixed in its charter.

(b) No action or proceeding shall be brought or defense or counterclaim pleaded later than July 1, 1958 in which either the continued existence of such corporation or the validity of any of the contracts, acts, deeds, rights, privileges, powers, franchises and titles of such corporation is attacked or otherwise questioned on the grounds that such amendment was not filed within the period of such corporation's existence as theretofore fixed in its charter.

(c) In no event shall the limitation provided in subsection (b) of this section bar any action, proceeding, defense or counterclaim based upon grounds other than those mentioned in subsection (b), unless the grounds set out in subsection (b) are an essential part thereof. (1957, c. 509.)

Chapter 56.

Electric, Telegraph and Power Companies.

ARTICLE 1.

Acquisition and Condemnation of Property.

§ 56-5. **Grant of eminent domain; exception as to mills and water powers.**—Such telegraph, telephone, electric power or lighting company shall be entitled, upon making just compensation therefor, to the right of way over the lands, privileges and easements of other persons and corporations, including rights of way for the construction, maintenance, and operation of pipe lines for transporting fuel to their power plants; and to the right to erect poles and towers, to establish offices, and to take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, works, railroads, or sidetracks, or powerhouses,

with the right to divert the water from such ponds or reservoirs and conduct the same by flume, ditch, conduit, waterway or pipe line, or in any other manner, to the point of use for the generation of power at its said powerhouses, returning said water to its proper channel after being so used.

(1957, c. 1046.)

Editor's Note. — The 1957 amendment inserted in the first sentence the words "including rights of way for the construction, maintenance, and operation of pipe

lines for transporting fuel to their power plants." As only the first sentence was changed the rest of the section is not set out.

Chapter 57.

Hospital and Medical Service Corporations.

Sec.

- 57-1.1. Contract for joint assumption or underwriting of risks.
- 57-1.2. Premium or dues paid by employer, employee, principal or agent or jointly and severally.
- 57-3.1. Dentists' services.
- 57-4.1. Public hearings on revision of existing schedule or establish-

Sec.

- ment of new schedule: publication of notice.
- 57-12.1. Medical and hospital service associations and agent to transact business through licensed agents only.
- 57-19.1. Merger.

§ 57-1. Regulation and definition; application of other laws; profit and foreign corporations prohibited.—Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical service plan whereby hospital care and/or medical service may be provided in whole or in part by said corporation or by hospitals and/or physicians participating in such plan, or plans, shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term "hospital service plan" as used in this chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term "medical service plan" as used in this chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician.

The term "hospital service corporation" as used in this chapter is intended to mean any nonprofit corporation operating a hospital and/or medical service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical service plan, or both, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical fees, or the furnishing of such services, or both, and may enter into contracts with hospitals or physicians, or both, for the furnishing of fees or services respectively under a hospital or medical service plan, or both.

No foreign or alien hospital or medical service corporation as herein defined

shall be authorized to do business in this State. (1941, c. 338, s. 1; 1943, c. 537, s. 1; 1953, c. 1124, s. 1.)

Editor's Note.—

The 1953 amendment, effective July 1, 1953, struck out the former fifth paragraph, which prohibited the conversion of a hospital service corporation into a corporation organized for pecuniary profits and required every such corporation to be maintained and operated as a co-operative

corporation.

Applicable Provisions of Chapter 58.—

For provisions of chapter 58 of the General Statutes made applicable to hospital and medical service corporations, see notes to §§ 58-41, 58-44.6, 58-54.4, 58-250.1, 58-252, 58-257 and 58-257.1.

§ 57-1.1. Contract for joint assumption or underwriting of risks.—

Any corporation organized or regulated by the provisions of this chapter is authorized to enter into such contracts with any other firm or corporation for joint assumption or underwriting of any part or all of any risks undertaken upon such terms and conditions as are approved by the Commissioner of Insurance. (1955, c. 894, s. 1.)

§ 57-1.2. Premium or dues paid by employer, employee, principal or agent or jointly and severally.—Any premium or dues charged by a corporation regulated under the provisions of this chapter may be paid by the employer, employee, principal, or agent, or jointly and severally. The term "employer" as used herein includes counties, municipal corporations, and all departments or subdivisions of the State, county, municipal corporation, and official boards including city and county boards of alcoholic control, together with all others occupying the status of employer and employee, principal and agent. (1955, c. 894, s. 2.)

§ 57-3. Hospital and physician contracts.

On and after January 1, 1956, all certificates, plans or contracts issued to subscribers or other persons by hospital and medical service corporations operating under chapter 57 of Volume 2B of the General Statutes shall contain a provision as follows: "After two years from the date of issue of this certificate, contract or plan no misstatements, except fraudulent misstatements made by the applicant in the application for such certificate, contract or plan, shall be used to void said certificate, contract or plan, or to deny a claim for loss incurred or disability (as therein defined) commencing after the expiration of such two-year period. No claim for loss incurred or disability (as defined in the certificate, contract or plan) commencing after two years from the date of issue of this certificate, contract or plan shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specifically described, effective on the date of loss, had existed prior to the effective date of coverage of this certificate, contract or plan." (1941, c. 338, s. 3; 1943, c. 537, s. 2; 1947, c. 820, s. 1; 1955, c. 850, s. 7.)

Editor's Note.—

The 1955 amendment added the above paragraph at the end of this section. As

the rest of the section was not changed by the amendment, it is not set out.

§ 57-3.1. Dentists' services.—Any corporation organized under the provisions of this chapter may, in addition to its authority to contract under G. S. 57-3, enter into contracts to pay duly licensed dentists for treatment of fractures and dislocations of the jaw, and cutting procedures in the oral cavity other than extractions, repairs and care of the teeth and gums. (1957, c. 987.)

§ 57-4.1. Public hearings on revision of existing schedule or establishment of new schedule; publication of notice.—Whenever any hospital service corporation licensed under this chapter makes a rate filing or any proposal to revise an existing rate schedule or contract form, the effect of which is to increase or decrease the charge for its contracts, or to set up a new rate sched-

ule, and such rate schedule is subject to the approval of the Commissioner, such hospital service corporation shall file its proposed rate change or contract form and supporting data with the Commissioner, who shall thereafter, before acting on any such proposal, order a public hearing thereon, if such hearing is required by the rules and regulations adopted by the Commissioner of Insurance; and then in accordance therewith fix a time and place for such hearing not earlier than twenty days thereafter. The hospital service corporation making such proposal shall, not more than ten days prior to the time of such public hearing, cause to be published in a daily newspaper or newspapers published in North Carolina, and in accordance with the rules and regulations of the Commissioner of Insurance, a notice, in the form and content approved by the Commissioner, setting forth the nature and effect of such proposal and the time and place of the public hearing to be held. (1953, c. 1118.)

§ 57-7. Subscribers' contracts; required and prohibited provisions.

—1. Every contract made by a corporation subject to the provisions of the chapter shall be for a period not to exceed twelve months, and no contract shall be made providing for the inception of benefits at a date later than one year from the date of the contract. Any such contract may provide that it shall be automatically renewed for a similar period unless there shall have been one month's prior written notice of termination by either the subscriber or the corporation.

2. Contracts may be issued which entitle one or more persons to benefits thereunder, provided that persons entitled to benefits thereunder, other than the certificate holder, are either spouse, lawful or legally adopted child of the certificate holder or his spouse, or other members of the immediate family of the certificate holder who reside in the same household with certificate holder and are legally, equitably, or morally dependent upon and rely upon certificate holder to a material degree for the reasonable necessities of life, such as food, clothing, lodging, maintenance, support, and/or education.

3. Every contract entered into by any such corporation with any subscriber thereto shall be in writing and a certificate stating the terms and conditions thereof shall be furnished to the subscriber to be kept by him. No such certificate form, other than to group subscribers of groups of ten or more certificate holders or those issued pursuant to a master group contract covering ten or more certificate holders shall be made, issued or delivered in this State unless it contains the following provisions, provided, however, groups between five and ten certificate holders complying with and maintaining eligibility status under regulations approved by the Insurance Commissioner for group enrollment may be cancelled if such participation falls below the minimum participation of five certificate holders; or if the group takes other group hospital, medical or surgical coverage.

(a) A statement of the amount payable to the corporation by the subscriber and the times at which and manner in which such amount is to be paid; this provision may be inserted in the application rather than in the certificate. Application need not be attached to certificate.

(b) A statement of the nature of the benefits to be furnished and the period during which they will be furnished.

(c) A statement of the terms and conditions, if any, upon which the contract may be canceled or otherwise terminated at the option of either party. Said statement shall be in the following language:

"Renewability": Any contract subject to the provisions hereof is renewable at the option of the subscriber unless sufficient notice in writing of nonrenewal is mailed to the subscriber by the corporation addressed to the last address recorded with the corporation.

"Sufficient notice" shall be as follows:

1. During the first year of any such contract, or during the first year following any lapse and reinstatement, or re-enrollment, a period of thirty (30) days.

2. During the second and subsequent years of continuous coverage, a number of full calendar months most nearly equivalent to one-fourth the number of months of continuous coverage from the first anniversary of the date of issue or reinstatement or re-enrollment, whichever date is more recent, to the date of mailing of such notice.

3. No period of required notice shall exceed two years, and no renewal hereunder shall renew any such contract for any period beyond the required period of notice except by written agreement of the subscriber and corporation.

Any such contract may be modified, terminated, or cancelled by the corporation at any time at its option, upon:

1. Nonpayment of fees or dues as required, or
2. Failure or refusal to comply with rate or benefit changes approved by the State Insurance Department after public hearing as outlined in G. S. 57-4.1.
3. Failure or refusal after thirty (30) days' written notice to subscriber to transfer into hospital and medical service plan serving the area to which he has changed residence and is eligible for or to which corporation is required to transfer by inter-plan agreement of transfer.

4. The provisions of these amendments to subsection 3 and 3 (c) shall apply only to such contracts as are first issued on and after January 1, 1956.

(d) A statement that the contract includes the endorsements thereon and attached papers, if any, and together with the application contains the entire contract.

(e) A statement that if the subscriber defaults in making any payment, under the contract, the subsequent acceptance of a payment by the corporation at its home office shall reinstate the contract, but with respect to sickness and injury, only to cover such sickness as may be first manifested more than ten days after the date of such acceptance.

4. In every such contract made, issued or delivered in this State:
 - (a) All printed portions shall be plainly printed;
 - (b) The exceptions from the contract shall appear with the same prominence as the benefits to which they apply; and
 - (c) If the contract contains any provision purporting to make any portion of the articles, constitution or bylaws of the corporation a part of the contract, such portion shall be set forth in full.

5. A hospital service corporation may issue a master group contract with the approval of the Commissioner of Insurance provided such contract and the individual certificates issued to members of the group, shall comply in substance to the other provisions of this chapter. Any such contract may provide for the adjustment of the rate of the premium or benefits conferred as provided in said contract, and in accordance with an adjustment schedule filed with and approved by the Commissioner of Insurance. If such master group contract is issued, altered or modified, the subscribers' contracts issued in pursuance thereof are altered or modified accordingly, all laws and clauses in subscribers' contracts to the contrary notwithstanding. Nothing in this chapter shall be construed to prohibit or prevent the same. Forms of such contract shall at all times be furnished upon request of subscribers thereto.

6. Any hospitalization contract renewed in the name of the subscriber during the grace period shall be construed to be a continuation of the contract first issued. (1941, c. 338, s. 7; 1947, c. 820, ss. 3, 4; 1955, c. 679, ss. 1-3; 1957, c. 1085, s. 1.)

Editor's Note.—

The 1955 amendment, effective January 1, 1956, inserted in the introductory paragraph of subsection 3 the words "other than to group subscribers or those issued pursuant to a master group contract." The

amendment also added all of subsection 3 (c) appearing after the first sentence and extending to paragraph (d). It also added subsection 6 at the end of the section.

The 1957 amendment rewrote the second sentence of the preliminary paragraph of

subsection 3 to become effective January 1, 1958. The sentence in effect until said date reads as follows: "No such certificate form, other than to group subscribers or

those issued pursuant to a master group contract, shall be made, issued or delivered in this State unless it contains the following provisions:"

§ 57-12.1. Medical and hospital service associations and agent to transact business through licensed agents only.—No medical or hospital service association; nor any agent of any association shall on behalf of such association or agent, knowingly permit any person not licensed as an agent as provided by law, to solicit, negotiate for, collect or transmit a premium for a new contract of medical or hospital service certificate or to act in any way in the negotiation for any contract or policy; provided, no license shall be required of the following:

(1) Persons designated by the association or subscriber to collect or deduct or transmit premiums or other charges for medical care or hospital contracts, or to perform such acts as may be required for providing coverage for additional persons who are eligible under a master contract.

(2) An agency office employee acting in the confines of the agent's office, under the direction and supervision of the duly licensed agent and within the scope of such agent's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties. (1955, c. 1268.)

§ 57-15. Amendments to certificate of incorporation.

3. The charter of any corporation subject to the provisions of this chapter may be amended to convert that corporation, so amending its charter, into either a mutual nonstock or stock accident and health insurance company or life insurance company subject to the provisions of chapter 58 of the General Statutes of North Carolina provided the rights of the subscribers or certificate holders in the reserves and capital of such corporation are adequately protected under rules and regulations adopted by the Commissioner of Insurance. (1941, c. 338, s. 15; 1947, c. 820, s. 6; 1953, c. 1124, s. 2.)

Editor's Note.—

The 1953 amendment, effective July 1, 1953, added subsection 3 at the end of

this section. As the rest of the section was not affected by the amendment, it is not set out.

§ 57-19.1. Merger.—Nothing in this chapter shall be construed to prohibit or prevent a corporation organized under, or subject to, the provisions of this chapter from merging or consolidating with a mutual nonstock or stock accident and health insurance company or life insurance company operating under the provisions of chapter 58 of the General Statutes of North Carolina provided the rights of the subscribers or certificate holders in the reserves and capital of such merging or consolidating corporation are adequately protected under rules and regulations adopted by the Commissioner of Insurance. The provisions of this chapter shall be followed with reference to the adoption of such contract of merger or consolidation by the corporation operating under this chapter and such contract, upon adoption, shall be approved and filed as herein provided. The laws of merger or consolidation applicable to the other corporation with which merger or consolidation is proposed shall be followed by such other corporation. (1953, c. 1124, s. 3.)

Chapter 58.

Insurance.

SUBCHAPTER I. INSURANCE DEPARTMENT.

Article 1.

Title and Definitions.

Sec.

58-3.1. Motor vehicle warranties.

Article 3.

General Regulations for Insurance.

58-33. Companies must do business in own name; emblems, insignias, etc.

58-39.5, 58-39.6. [Struck out.]

58-40.4. Salaried officers not required to be licensed.

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Article 13.

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58-126.1. Policies combining other coverage with fire insurance.

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58-155.36. Special deputy commissioners, counsel, clerks and assistants; expenses of liquidation or rehabilitation.

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Article 21.

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Sec.

58-190. Appropriations; fund to pay administrative expenses.

58-191. Payment of losses; rules and regulations; sprinkler leakage insurance.

58-191.1. Extended coverage insurance.

58-191.2. Use and occupancy and business interruption insurance.

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Article 22.

General Regulations of Business.

58-195.2. Credit life insurance defined.

58-195.3. Any type of survivorship fund in life insurance contract prohibited.

58-195.4. Tie-in sales with life insurance prohibited.

58-204.1. Insurable interest in life and physical ability of employee or agent.

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58-204.4. Construction of §§ 58-204.1 to 58-204.3.

Article 24.

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58-229.2. Deposit or investment of funds of mutual burial associations.

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58-241.5. Commissioner authorized to subpoena witnesses, administer oaths and compel attendance at hearings.

SUBCHAPTER V. AUTOMOBILE LIABILITY INSURANCE.

Article 25.

Regulation of Automobile Liability Insurance Rates.

58-248.7. Validation of experience rating plans in use prior to April 7, 1953.

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58-248.8. Rates to distinguish between safe and nonsafe drivers.

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

Article 26.

Nature of Policies.

58-250. Form of policy.
58-250.1. Right to return policy and have premium refunded.
58-251. [Repealed.]
58-251.1. Accident and health policy provisions.
58-251.2. Renewability of individual and blanket hospitalization and accident and health insurance policies.
58-252. Meaning of term "pre-existing conditions" in certain policies.
58-253, 58-254. [Repealed.]

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58-254.2. Industrial sick benefit insurance; provisions.
58-254.7. Approval by Commissioner of forms, classification and rates; hearing; exceptions.
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58-255. [Repealed.]
58-257. Application.
58-257.1. Claim forms.
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58-259. [Repealed.]
58-259.1. Age limit.
58-260.2. Premium rates on credit accident and health insurance.

SUBCHAPTER I. INSURANCE DEPARTMENT.

ARTICLE 1.

Title and Definitions.

§ 58-3.1. **Motor vehicle warranties.**—Any motor vehicle warranty issued by a person as defined in this article, other than a warranty made solely by the manufacturer or seller without charge, guaranteeing indemnity for defective parts, mechanical breakdown and labor shall be a contract of insurance. (1959, c. 866.)

ARTICLE 2.

Commissioner of Insurance.

§ 58-6. **Salary of Commissioner.**—The salary of the Commissioner of Insurance shall be twelve thousand dollars (\$12,000.00) a year, payable in equal monthly installments. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, cc. 42, 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10, c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C. S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1.)

Editor's Note.—

The 1953 amendment increased the salary from \$9,000.00 to \$10,000.00 from the time that the Commissioner took the oath of office and began serving the term for which he was elected in 1952.

The 1957 amendment increased the salary from \$10,000.00 to \$12,000.00 from the time the Commissioner took the oath of office and began serving the term for which he was elected in 1956.

§ 58-9.3. **Court review of orders and decisions.**

Applied in *In re Blue Bird Taxi Co.*, 237 N. C. 373, 75 S. E. (2d) 156 (1953); *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

§ 58-11. **Office of Commissioner a public office; records, etc., subject to inspection.**—The office of the Commissioner shall be a public office and the records, reports, books and papers thereof on file therein shall be accessible to the inspection of the public, except that the records compiled as a part of an investigation for the crime of arson, that of unlawful burning, or of fraud, shall not

be considered as public records and may be made available to the public only upon an order of court of competent jurisdiction. Provided that such records shall upon request be made available to the solicitor of any district if the same concerns persons or investigations in his district. (1899, c. 54, ss. 9, 77; Rev., s. 4683; 1907, c. 1000, s. 1; C. S., s. 6271; 1945, c. 383; 1951, c. 781, s. 11; 1955, c. 456.)

Editor's Note.—The 1951 amendment re-wrote this section. For brief comment on the amendment, see 29 N. C. Law Rev. 398.

The 1955 amendment inserted in the first sentence the references to "unlawful burning" and "fraud."

§ 58-21. Annual statements to be filed with Commissioner.—Every insurance company shall file in the office of the Commissioner of Insurance, on or before the first day of March in each year, in form and detail as the Commissioner of Insurance prescribes, a statement showing the business standing and financial condition of such company, association, or order on the preceding thirty-first day of December, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner of Insurance or some officer authorized by law to administer oaths. The Commissioner of Insurance shall, in December of each year, furnish to each of the insurance companies authorized to do business in the State two or more blanks adapted for their annual statements. Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of such annual statement for such company, for a reasonable period of time, not to exceed thirty days. (1899, c. 54, ss. 72, 73, 83, 90, 97; 1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s. 4698; C. S., s. 6280; 1945, c. 383; 1957, c. 407.)

Editor's Note. —

The 1957 amendment added the proviso at the end of the section.

ARTICLE 3.

General Regulations for Insurance.

§ 58-28. State law governs insurance contracts.

Section Held Inapplicable.—See *Turner v. Liberty Mut. Ins. Co.*, 105 F. Supp. 723 (1952).

§ 58-30. Statements in application not warranties.

The purpose of the statute, etc.—

In accord with original. See *Garvey v. Old Colony Ins. Co.*, 153 F. Supp. 755 (1957).

Material Representations.—

In accord with 1st paragraph in original. See *Garvey v. Old Colony Ins. Co.*, 153 F. Supp. 755 (1957).

The North Carolina cases declare the rule to be that "the materiality of the representation depends on whether it was such as would naturally and reasonably have influenced the insurance company with respect to the contract or risk." *Carroll v. Carolina Cas. Ins. Co.*, 227 N. C. 456, 458, 42 S. E. (2d) 607 (1947); *Walker v. Philadelphia Life Ins. Co.*, 127 F. Supp. 26 (1954); *Old Colony Ins. Co. v. Garvey*, 253 F. (2d) 299 (1958).

A representation in an application for a policy of life insurance is deemed mate-

rial if the knowledge or ignorance of it would naturally influence the judgment of insurer in making the contract, and written questions relating to health and their answers in an application are deemed material as a matter of law. *Tolbert v. Mutual Benefit Life Ins. Co.*, 236 N. C. 416, 72 S. E. (2d) 915 (1952).

Answers to questions in application for life insurance were material, and being also false, the contract of insurance is vitiated and there can be no recovery. *Walker v. Philadelphia Life Ins. Co.*, 127 F. Supp. 26 (1954).

Unintentional Misrepresentations.—

The North Carolina law is that a fraudulent or material misrepresentation in the application for insurance, even though innocently made, will prevent recovery on the policy. *Garvey v. Old Colony Ins. Co.*, 153 F. Supp. 755 (1957).

False Material Representations, Although Not Fraudulent, Void Policy.—

It is well settled that a material representation which is false will constitute sufficient ground upon which to avoid the policy. *Tolbert v. Mutual Benefit Life Ins. Co.*, 236 N. C. 416, 72 S. E. (2d) 915 (1952).

Clearly a representation which is material and false will prevent recovery, even though not fraudulent. *Walker v. Philadelphia Life Ins. Co.*, 127 F. Supp. 26 (1954).

Same—Instruction.—An instruction of the court which tends to leave the impression that it was not only necessary that insurer show that the representations were false and material but also that they were fraudulently made with intent to deceive, must be held for prejudicial error. *Tolbert v. Mutual Benefit Life Ins. Co.*, 236 N. C. 416, 72 S. E. (2d) 915 (1952).

Verbal Answers Made to Agent by Applicant for Fire Policy.—Whatever be the North Carolina rule with respect to the effect to be given to written answers to written questions in an application for a life insurance policy, which is attached to and made a part of the policy, there is nothing in the law of North Carolina, or anywhere else, which requires that any such rule be applied to verbal answers made by an applicant for a fire policy to an agent asking questions for the purpose of obtaining information upon which to describe the insured property in the policy. To hold that such answers are to be deemed material as a matter of law would be to give them the status of warranties in contravention of this section. *Old*

Colony Ins. Co. v. Garvey, 253 F. (2d) 299 (1958).

Identification of Insured Vehicle.—A vehicle covered by a policy of liability insurance may be identified as between the parties not only by the motor and serial numbers entered on the policy but also by descriptive insignia resorted to in the policy, or, in case of an ambiguous description, by evidence aliunde, and this without resort to the equitable doctrine of reformation for mutual mistake or fraud. *Ratliff v. Virginia Surety Co.*, 232 N. C. 166, 59 S. E. (2d) 609 (1950).

The complaint alleged in effect that insured owned but two White tractors, one of which had been scrapped for junk at the time the policy was issued and that the other was involved in the collision in suit, but that through mistake the motor and serial numbers of the scrapped vehicle were entered in the policy instead of those of the vehicles in use, and that the vehicle in use was the one actually insured. It was held that a demurrer to the complaint was improperly sustained, since, as between the parties, insured is entitled under the allegations of the complaint, admitted by the demurrer, to attempt to identify the property insured by other descriptive insignia contained in the policy and by evidence aliunde. *Ratliff v. Virginia Surety Co.*, 232 N. C. 166, 59 S. E. (2d) 609 (1950).

Unoccupancy of Insured House.—Evidence held insufficient to show that knowledge of the unoccupancy of the house insured would have influenced the company naturally and materially on the question of risk. *Garvey v. Old Colony Ins. Co.*, 153 F. Supp. 755 (1957).

§ 58-31. Stipulations as to jurisdiction and limitation of actions.

History of Section.—See *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

Section Repealed to Extent of Conflict with Contractual Limitation in Standard Form Fire Policy.—This section was repealed by chapter 378, Session Laws of

1945 (G. S. 58-176) insofar as it is in conflict with the contractual limitation in a standard form of a fire insurance policy that suit on the policy be instituted within one year of the inception of loss. *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

§ 58-33. Companies must do business in own name; emblems, insignias, etc.—Every insurance company must conduct its business in the State in, and the policies and contracts of insurance issued by it shall be headed or entitled only by, its proper or corporate name. There shall not appear on the face of the policy or on its filing back anything that would indicate that it is the obligation of any other than the company or companies responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the bottom of the filing back, the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated. The use of any emblem, insignia, or anything other than the true and proper corporate name of such company shall be permitted only with the approval

of the Commissioner. (1899, c. 54, s. 18; Rev., s. 4811; C. S., s. 6292; 1945, c. 377; 1951, c. 781, s. 10.)

Editor's Note. — The 1951 amendment added the second and third sentences. For brief comment on the amendment, see 29 N. C. Law Rev. 398.

§ 58-39.4. **Definitions.**—(a) An insurance agency is hereby defined to be any person, partnership, or corporation designated in writing by any insurance company lawfully licensed to do business in this State, to act as its agent, with authority to solicit, negotiate, and effect contracts of insurance on behalf of the insurance company through duly licensed agents of such company, and to collect the premiums thereon, or to do any of such acts.

(b) An insurance broker is hereby defined to be an individual who being a licensed agent, procures insurance through a duly authorized agent of an insurer for which the broker is not authorized to act as agent.

(c) A general agent is hereby defined to be an individual designated in writing by an insurance company lawfully licensed to do business in this State to act for it as agent or manager and with additional authority to appoint, designate, or supervise local agents within a specified territory.

(d) A special agent is hereby defined to be an individual other than an officer, manager, or general agent of the insurer, employed by an insurer or general agent to work with and assist agents in soliciting, negotiating, and effectuating insurance in such insurer or in the insurers represented by the general agent.

(e) A life insurance agent is hereby defined to be a person engaged in the business of selling any or all types of insurance offered by life insurance companies, including life, annuities, health, accident and hospital insurance.

(f) A credit life insurance agent is hereby defined to be a person engaged in selling any or all of the following types of insurance or collateral security for a loan in connection with which such insurance is written:

- (1) Credit term life;
- (2) Credit accident and health; and
- (3) Hospital insurance.

(g) An accident and health insurance agent is hereby defined to be a person engaged in the business of selling accident and health insurance and hospital insurance as defined in subparagraph 3 of G. S. 58-72.

(h) A hospital or medical care agent is hereby defined to be a person representing a hospital or medical service association selling prepaid hospital or medical care service.

(i) A fire and casualty insurance agent is hereby defined to be a person engaged in the business of selling any type of insurance offered by a fire and casualty company.

(j) A credit insurance agent is hereby defined to be a person engaged in the business of selling credit insurance covering property, the title of which is conveyed or retained as security for a loan, or of selling credit insurance as defined in subparagraph 17 of G. S. 58-72, not including credit life, credit accident and health or hospital insurance.

(k) A physical damage insurance agent is hereby defined to be a person engaged in the business of selling physical damage insurance on a motor vehicle.

(l) A title insurance agent is hereby defined to be a person engaged in the business of selling title insurance.

(m) An insurance adjuster is hereby defined to be any individual, who for salary, fee, commission, or other compensation of any nature, as an independent contractor, or as an employee of an independent contractor or as an employee of an insurer or as an adjuster for any insured, investigates or reports to his principal relative to claims arising under insurance contracts other than life or annuity. It shall be unlawful and cause for revocation of license for a licensed insurance adjuster to engage in the practice of law.

(n) An attorney at law who adjusts insurance losses from time to time in-

cidental to the practice of his profession, an adjuster of marine losses, or a special agent who adjusts for companies for which he is licensed as agent is not deemed to be an "adjuster" for the purposes of this chapter.

(o) Nothing in the above definitions shall be construed to prohibit any individual from applying for and upon passing any required examination from receiving license under any or all of the above definitions or classifications.

(p) A regular salaried officer or employee of a licensed mutual or reciprocal insurer who travels for his insurer in this State shall not be deemed an insurance agent if

- (1) He has other duties than soliciting insurance,
- (2) Any policies of insurance written by him are signed by a licensed insurance agent who is a bona fide resident of this State and
- (3) He receives no commission or other compensation directly dependent upon the amount of business obtained.

(q) Nothing in this section shall be construed to in any way prevent or restrict any insurance agent, general agent or adjuster from continuing to engage in the business of selling the same kind and type of insurance as authorized by the license now held by him on or after April 1, 1957, except as provided in paragraph 2 of G. S. 58-41.1. (1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1953, c. 1043, s. 1; 1957, c. 299.)

Editor's Note.—

The 1951 amendment rewrote provisions relating to adjusters and made other

changes. The 1953 and 1957 amendments rewrote this section.

§§ 58-39.5, 58-39.6: Struck out by Session Laws 1951, c. 105, s. 1.

§ 58-40. **Agents and adjusters must procure license.**—a. Every agent of any insurance company authorized to do business in this State shall be required to obtain annually from the Commissioner of Insurance a license under the seal of his office, showing that the company for which he is agent is licensed to do business in this State and that he has been appointed an agent of such company as defined in § 58-39.4 and is duly authorized to act for such company within the scope of the agency designated on such license.

b. Every insurance adjuster shall be required to obtain annually from the Commissioner of Insurance a license under the seal of his office showing that he is duly authorized to act as an adjuster.

c. Every such agent or adjuster, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit insurance or with whom he deals as an adjuster. (1899, c. 54, s. 81; 1901, c. 391, s. 7; 1903, c. 438, s. 8, c. 774; Rev., s. 4706; 1915, c. 109, s. 7, c. 166, s. 1; C. S., s. 6298; 1951, c. 105, s. 1; 1953, c. 1043, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section.

1953, changed the latter part of subsection a.

The 1953 amendment, effective July 1,

§ 58-40.2. **Bond required of brokers.**—1. Every applicant for a resident broker's license or for the renewal thereof shall file with the application and shall thereafter maintain in force while so licensed a bond in favor of the State of North Carolina for the use of aggrieved parties, executed by an authorized corporate surety approved by the Commissioner, in the amount of one thousand dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of five thousand dollars. The bond shall be conditioned on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith.

2. Any such bond shall remain in force until the surety is released from liability by the Commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel

the bond upon thirty days' advance notice in writing filed with the Commissioner. (1947, c. 922; 1951, c. 781, s. 6.)

Editor's Note.—The 1951 amendment changed the amount of the bond at the end of the first sentence from five thousand to one thousand dollars. However, it should be noted that the amendment made no

reference to the amount stated in the second sentence. For brief comment on the amendment, see 29 N. C. Law Rev. 398.

§ 58-40.4. Salaried officers not required to be licensed.—A regular salaried officer or employee of an insurer authorized to do business in this State shall not be deemed to be an insurance agent where his only activity in the solicitation of insurance is confined to the rendering of assistance to or on behalf of a licensed insurance agent; provided that such salaried officer or employee devotes substantially all of this time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of insurance obtained. (1953, c. 1043, s. 3.)

Editor's Note.—The act inserting this section became effective July 1, 1953.

§ 58-40.5. Exceptions to requirements for licensing.—Nothing contained in article 3 of chapter 58 shall be construed as prohibiting the purchase of insurance by, or requiring the licensing of, a person who arranges the purchase of insurance to cover property in which he or his employer has an insurable interest, provided such insurance is issued through an agent duly licensed under this article. (1953, c. 1043, s. 4.)

Editor's Note.—The act inserting this section became effective July 1, 1953.

§ 58-41. Agent's and adjuster's qualifications.—Before a license is issued to an insurance agent, general agent, or insurance adjuster in this State, the agent, general agent, or adjuster shall apply for license on forms to be prescribed by the Commissioner. In all cases where application is made for the license mentioned herein by an insurance agent or general agent, the company for which the agent or general agent desires to act shall also apply for the license on forms to be prescribed by the Commissioner. Upon the filing of an application of an insurance adjuster there shall also be an application, as above prescribed, by the insurance company for which that adjuster proposes to adjust in the event that the adjuster is to be an employee of that company. Upon the filing of an application of an adjuster who is to work as an employee of any person, firm, or corporation other than an insurance company, then the employer shall make an application on form prescribed by the Commissioner. Before he issues a license to such agent, general agent, or insurance adjuster, the Commissioner shall satisfy himself that such license, if issued, shall serve the public interest and that the person applying for the license as an agent, general agent, or insurance adjuster:

(a) Be twenty-one years of age or over;

(b) Meet residence requirements as follows: (1) For insurance adjusters: Be a bona fide resident of and actually reside in this State except as provided in § 58-51.2.

(2) For agents and general agents: Be a bona fide resident of and actually reside in this State for a period of twelve (12) months next preceding the date when he applies for license, except as provided in § 58-43: Provided, however, that the said twelve-month (12) waiting period shall not apply if the applicant for license files a good and sufficient bond of one thousand dollars (\$1,000.00) with the Commissioner of Insurance, which bond shall be subject to forfeiture upon a finding by the Commissioner of Insurance that the licensed person or agent has moved his domicile or residence from this State within the period of the year for which license was issued; provided, however, that no such agent shall be re-

quired to file more than one bond under this section, irrespective of the number of licenses issued to him or the number of companies he may represent. Upon such forfeiture, the Commissioner of Insurance shall pay said penal amount of such bond to the board of education of the county where the agent resided. The provisions of this paragraph shall also be applicable to the agents of hospital and medical service corporations operating under chapter 57 of the General Statutes, as amended. In lieu of the requirements of this paragraph that all agents shall file the bond herein prescribed, all insurance companies licensed to write accident, health or hospitalization insurance in this State may file a blanket bond covering such of their agents who are duly authorized to sell accident, health or hospitalization insurance.

(c) Successfully pass an examination as required under § 58-41.1;

(d) Be a trustworthy person;

(e) Has not willfully violated any of the insurance laws of this State;

(f) Has had special education, training or experience of sufficient duration and extent reasonably to satisfy the Commissioner that he possesses the competence necessary to fulfill the responsibilities of an agent, general agent or adjuster: Provided, that upon the expiration of any license of an agent, general agent, or insurance adjuster, the Commissioner of Insurance may grant a license to such agent, general agent, or insurance adjuster for a period not exceeding twelve months, upon an application of the company desiring to license such agent, or general agent, or upon the application of the employer of such insurance adjuster, and without any application from the agent, general agent, or insurance adjuster, upon such forms and in accordance with such rules as may be determined by the Commissioner of Insurance and upon the payment by either the insurance company or the agent, general agent, or insurance adjuster of the proper fees.

No license may be issued to any agent whose premium writings represented by the premiums on contracts of insurance signed, countersigned, issued or sold by him or the agency employing him for the general public during the preceding year shall not exceed those on insurance signed, countersigned, issued or sold by the agency covering his own property or life and the property or lives of members of his immediate family, his employer, his employees, and stockholders or employees of his employer. This limitation shall not apply to agents originally licensed and duly qualified prior to April 1, 1945.

In addition to the bond requirements of subsection (b) (2) of this section, all agents licensed to sell accident, health or hospitalization insurance in this State or certificates or service plans of a medical service corporation shall be required to file with the Commissioner of Insurance a bond in the amount of five hundred dollars (\$500.00), which shall be subject to forfeiture in whole or in part upon a finding made by the Commissioner of Insurance that such agent has wilfully misrepresented the terms of an accident, health or hospitalization insurance policy, or service plan or certificate of a medical service corporation, offered for sale; provided, however, that no such agent shall be required to file more than one bond under this section, irrespective of the number of licenses issued to him or the number of companies he may represent. Upon such forfeiture being made final by the Commissioner of Insurance or his authorized deputy, the forfeiture shall be paid to the board of education of the county of the agent's residence. (1913, c. 79, s. 1; 1915, c. 109, ss. 6, 7, c. 166, s. 7; C. S., s. 6299; 1931, c. 185; 1945, c. 458; 1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1953, c. 1043, s. 5; 1955, c. 850, ss. 1, 4; 1957, c. 96.)

Editor's Note.—

The 1951 amendment rewrote that part of the section preceding paragraph (a), deleted the words "independent adjuster" formerly appearing in paragraph (f) and inserted the proviso thereto.

The 1953 amendment, effective July 1,

1953, rewrote the next to last paragraph.

The 1955 amendment rewrote and greatly enlarged the provisions of subsection (b), and added the last paragraph of the section. Section 12 of the amendatory act made the amendment applicable to hospital and medical service corporations under

chapter 57 to the same extent as to insurers under this chapter.

The 1957 amendment added the last sentence of subsection (b) (2).

§ 58-41.1. Examinations for license.—1. Each applicant for license as agent, general agent or adjuster shall, prior to the issuance of any such license, personally take and pass to the satisfaction of the Commissioner an examination in writing given by the Commissioner as a test of his qualifications and competence; but this requirement shall not apply to:

(a) Applicants for license under § 58-41.2 and as agents for companies or associations specified in § 58-131.9;

(b) Applicants who have, within the three year period next preceding the date of application, not including time spent in military service of the United States during war, been licensed in this State in the same capacity and to engage in the same kinds of insurance for which they were previously licensed;

(c) Applicants for an agent's, general agent's or adjuster's license covering the same kinds of insurance as authorized by the license then held by them except as provided in paragraph 2 of this section;

(d) Applicants for license to write ocean marine insurance whenever the Commissioner deems the applicant to be qualified by past experience to deal in such insurance.

(e) Applicants (who are bona fide residents and actually residing in this State) for an agent's, general agent's, or adjuster's license covering the same kinds of insurance as authorized by the license or certificate granted him upon the successful passing of a written examination given by the insurance department of another state, or by the American College of Life Underwriters, Life Underwriters Training Council, American Institute of Property and Liability Underwriters, Institute of Insurance of America, or any insurance institute conducted at a recognized college or university in the State of North Carolina and meeting the standards as approved by the Commissioner of Insurance.

(f) Applicants for license as credit life insurance agents, credit accident and health insurance agents, and credit property insurance agents.

2. The Commissioner may require any licensed agent, general agent or adjuster to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been guilty of any violation of any provision of this chapter. If a person fails to pass such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such person has successfully passed an examination as provided in this chapter.

3. Each examination shall be as the Commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of the terms and provisions of the policies or contracts of insurance he proposes to effect or types of claims or losses he proposes to adjust, and of the duties and responsibilities of and the laws of this State applicable to such a license.

4. The answers of the applicant to any such examination shall be written by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as he deems necessary reasonably to serve the convenience of both the Commissioner and applicants. The Commissioner shall require a waiting period of at least ninety days' duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

5. The Commissioner shall collect in advance the examination fee provided in § 105-228.7.

6. Upon the filing of the application for the license as insurance adjuster and the advance payment of the examination fee referred to above and upon the filing with the Commissioner of a certificate signed by the employer of the applicant certifying that the applicant is a person of good character and is employed by the signer of the certificate and will operate as a student or learner under the instruction and

general supervision of a licensed insurance adjuster, and that the employer will be responsible for the adjustment acts of the learner during the learning period, the Commissioner may issue to the applicant a learner's permit authorizing the applicant to act as an insurance adjuster for a learning period of 90 days without a requirement of any other or additional license; provided that not more than one learner permit shall ever be issued to one individual. (1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1; 1953, c. 1043, s. 6.)

Editor's Note.—

The 1951 amendment deleted references to independent adjusters throughout the section, and added subsection 6.

The 1953 amendment, effective July 1, 1953, added paragraphs (e) and (f) of subsection 1.

§ 58-41.2. **Limited licenses.**—a. The Commissioner shall issue limited licenses to persons requesting to be licensed:

1. As agents for any type of insurance to persons who continue to represent an insurance company solely for the purpose of servicing unexpired contracts of insurance.

2. As travel insurance agents to employees of common carriers of persons or to individuals or employees of persons engaged in selling transportation on such common carriers.

b. Travel insurance agents are restricted to the sale of insurance to individuals entitled to transportation on a common carrier, as follows:

1. Transportation ticket policies of accident insurance.

2. Baggage insurance on the personal effects of such individuals while in transit. (1947, c. 922; 1953, c. 1043, s. 7.)

Editor's Note.—The 1953 amendment, effective July 1, 1953, rewrote this section.

§ 58-41.3. **Temporary license.**—1. The Commissioner may issue an agent's, general agent's or broker's temporary license in the following circumstances:

(a) To applicants for licensing as agent of a life insurer pending the passing of the examination provided for in § 58-41.1;

(b) To the personal representative of a deceased licensed agent, general agent or broker, or to his surviving spouse or to some other proper person in case the personal representative or surviving spouse does not apply or is not qualified therefor;

(c) To an employee, legal guardian or spouse of a licensed agent, general agent or broker becoming disabled because of sickness, insanity or injury, or to some other proper person.

(d) To an employee, spouse or other proper person as designated by a licensed agent who is called into the armed services.

(1953, c. 1043, s. 8.)

Editor's Note.—The 1953 amendment, effective July 1, 1953, added paragraph (d) to subsection 1. As only this subsec-

tion was affected by the amendment, subsections 2 through 5 are not set out.

§ 58-41.4. **Employment in agency.**—No person shall be issued an agent's license to enter the employment of any agency or person, which agency or person is at that time found by the Commissioner of Insurance to be in violation of any of the insurance laws of this State, or which has been in any manner disqualified under the laws of this State to engage in the insurance business. (1953, c. 1043, s. 9.)

§ 58-42. **Revocation of license.**—When the Commissioner is satisfied that any insurance agent, general agent, special agent, adjuster, broker or nonresident broker licensed by this State has willfully violated any of the insurance laws of this State, or has willfully overinsured property or has willfully misrepresented any

policy of insurance, or has dealt unjustly with or willfully deceived any person in regard to any insurance policies, or has exercised coercion in obtaining an application for or in selling insurance, or, on demand, has failed or refused to pay over or deliver to the company which he represents, or has represented, any money or property in his hands belonging to the company, or has become in any way disqualified according to any of the provisions necessary for obtaining or holding such license as set out in this chapter, or has obtained or attempted to obtain any license through willful misrepresentation or fraud, the Commissioner may immediately suspend his license or licenses and shall forthwith give to such licensee ten days' notice of the charge or charges and of a hearing thereon, and if the Commissioner finds there has been any of the violations hereinbefore set forth, he shall specifically set out such finding and shall revoke the license of such agent, general agent, special agent, adjuster, broker or nonresident broker for all the companies which he represents in this State. Such agent, general agent, special agent, adjuster, broker, or nonresident broker shall have the right to have such revocation reviewed as provided in § 58-9.3. For the purposes of investigation under this section the Commissioner shall have all the power conferred upon him by § 58-44.4. (1913, c. 79, ss. 2, 3; 1915, c. 166, s. 7; C. S., s. 6300; 1929, c. 301, s. 1; 1943, c. 434; 1945, c. 458; 1947, c. 922; 1949, c. 958, s. 1; 1951, c. 105, s. 1.)

Editor's Note.— to independent adjusters throughout the section.
The 1951 amendment deleted references

§ 58-43. Nonresident agents forbidden; exception.— No nonresident of the State shall be licensed as an agent to do business in the State except as a special agent or organizer, and except as an agent licensed to sell life insurance and annuities only, and then only when he reports his business as North Carolina business to some general or district agent of his company in the State, or having territory within the State. No such nonresident shall be licensed to represent a life insurance company in this State unless he is licensed to represent the same company in his home state and meets the licensing requirements of this chapter. (1899, c. 54, s. 108; 1903, c. 438, s. 11; Rev., s. 4707; C. S., s. 6301; 1945, c. 458; 1947, c. 922; 1955, c. 850, s. 2.)

Editor's Note.—The 1955 amendment rewrote the first sentence.

§ 58-44. Resident agents required.—All business done in this State by insurance companies doing the business of insurance as defined in G. S. 58-72, shall be transacted by their regularly authorized agents residing in this State, or through applications of such agents; and all policies issued by insurance companies doing the business of insurance as defined in subsections 3 through 22, inclusive, of G. S. 58-72, must be countersigned by such agents; provided, however, that this section shall not apply to bid bonds issued by any such company in connection with any public or private building or construction project. It shall be unlawful for any salaried officer, manager or other representative of any such company to transact for his company any of the business of a licensed agent unless he himself shall be a bona fide resident licensed agent. (1899, c. 54, ss. 107, 108; 1903, c. 438, s. 11; Rev., s. 4810; 1911, c. 196, s. 5; 1913, c. 140, s. 3; C. S., s. 6302; 1921, c. 136, s. 3; 1925, c. 70, s. 1; 1945, c. 458; 1957, c. 548; 1959, c. 1013.)

Editor's Note.— The 1959 amendment added the proviso
The 1957 amendment rewrote the first to the first sentence.
sentence.

§ 58-44.2. Licensing nonresident brokers.— The Commissioner may license a nonresident as an insurance broker to represent companies doing the business of insurance as defined in subsections 3 to 22 inclusive of § 58-72, upon application made in the form prescribed by the Commissioner, and upon such applicant's filing an affidavit setting forth that he has not after January 1, 1955 and

will not during the period of the license solicit, directly or indirectly in this State, nor will he place any insurance on any risk located in this State except through licensed agents of companies licensed to do business in this State, that he is a bona fide broker, and proposes to hold himself out as such, and that neither he nor any member of the agency or corporation is an employee or active officer of an insurance company. The fee for such license shall be as fixed in the Revenue Act. For any violation of the terms on which such license is issued the Commissioner may revoke the same. (1903, c. 488, s. 2; 1905, c. 170, s. 2; Rev., s. 4766; C. S., s. 6430; 1923, c. 4, s. 70; 1925, c. 70, s. 6; 1945, c. 458; 1955, c. 902.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, made several changes in the first sentence.

§ 58-44.5. Rebates prohibited.—No insurer or employee thereof, and no broker or agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Insurance Commissioner. No insurer or employee thereof, and no broker or agent shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond. (1951, c. 781, s. 2.)

For brief comment on this section, see
29 N. C. Law Rev. 398.

§ 58-44.6. Imposition of civil penalty.—Whenever any person, agent, adjuster, firm, corporation or company, subject to the provisions of chapter 57 of the General Statutes, as amended, and the provisions of chapter 58 of the General Statutes, as amended, shall do or commit any act or shall fail to comply with any requirements prohibited or required by said chapters, by virtue of which any license is subject to suspension or revocation, the Commissioner of Insurance, in addition to or in lieu of any other official action that may be taken by him, may, in his discretion, inflict a civil penalty in an amount to be fixed by said Commissioner of Insurance not in excess of twenty-five thousand dollars (\$25,000.00), and if said civil penalty is not paid within ten (10) days from the date of the finding and order inflicting said penalty, then said Commissioner of Insurance may revoke any license of such person, agent, adjuster, firm, corporation or company subject to the provisions of said chapters. The Commissioner of Insurance before imposing any penalty or revoking any license shall conduct a hearing and shall make all necessary findings of fact in regard to the matter under inquiry. In giving notices, conducting hearings and producing evidence, as well as examining records, the Commissioner of Insurance shall have all the power and authority and shall follow the procedures conferred and given in § 58-54.6. Any person, agent, adjuster, firm, corporation or company subject to said chapters, whose rights are affected by the findings and order of the Commissioner of Insurance, shall have the right to appeal to the Superior Court of Wake County, and upon such appeal the record shall be certified to the Superior Court of Wake County, and the procedure and authority contained in § 58-9.3 shall be followed and shall

govern. The commencement of proceedings, as herein authorized, shall not operate as a stay of the Commissioner's order or decision, unless so ordered by the court. (1955, c. 850, s. 11.)

Editor's Note.—Section 12 of the act which inserted this section made it applicable to hospital and medical service corporations under chapter 57 to the same extent as to insurers under chapter 58.

§ 58-44.7. Rebate of premiums on credit life and credit accident and health insurance; retention of funds by agent.—It shall be unlawful for any insurance carrier or officer or agent of an insurance company writing credit life and credit accident and health insurance, as defined in §§ 58-195.2 and 58-254.8, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans, to permit any agent or representative of such company to retain any portion of funds received for the payment of losses incurred, or to be incurred, under such policies of insurance issued by such company, or to pay, allow, permit, give or offer to pay, allow, permit or give, directly, or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium, to any loan agency, insurance agency or broker, or to any creditor of the debtor on whose account the insurance was issued, or to any person, firm or corporation which received a commission or fee in connection with the issuance of such insurance: Provided, that this section shall not prohibit the payment of commissions to a licensed insurance agent or agency on the sale of a policy of credit life and credit accident and health insurance, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans.

It shall be unlawful for any broker, agent, agency or insured named in any such policy, or for any loan agency or broker, or any agent, officer or employee of any loan agency or broker to receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of the premium as set out in this section. (1955, c. 1341, s. 1.)

§ 58-44.8. Agents prohibited from representing unauthorized companies.—No licensed agent of any insurer shall solicit anywhere in the boundaries of the State of North Carolina, or receive or transmit an application or premium of insurance, for a company not authorized to do business in the State, except as provided in G. S. 58-53.1. (1957, c. 547.)

§ 58-51. Adjuster acting for unauthorized company.—If any person shall act as adjuster on a contract made otherwise than as authorized by the laws of this State, or by any insurance company or other person not regularly licensed to do business in this State, or shall adjust or aid in the adjustment, either directly or indirectly, of a claim arising under a contract of insurance not authorized by the laws of the State, he shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than two years, or both, in the discretion of the court. (1899, c. 54, s. 114; Rev., s. 3482; C. S., s. 6309; 1945, c. 458; 1949, c. 958, s. 1; 1951, c. 105, s. 1.)

Editor's Note.—The 1951 amendment struck out the words "independent adjuster or" formerly appearing before the word "adjuster" in line two.

§ 58-51.1. Agent may adjust.—On behalf and on request of an insurer for which he is licensed, any agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster, provided: In no event may any agent or agents adjust any losses in any amount where his remuneration for the sale of insurance is in any way dependent upon the adjustment of such losses. (1947, c. 922; 1951, c. 781, s. 7.)

Editor's Note.—The 1951 amendment added the proviso. For brief comment on the amendment, see 29 N. C. Law Rev. 398.

§ 58-51.2. **Nonresident adjusters.**—The Commissioner may license a nonresident as an insurance adjuster upon his compliance with all the requirements of this chapter applicable to resident adjusters. No license shall be required of an adjuster licensed as such in another state for the adjustment in this State of a single loss, or of losses arising out of a catastrophe common to all such losses: Provided such adjuster notifies the Commissioner of Insurance in writing prior to the adjusting of such loss or losses. The Commissioner of Insurance may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in such other state (if such state requires a license), to act as adjuster in this State without a North Carolina license, for emergency insurance adjustment work, for a period of not exceeding thirty days, done for an employer who is an insurance adjuster licensed by the State of North Carolina or who is a regular employer of one or more insurance adjusters licensed by the State of North Carolina; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such "emergency insurance adjustment work." (1947, c. 922; 1951, c. 105, s. 1; 1957, c. 360.)

Editor's Note.—The 1951 amendment The 1957 amendment added the proviso added the last sentence. at the end of the second sentence.

§ 58-51.3. **Companies and agents to transact business through licensed agents.**—No insurance company, nor any agent of any insurance company, shall on behalf of such company or agent knowingly permit any person not licensed as an insurance agent as provided by law, to solicit insurance, negotiate for, collect or transmit a premium for a new contract of insurance or to act in any way in the negotiation for any contract or policy of insurance; provided, no license shall be required of the following:

1. Persons designated by the insurance company or the insured to collect or deduct and transmit premiums or other charges for life, accident and/or health and/or hospitalization insurance, or to perform such acts as may be required for providing coverage for additional persons who are eligible under the terms of a master contract.

2. Of an agency office employee acting within the confines of the agent's office, under the direction and supervision of the duly licensed agent and within the scope of such agent's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

3. Of those persons described as a regular salaried officer or employee of an insurer or reciprocal as defined in this article. (1949, c. 1120; 1953, c. 1043, s. 10.)

Editor's Note.—

The 1953 amendment, effective July 1, 1953, rewrote this section.

§ 58-51.4. **Lending institutions.**— Nothing in this act shall prohibit or prevent lending institutions or their officers or employees from acting as insurance agents as heretofore. (1953, c. 1043, s. 11.)

Editor's Note.—The act inserting this section became effective July 1, 1953. The words "this act" in the section evidently refer to chapter 1043 of the 1953 Session Laws, which also amended or inserted §§ 58-39.4, 58-40, 58-40.4, 58-40.5, 58-41 to 58-41.4, 58-51.3.

§ 58-52. **Agent acting without a license or violating insurance law.**—If any person shall assume to act either as principal, agent, broker or adjuster without license as is required by law, or pretending to be a principal, agent, broker or adjuster, shall solicit, examine, or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal

or agent shall violate any provision of law contained in this chapter, the punishment for which is not elsewhere provided for, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars, or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court. (1899, c. 54, s. 115; Rev., s. 3490; C. S., s. 6310; 1945, c. 458; 1949, c. 958, s. 1; 1951, c. 105, s. 1.)

Editor's Note.—

The 1951 amendment struck out the words "independent adjuster", formerly

appearing after the word "broker" in lines one and three.

ARTICLE 3A.

*Unfair Trade Practices.***§ 58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined.**

(9) Advertising of Health, Accident or Hospitalization Insurance.—In all advertising of policies, certificates or service plans of health, accident or hospitalization insurance, except those providing group coverage, where details of benefits provided by a particular policy, certificate or plan are set forth in any advertising material, such advertising material shall contain reference to the major exceptions or major clauses limiting or voiding liability contained in the policy, certificate or plan so advertised. The references to such exceptions or clauses shall be printed in a type no smaller than that used to set forth the benefits of the policy, certificate or plan. In all advertising of such policies, certificates or plans which contain a cancellation provision or a provision that the policies, certificates or plans may be renewed at the option of the company or medical service corporation only, such advertising material shall contain clear and definite reference to the fact that the policies, certificates or plans are cancellable or that the same may be renewed at the option of the company only. (1949, c. 1112; 1955, c. 850, s. 3.)

Editor's Note. — The 1955 amendment added subsection (9). As the rest of the section was not affected it is not set out.

made the amendment applicable to hospital and medical service corporations under chapter 57 to the same extent as to insurers under this chapter.

Section 12 of the 1955 amendatory act

ARTICLE 5.

*License Fees and Taxes.***§ 58-63. Schedule of fees and charges.**

2. To be paid to the publisher, for the publication of each financial statement, twelve dollars (\$12.00).

3. The Commissioner shall receive for copy of any record or paper in his office ten cents per copy sheet and one dollar for certifying same, or any fact or data from the records of his office; for examination of any foreign company, not less than forty dollars per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, five dollars. The traveling and other expenses of accountants, and other examiners when engaged in the work of examination shall be paid by the companies, associations, or orders under investigation. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the Commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reason-

able percentage of such delinquent tax, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.

(1957, cc. 133, 1047; 1959, c. 911.)

Editor's Note.—

The first 1957 amendment changed subsection 3 by increasing the fee for examining a foreign company from twenty-five to thirty-six dollars. The second 1957 amendment changed subsection 2 by increasing the amount to be paid for publication of financial statements from nine to twelve dollars.

The 1959 amendment struck out the words "thirty-six dollars per diem and

all expenses," immediately following the comma after the word "company," in line three of subsection 3, and substituted in lieu thereof the words "not less than forty dollars per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners."

As only these subsections were changed by the amendments the rest of the section is not set out.

§ 58-66. Licenses run from July first; pro rata payment.—The license required of insurance companies shall continue for the next ensuing twelve (12) months after July first of each year, unless revoked as provided in this chapter; but the Commissioner of Insurance may, when the annual license tax exceeds twenty-five dollars (\$25.00), receive from applicants after July first so much of the license fee required by law as may be due pro rata for the remainder of the year, beginning with the first day of the current month. Application for renewal of the company license must be submitted on or before the first day of March on a form to be supplied by the Commissioner of Insurance. Upon satisfying himself that the company has met all requirements of law and appears to be financially solvent he shall forward renewal license to the company. Any company which does not qualify for renewal license before July first shall cease to do business in the State of North Carolina as of July first, unless license is sooner revoked by the Commissioner.

Before issuing any license for the year, beginning July 1, 1955, the Commissioner shall collect, in addition to the annual license fee, a pro rata fee for the three (3) months of April, May and June, 1955, collection of which fee shall extend licenses expiring April 1, 1955, until July 1, 1955, if accepted by the Commissioner of Insurance.

Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies as listed in § 105-228.7, which licenses shall run from April first of each year. (1899, c. 54, s. 78; Rev., s. 4718; C. S., s. 6321; 1955, c. 179, s. 1.)

Editor's Note.—The 1955 amendment rewrote this section. Prior to the amendment licenses began to run from April first.

SUBCHAPTER II. INSURANCE COMPANIES.

ARTICLE 6.

General Domestic Companies.

§ 58-72. Kinds of insurance authorized.

13. "Personal injury liability insurance," meaning insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, and including an obligation of the insurer to pay medical, hospital, surgical and funeral benefits and in the case of automobile liability insurance including also disability and death benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as a result of negligence in render-

ing expert, fiduciary or professional service, but not including any kind of insurance specified in subsection fifteen.

(1953, c. 992.)

Editor's Note.—

The 1953 amendment inserted in subsection 13 the provision as to automobile

liability insurance. As the rest of the section was not affected by the amendment only this subsection is set out.

§ 58-73. Manner of creating such corporations.—The procedure for organizing such corporations is as follows: The proposed incorporators, not less than ten in number, a majority of whom must be residents of the State, shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation doing business under the laws of this State as to be likely to mislead the public, and must be approved by the Commissioner of Insurance; the class of insurance it proposes to transact and on what business plan or principle; the place of its location within the State, and if on the stock plan, the amount of its capital stock. The words "insurance company," "insurance association," or "insurance society" or "life" or "casualty" or "indemnity" must be a part of the title of any such corporation, and also the word "mutual," if it is organized upon the mutual principle. The certificate of incorporation must be subscribed and sworn to by the incorporators before an officer authorized to take acknowledgment of deeds, who shall forthwith certify the certificate of incorporation, as so made out and signed, to the Commissioner of Insurance of the State at his office in the city of Raleigh. The Commissioner of Insurance shall examine the certificate, and if he approves of it and finds that the requirements of the law have been complied with, shall certify such facts, by certificate on such articles, to the Secretary of State. Upon the filing in the office of the Secretary of State of the certificate of incorporation and attached certificates, and the payment of a charter fee in the amount required for private corporations, and the same fees to the Secretary of State, the Secretary of State shall cause the certificate and accompanying certificates to be recorded in his office, and shall issue a certificate in the following form:

Be it known that, whereas (here the names of the subscribers to the articles of association shall be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of association shall be inserted), with a capital (or with a permanent fund) of (here the amount of capital or permanent fund fixed in the articles of association shall be inserted), and have complied with the provisions of the statute of this State in such case made and provided, as appears from the following certified articles of association: (Here copy articles of association and accompanying certificates). Now, therefore, I (here the name of the Secretary shall be inserted), Secretary of State, hereby certify that (here the names of the subscribers to the articles of association shall be inserted), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (here the name of the corporation shall be inserted), with such articles of association, and have all the powers, rights, and privileges and are subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the State of North Carolina hereunto affixed, this the day of, in the year (in these blanks the day, month, and year of execution of this certificate shall be inserted; and in the case of purely mutual companies, so much as relates to capital stock shall be omitted).

The Secretary of State shall sign the certificate and cause the seal of the State to be affixed to it, and such certificate of incorporation and certificate of the Secretary of State has the effect of a special charter and is conclusive evidence of

the organization and establishment of the corporation. The Secretary of State shall also cause a record of his certificate to be made, and a certified copy of this record may be given in evidence with the same effect as the original certificate. (1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3; Rev., s. 4727; C. S., s. 6328; 1957, c. 98.)

Editor's Note.—The 1957 amendment inserted in line eleven of the first paragraph the words "or 'life' or 'casualty' or 'indemnity'."

§ 58-77. Amount of capital and/or surplus required.

Cited in American Equitable Assurance Co. v. Gold, 249 N. C. 461, 106 S. E. (2d) 875 (1959).

§ 58-79. Investments; life.—I. Investments Specified.

(e) Federal farm loan bonds issued by federal land banks organized under the provisions of the act of Congress known as the Federal Farm Loan Act. Interest bearing bonds, notes or other interest bearing obligations of any solvent corporation organized under the laws of the United States of America or of the Dominion of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States of America, or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development. Equipment trust obligations or certificates or other secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchases or other fixed obligatory payments for the use or purchase of such transportation equipment.

(f) Dividend paying stocks or shares of any corporation created or existing under the laws of the United States of America or of any state, District of Columbia, territory or possession of the United States of America; notwithstanding any provisions in this section to the contrary no company may invest more than ten per cent (10%) of its total admitted assets in stocks; and further provided, that no company may invest more than three per cent (3%) of its admitted assets in the stock or shares of any one corporation; and provided further, except as the Commissioner shall permit, that such investment in any one corporation not engaged solely in the business of insurance shall not result in the acquisition of more than 20% of the outstanding voting stock or shares of such corporation. The restrictions in this section do not apply to shares of building and loan or savings and loan associations or federal savings and loan associations.

(g) Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple or improved leasehold real estate in the District of Columbia or in any state, territory or possession of the United States of America, to an amount not exceeding seventy-five per cent (75%) of the fair market value of such fee simple or improved leasehold real estate. No loan may be made on leasehold real estate unless the lease has at least thirty years to run before its termination and the loan matures at least twenty years before expiration of the lease. Whenever such loans are made upon fee simple, or improved leasehold real estate which is improved by a building or buildings, the said improvements shall be insured against loss by fire, and the fire insurance policies shall contain a standard mortgage clause and shall be delivered to the mortgagee as additional security for the said loan.

Loans secured by first mortgages which the Federal Housing Administrator has insured or has made a commitment to insure, or invested in mortgage notes or bonds so insured, and neither the limitations of this section nor any other law of this State requiring security upon which loans shall be made, or prescribing the nature, amount or forms of such security, or limiting the interest rates upon loans, shall be deemed to apply to such insured mortgage loans.

Loans secured by first mortgages, or deeds of trust, on unencumbered fee

simple real estate in connection with which the Veterans Administration of the United States has guaranteed, or has made a commitment to guarantee, a portion of the loan pursuant to the Service Men's Readjustment Act of 1944, and amendments thereto, provided the amount of any such loan, less the portion thereof guaranteed by said Veterans Administration, shall not exceed seventy-five per cent (75%) of the fair market value of such real estate.

In all investments made upon mortgages, the evidence of the debt, if any, shall accompany the mortgage or deed of trust.

(k), (5), (A),

c. That during the term of the lease the tenant shall keep and maintain the said improvements in good repair. Real estate acquired pursuant to the provisions of this subsection (A) shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of this subsection, nor shall real estate acquired pursuant to this subsection (A) be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by equal decrements sufficient to write off at least seventy-five per cent (75%) of the investment at the normal termination of the lease or at the end of thirty years should the term of the lease be for a longer period. The total investments of any company under this subsection (A) shall not exceed six per cent of its assets, nor more than fifty per cent (50%) of its capital and surplus whichever is less.

(1951, c. 284; c. 781, s. 8; 1955, c. 178, s. 1; 1959, c. 286.)

Editor's Note.—The 1951 amendments made changes in subsection I. The first amendment substituted "six per cent" for "four per cent" in the last sentence of paragraph (k) (5) (A) c. And the second amendment added the last proviso to the first sentence of paragraph (f). The 1955 amendment inserted the words "or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and

Development" in paragraph (e) of subsection I.

The 1959 amendment substituted 75% for 66 2/3% formerly appearing in the first and third paragraphs of subsection I (g).

As the rest of the section was not changed by the amendments only the affected paragraphs are set out.

For brief comment on the second 1951 amendment, see 29 N. C. Law Rev. 398.

§ 58-79.1. Investments; fire, casualty and miscellaneous.—I. Minimum Capital Investments.

(f) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.

(1955, c. 178, s. 2.)

Editor's Note. — The 1955 amendment added paragraph (f) at the end of subsection I. As the rest of the section was not

changed by the amendment, it is not set out.

ARTICLE 8.

Mutual Insurance Companies.

§ 58-97. Dividends to policyholders. — Any participating or dividend paying company, stock or mutual, other than life, may declare and pay a dividend to policyholders from its surplus which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by such policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, which dividends shall be uniform in rate and applicable to the majority of risks within such general kind of

insurance, exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on such class or classes if the conditions applicable to such class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment thereof be executed. Neither the payment of dividends nor the rate thereof may be guaranteed by any company, or its agent, prior to the declaration of the dividend by the board of directors of such company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks. (1899, c. 54, s. 35; Rev., s. 4741; C. S., s. 6351; 1935, c. 89; 1945, c. 386; 1947, c. 721; 1955, c. 645.)

Editor's Note.—

The 1955 amendment struck out the words "shall be entitled to dividends at the same rate as other policyholders of the

company" formerly appearing at the end of the last sentence, and inserted in lieu thereof the words "may be established as a separate class of risks."

ARTICLE 12.

Promoting and Holding Companies.

§ 58-121. **Certificate of authority to sell securities required.**—No individual, partnership, association, or corporation, as the agent of another or as a broker, shall sell or offer for sale, or in any way assist in the sale in this State of the securities of any promoting or holding corporation, or of any insurance corporation, which is not at that time lawfully engaged or authorized to engage in the transaction of the business of insurance in this State, without first procuring, as hereinafter provided, a certificate of authority from the insurance department to sell such securities; nor shall any individual, partnership, association, or corporation sell or offer for sale in this State the securities of any promoting or holding corporation, or of any insurance corporation which is not at the time of such sale or offer of sale lawfully engaged or authorized to engage in the transaction of the business of insurance in the State, unless such corporation has first procured from the Commissioner of Insurance, as hereinafter provided, a certificate that the corporation has fully complied with the provisions of this article, and is authorized to sell the securities. Every certificate issued by the Commissioner of Insurance pursuant to the provisions of this article shall state in bold type that the Commissioner in no way recommends the securities thereby authorized to be sold, and shall be renewable annually, upon written application, filed on or before the first day of July of each year, and may be revoked for cause at any time by the Commissioner. The Commissioner shall prepare and furnish upon request suitable blank forms of application for the certificates required by this article. (1913, c. 182, s. 2; C. S., s. 6384; 1955, c. 179, s. 2.)

Editor's Note.—

The 1955 amendment substituted "July" for "April" near the end of the section.

ARTICLE 13.

Fire Insurance Rating Bureau.

§ 58-125. **North Carolina fire insurance rating bureau created.**

Cited in *Garvey v. Old Colony Ins. Co.*,
153 F. Supp. 755 (1957).

§ 58-126.1. Policies combining other coverage with fire insurance.—The Commissioner of Insurance is authorized to approve policies combining other coverages with fire insurance on property in North Carolina, either for a divisible or indivisible premium, provided the provisions of the second page of the statutory fire insurance policy as set forth in G. S. 58-176 are included therein and, provided further, that such policies shall be under the supervision of the North Carolina Fire Insurance Rating Bureau.

This section does not apply to insurance policies that include the peril of fire and which are excepted by law from the requirements for the use of the statutory fire insurance policy. (1955, c. 807, s. 1.)

§ 58-130. Statistical reports.

Cited in *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

§ 58-131. Reasonableness of rates.

Cross Reference.—See note to § 58-131.2.

This section prevents discrimination between unprotected farm and unprotected nonfarm properties similar in location, construction and hazards, and having substantially the same degree of protection. *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Separate Classes of Property May Have

§ 58-131.2. Reduction or increase of rates.

Fire Insurance Rate Not to Be Fixed upon Consideration of Hazard Alone.—It is apparent under the provisions of this section that the General Assembly has never authorized a fire insurance rate to be fixed upon a consideration of hazard alone. *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Commissioner May Not Consider Fire Rate Based on Less than Five Years' Experience.—Upon hearing of a petition of the rating bureau for review of fire insurance rates on a particular classification, the Commissioner of Insurance has no right to consider a rate which is not based on experience for a period of not less than five years next preceding the year in which the review is requested. *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Burden upon Rating Bureau.—There is no statute or decision that makes a request of the rating bureau for an increase or decrease in rates presumptively correct and proper. The rating bureau is the movant in the proceeding and the burden is upon it to establish that the proposed rate is fair and reasonable and that it does not "unfairly discriminate between risks involving essentially the same construction and hazards, and having substantially the same degree of protection." *In re North*

Same Rate.—Properties need not necessarily be included in the same class in order for them to have the same fire insurance rate, but separate classes may have the same rate provided the location, construction and degree of protection are substantially the same for both. *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Carolina Fire Ins. Rating Bureau, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

The mere fact that the Commissioner has heretofore approved one hundred and fifteen different classes of property in the State in order that premiums and losses with respect to each class may be ascertained, does not relieve the rating bureau of the burden of proof to support its request or requests to the Commissioner for reductions or increases in rates. *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Requested Increase Based on Loss Ratio of a Class as a Whole.—Where requested increase in insurance rates is based on the loss ratio of a class as a whole, objection to finding that the rating bureau failed to present the loss experience for the prior five years on a sub-classification included in the class, is immaterial. *In re North Carolina Fire Ins. Rating Bureau*, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Application for an increase in insurance rates on unprotected farm dwellings, which would result in a higher rate from that applicable to unprotected nonfarm dwellings, similar in location, construction and hazards, and having substantially the same degree of protection, was properly denied by the Insurance Commissioner, since § 58-131 proscribes such discrimination. *In re North Carolina Fire Ins. Rating*

Bureau, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

Application of Rating Method or Classification by Rating Bureau.—The fact that certain classes have been approved does not relieve the Commissioner of the duty

to determine whether the rating bureau's application of an approved rating method or classification is unfairly discriminatory. In re North Carolina Fire Ins. Rating Bureau, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

§ 58-131.5. **Hearing.**—The Commissioner shall not make any rule, regulation or order under the provisions of this article without giving the rating bureau and insurers who may be affected thereby reasonable notice and a hearing if hearing is requested. All hearings provided for in this article shall be held at such time and place as shall be designated in a notice which shall be given by the Commissioner in writing to the rating bureau and insurer or the officers and agents and representatives thereof which may be affected thereby, at least thirty (30) days before the date designated therein. The notice shall state the subject of the inquiry.

At the conclusion of such hearing, or within thirty (30) days thereafter, the Commissioner shall make such order or orders as he may deem necessary in accordance with his finding. Within thirty (30) days after receiving written notice of any such order or finding any person affected thereby may request a rehearing or review thereof before the Commissioner by filing a written request setting forth a summary of the reasons therefor. Upon receipt of such request, the Commissioner shall set a date for rehearing. Such application for rehearing shall act as a stay of the provisions of such order. The Commissioner may modify, change or rescind such order if he finds that the facts shown at the rehearing warrant such modification, change or rescission.

In the conduct of such hearing the Commissioner, his deputy or the duly authorized examiner specifically designated by him for such purpose shall have power to administer oaths and to examine any person under oath and in connection therewith to require the production of any books, records, or papers relative to the inquiry.

The giving of notice to the rating bureau shall, for the purposes of the provisions of this section, constitute notice to all of the insurer members of the rating bureau except those insurer members who are moving parties or have been named as parties or have been added as parties to the proceeding, provided that any insurer member who may be affected or may have a direct or indirect interest in any proposed rule, regulation or order may, upon written request of such insurer, be added as a named party to the proceeding and shall thereafter be entitled to receive all notices required by this section. (1945, c. 380; 1957, c. 546.)

Editor's Note.—The 1957 amendment added the last paragraph.

ARTICLE 15.

Title Insurance Companies and Land Mortgage Companies Issuing Collateral Loan Certificates.

§ 58-136. **Licenses.**—Any domestic land mortgage company, or title insurance company, wishing to do business under the provisions of this article upon making written application and submitting proof satisfactory to the Commissioner of Insurance that its business, capital and other qualifications comply with the provisions of this article, upon paying to the Commissioner of Insurance, the sum of two hundred dollars as a license fee and all other fees assessed against such company may be licensed to do business in this State under the provisions of this article until the first day of the following July, and may have its license renewed for each year thereafter so long as it complies with the provisions of this article and such rules and regulations as may be promulgated by the Commissioner of Insurance. For each such renewal such company shall pay to the

Commissioner of Insurance the sum of two hundred dollars, and all other fees assessed against such company and such renewal shall continue in force and effect until a new license be issued or specifically refused, unless revoked for good cause. The Commissioner of Insurance, or any person appointed by him, shall have the power and authority to make such rules and regulations and examinations not inconsistent with the provisions of this article, as may be in his discretion necessary or proper to enforce the provisions hereof and secure compliance with the terms of this article. For any examination made hereunder the Commissioner of Insurance shall charge the land mortgage companies or title insurance companies examined with the actual expense of such examination. (1927, c. 204, s. 2; 1955, c. 179, s. 3.)

Editor's Note. — The 1955 amendment substituted "July" for "April" in the first sentence.

ARTICLE 16.

Reciprocal or Inter-Insurance Exchanges.

§ 58-142. **Certificate issued by Commissioner.**—Upon the filing of the foregoing papers, and upon the payment of fees as provided for in this article, the Commissioner of Insurance shall examine and pass upon the same, and if found correct, and in accordance with this article, issue a certificate of authority, which shall expire on the first day of July next succeeding. (1913, c. 183, s. 6; C. S., s. 6402; 1955, c. 179, s. 4.)

Editor's Note. — The 1955 amendment substituted "July" for "April."

ARTICLE 17.

Foreign or Alien Insurance Companies.

§ 58-149. **Admitted to do business.**

Stated in *Hodges v. Home Ins. Co.*, 232 N. C. 475, 61 S. E. (2d) 372 (1950).

§ 58-150. **Conditions of admission.**

(2) Satisfies the Commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact, and that it has been successful in the conduct of such business; that it has, if a stock company, a free surplus and a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description of an amount not less than that required for the organization of a domestic company writing the same kinds of business; and if a mutual company that its free surplus is not less than that required for the organization of a domestic company writing the same kind of business, and that such capital, surplus, and other funds are invested in substantial accordance with the requirements of this chapter.

(1951, c. 781, s. 3.)

Cross Reference.—

See note to § 1-79.

Editor's Note.—The 1951 amendment inserted in line four of subsection (2) the words "a free surplus and" As the rest of the section was not changed by the amendment it is not set out.

For brief comment on the 1951 amendment, see 29 N. C. Law Rev. 398.

This section prescribes the conditions for a foreign insurance company to be admitted and authorized to do business in North Carolina. *Crain & Denbo, Inc. v.*

Harris & Harris Constr. Co., 250 N. C. 106, 108 S. E. (2d) 122 (1959).

Power of Attorney for Service of Process.—

When an insurance company, pursuant to this section, designates the State Commissioner of Insurance its true and lawful attorney upon whom all lawful processes in any action against it may be served, it creates "a passive agency" for the service of lawful process alone, and the statute gives no authority to the Commissioner even to accept service of process.

It provides residents of this State a simple procedure to be followed in obtaining service of lawful process upon foreign insurance companies doing business here, and nothing more. *Crain & Denbo, Inc. v. Harris & Harris Constr. Co.*, 250 N. C. 106, 108 S. E. (2d) 122 (1959).

The Insurance Commissioner is not authorized to accept service for foreign insurance companies under the provisions of this section, the passive agency under this section being solely for the purpose of constituting him an agent upon whom service on foreign insurance companies may be made in the statutory manner. *Hodges v. Home Ins. Co.*, 232 N. C. 475, 61 S. E. (2d) 372 (1950).

Power of Corporation to Sue and Be Sued.—

When the insurance company complies

with the provisions of this section, it acquires the right to sue and be sued in the State courts under the rules and statutes, which apply to domestic corporations. *Crain & Denbo, Inc. v. Harris & Harris Constr. Co.*, 250 N. C. 106, 108 S. E. (2d) 122 (1959).

Statement Setting Forth Principal Place of Business, etc., Not Required.— This section does not require a foreign insurance corporation desiring to be admitted and authorized to do business in North Carolina to file a statement in the office of the Commissioner of Insurance setting forth its "principal place of business" or "principal office" or "a registered office." *Crain & Denbo, Inc. v. Harris & Harris Constr. Co.*, 250 N. C. 106, 108 S. E. (2d) 122 (1959).

§ 58-151.2. Company owned or controlled by alien government prohibited from doing business.—(1) Any insurance company or other insurance entity which is financially owned or financially controlled by any alien or foreign government outside the continental limits of the United States or the territories of the United States is hereby prohibited from doing any kind of insurance business in the State of North Carolina. For the purposes of the section, the term "alien or foreign government" is defined to mean any foreign government or any state, province, municipality, or political subdivision of any foreign government, and shall not be construed to apply to any insurance company organized under the laws of a foreign nation which is financially owned or financially controlled by the private citizens or private business interest of such foreign nation.

(2) The Commissioner of Insurance is hereby forbidden to grant a license to any insurance company or other insurance entity which is financially owned or financially controlled by any alien or foreign government outside the continental limits of the United States or the territories of the United States, or to authorize any such company or entity to transact any kind of insurance business in the State of North Carolina.

(3) Any insurance company or other insurance entity which is financially owned or financially controlled by any alien or foreign government outside the continental limits of the United States or the territories of the United States, or any representative or agent of any such company or entity which violates the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined in the discretion of the court. (1955, c. 449.)

§ 58-153. Service of legal process upon Commissioner of Insurance.—The service of legal process upon any insurance, bonding and/or surety company, admitted and authorized to do business in this State under the provisions of this chapter, shall be made by leaving the same in the hands or office of the Commissioner of Insurance, and service upon a company that is licensed to do business in this State is valid if made upon the Commissioner of Insurance, by leaving a copy of such process in the office of Commissioner with a deputy duly appointed by the Commissioner for such purpose, the general agent for service, or some officer of the company. As a condition precedent to a valid service of process and of the duty of the Commissioner in the premises, the plaintiff shall pay to the Commissioner of Insurance at the time of service the sum of one dollar, which the plaintiff shall recover as taxable costs if he prevails in his action. In any action of which a justice of the peace has jurisdiction, summons may be served on any licensed agent of such company, returnable in not less than ten days from

date of service; if there is no such agent in the county, then the summons may be served as provided for in other actions against foreign corporations in a court of a justice of the peace. (1899, c. 54, ss. 16, 62; 1903, c. 438, s. 6; Rev., s. 4750; C. S., s. 6414; 1927, c. 167, s. 1; 1931, c. 287; 1951, c. 781, s. 9.)

Editor's Note.—The 1951 amendment rewrote the first sentence. For brief comment on the amendment, see 29 N. C. Law Rev. 398.

Quoted in *Hodges v. Home Ins. Co.*, 232 N. C. 475, 61 S. E. (2d) 372 (1950).

Cited in *Hodges v. Carter*, 239 N. C. 517, 80 S. E. (2d) 144 (1954).

§ 58-153.1. **Unauthorized Insurers Process Act.**—1. Purpose of Section.—The purpose of this section is to subject certain insurers to the jurisdiction of courts of this State in suits by or on behalf of insureds or beneficiaries under insurance contracts. The General Assembly declares that it is a subject of concern that many residents of this State hold policies of insurance issued by insurers not authorized to do business in this State, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such State interest, the General Assembly herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this State, and also exercises powers and privileges available to the State by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st Session, s. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

2. Service of Process upon Unauthorized Insurer.—(a) Any of the following acts in this State, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (1) The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the Commissioner of Insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this State upon such insurer.

(b) Such service of process shall be made by delivering to and leaving with the Commissioner of Insurance or some person in apparent charge of his office two copies thereof and the payment to him of one dollar (\$1.00). The Commissioner of Insurance shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(c) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (b) of this section be valid if served

upon any person within this State who, in this State on behalf of such insurer, is

- (1) soliciting insurance, or
- (2) making, issuing or delivering any contract of insurance, or

(3) collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent within ten days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty days from date of the filing of the affidavit of compliance.

(e) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

3. Defense of Action by Unauthorized Insurer.—(a) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either (1) deposit with the clerk of the court in which such action, suit or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or (2) procure a certificate of authority to transact the business of insurance in this State.

(b) The court in any action, suit, or proceeding, in which service is made in the manner provided in paragraphs (b) or (c) of subsection 2 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of paragraph (a) of this subsection and to defend such action.

(c) Nothing in paragraph (a) of this subsection is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in paragraphs (b) or (c) of subsection 2 on the ground either (1) that such unauthorized insurer has not done any of the acts enumerated in paragraph (a) of subsection 2, or (2) that the person on whom service was made pursuant to paragraph (c) of subsection 2 was not doing any of the acts therein enumerated.

4. Attorney Fees.—In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this State to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action; providing, however, that the fee or portion of fee included in the judgment shall be not less than twenty-five dollars (\$25.00) nor more than twelve and one-half per cent (12½%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

5. Short Title.—This section may be cited as the Unauthorized Insurers Process Act. (1955, c. 1040.)

§ 58-154. **Commissioner to notify company of service of process.**

Quoted in *Hodges v. Home Ins. Co.*, 232 N. C. 475, 61 S. E. (2d) 372 (1950). Stated in *Townsend v. Carolina Coach Co.*, 231 N. C. 81, 56 S. E. (2d) 39 (1949).

ARTICLE 17A.

Mergers, Rehabilitation and Liquidation of Insurance Companies.

§ 58-155.1. **Merger or consolidation.**

2. Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer under an agreement whereby the reinsuring company succeeds to all of the liabilities of and supplants the domestic insurance company thereon shall be deemed a consolidation for the purposes of this section, unless the Commissioner, after such investigation as he may deem expedient to make, finds that a consolidation would:

- (a) Not be in the best interests of the policyholders of either of the insurers, or
- (b) Not be in the best interests of the public, or
- (c) Prevent reinsurance which would otherwise be for the best interests of the policyholders or the public, or
- (d) Result in the reinsurance of a solvent company. (1947, c. 923; 1955, c. 905.)

Editor's Note.—The 1955 amendment rewrote subsection 2. As subsection 1 was not changed it is not set out.

§ 58-155.36. **Special deputy commissioners, counsel, clerks and assistants; expenses of liquidation or rehabilitation.**—The Commissioner shall have power to appoint, under his official seal, one or more special deputies, as his agent or agents, and to employ such counsel, clerks and assistants as may by him be deemed necessary, for the purpose of efficiently conducting such liquidation or rehabilitation and may delegate to each of them such of the powers vested in him as he may deem wise and prudent. The compensation of such special deputy commissioners, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating or rehabilitating any such corporation shall be fixed by the Commissioner, subject to the approval of the court, and shall, on certificate of the Commissioner, be paid out of the funds or assets of such corporation. (1951, c. 781, s. 4.)

Editor's Note.—For brief comment on this section, see 29 N. C. Law Rev. 398.

SUBCHAPTER III. FIRE INSURANCE.

ARTICLE 18.

General Regulations of Business.

§ 58-164. **Uniform Unauthorized Insurers Act.**

Transacting Business in State. — Findings to the effect that defendant insurance company and its predecessor solicited applications for insurance, delivered policies and collected premiums in this State through the United States mail is sufficient to show that defendant was transacting business in this State within the meaning of subsection (e) of this section, and that process served on the Commissioner of Insurance in compliance with this statute renders defendant amenable to the jurisdiction of our courts, and meets the requirements of due process. *Suits v. Old Equity Life Ins. Co.*, 241 N. C. 483, 85 S. E. (2d) 602 (1955).

ARTICLE 19.

*Fire Insurance Policies.***§ 58-175.1. Agent to inspect risks.**

Cited in *State v. Fraylon*, 240 N. C. 365,
82 S. E. (2d) 400 (1954).

§ 58-176. Fire insurance contract; standard policy provisions.—(1)
The printed form of a policy of fire insurance, as set forth in subsection three shall be known and designated as the "Standard Fire Insurance Policy for North Carolina."

(2) No policy or contract of fire insurance except contracts of automobile fire, theft, comprehensive and collision, marine and inland marine insurance shall be made, issued or delivered by any insurer or by any agent or representative thereof, on any property in this State, unless it shall conform as to all provisions, stipulations, agreements and conditions, with such form of policy, except as provided in G. S. 58-126.1.

There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers. No provisions of this section limit a company to the use of any particular size or manner of folding the paper upon which the policy is printed; provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this State.

The standard fire insurance policy provided for herein need not be used for effecting reinsurance between insurers.

No provision in any fire insurance policy or in any extended coverage endorsement or other endorsement or rider, providing for an exclusion from the perils covered by the policy, endorsement or rider, issued on or after July 1, 1955, shall be valid unless such provision is printed in type which shall not be smaller than eight point type and in such other form and arrangement as shall be approved by the Commissioner of Insurance; provided, that the issuance of a renewal certificate of an annual renewal policy shall not be considered the issuance of a policy, endorsement or rider within the meaning of this section.

(3) The form of the standard fire insurance policy for North Carolina (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer and with permission for the North Carolina Fire Insurance Rating Bureau to change the manner of folding the policy and arrangement of the pages and the arrangement of the wording of page 1, page 3, and the back of the policy and relocation of the signatures, and any other relocations or rearrangement of the contents of the policy, with the approval of the Commissioner) shall be as follows: (See the four following pages for this form photographically reproduced from the original legal size pages.)

(1899, c. 54, s. 43, 1901, c. 391, s. 4; Rev., s. 4760; 1915, c. 109, s. 9; C. S., s. 6437; 1945, c. 378; 1951, c. 767; 1955, c. 622; c. 807, s. 2.)

I. GENERAL CONSIDERATION.**Editor's Note.—**

The 1951 amendment substituted "for" for "of the State of" in the designation of the policy in subsections (1) and (3). inserted the exception clause in the first paragraph of subsection (2), inserted in subsection (3) the provisions as to changes in the manner of folding and the arrangement of the policy, and revised the form of the standard policy to appear as reproduced herein.

The first 1955 amendment, effective July 1, 1955, added to subsection (2) the fourth paragraph requiring restrictive clauses to be printed in large type. The second 1955 amendment added the exception clause to the first paragraph of subsection (2).

History of Legislation in Respect to "Standard Fire Insurance Policy."—See *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

Validity and Binding Effect.—

In accord with 1st paragraph in original.

SECOND PAGE OF STANDARD FIRE POLICY

1 **Concealment.** This entire policy shall be void if, whether
2 **fraud.** before or after a loss, the insured has will-
3 fully concealed or misrepresented any ma-
4 terial fact or circumstance concerning this insurance or the
5 subject thereof, or the interest of the insured therein, or in case
6 of any fraud or false swearing by the insured relating thereto.
7 **Uninsurable** This policy shall not cover accounts, bills,
8 **and** currency, deeds, evidences of debt, money or
9 **excepted property.** securities; nor, unless specifically named
10 hereon in writing, bullion or manuscripts
11 **Perils not** This Company shall not be liable for loss by
12 **included.** fire or other perils insured against in this
13 policy caused, directly or indirectly, by: (a)
14 enemy attack by armed forces, including action taken by mili-
15 tary, naval or air forces in resisting an actual or an immediately
16 impending enemy attack, (b) invasion, (c) insurrection, (d)
17 rebellion, (e) revolution, (f) civil war, (g) usurped power, (h)
18 order of any civil authority except acts of destruction at the time
19 of and for the purpose of preventing the spread of fire, provided
20 that such fire did not originate from any of the perils excluded
21 by this policy; (i) neglect of the insured to use all reasonable
22 means to save and preserve the property at and after a loss, or
23 when the property is endangered by fire in neighboring prem-
24 ises, (j) nor shall this Company be liable for loss by theft.
25 **Other Insurance.** Other insurance may be prohibited or the
26 amount of insurance may be limited by en-
27 dorsement attached hereto.
28 **Conditions suspending or restricting insurance.** Unless other-
29 wise provided in writing added hereto this Company shall not
30 be liable for loss occurring
31 (a) while the hazard is increased by any means within the con-
32 trol or knowledge of the insured, or
33 (b) while a described building, whether intended for occupancy
34 by owner or tenant, is vacant or unoccupied beyond a period of
35 sixty consecutive days, or
36 (c) as a result of explosion or riot, unless fire ensue, and in
37 that event for loss by fire only
38 **Other perils** Any other peril to be insured against or sub-
39 **or subjects.** ject of insurance to be covered in this policy
40 shall be by endorsement in writing hereon or
41 added hereto.
42 **Added provisions.** The extent of the application of insurance
43 under this policy and of the contribution to
44 be made by this Company in case of loss, and any other pro-
45 vision or agreement not inconsistent with the provisions of this
46 policy, may be provided for in writing added hereto, but no pro-
47 vision may be waived except such as by the terms of this policy
48 is subject to change.
49 **Waiver** No permission affecting this insurance shall
50 **provisions.** exist, or waiver of any provision be valid,
51 unless granted herein or expressed in writing
52 added hereto. No provision, stipulation or forfeiture shall be
53 held to be waived by any requirement or proceeding on the part
54 of this Company relating to appraisal or to any examination
55 provided for herein.
56 **Cancellation** This policy shall be cancelled at any time
57 **of policy.** at the request of the insured, in which case
58 this Company shall, upon demand and sur-
59 render of this policy, refund the excess of paid premium above
60 the customary short rates for the expired time. This poli-
61 cy may be cancelled at any time by this Company by giving
62 to the insured a five days' written notice of cancellation with
63 or without tender of the excess of paid premium above the pro-
64 rata premium for the expired time, which excess, if not ten-
65 dered, shall be refunded on demand. Notice of cancellation shall
66 state that said excess premium (if not tendered) will be re-
67 funded on demand.
68 **Mortgage** If loss hereunder is made payable, in whole
69 **interest and** or in part, to a designated mortgagee not
70 **obligations.** named herein as the insured, such interest in
71 this policy may be cancelled by giving to such
72 mortgagee a ten days' written notice of can-
73 cellation.
74 If the insured fails to render proof of loss such mortgagee, upon
75 notice, shall render proof of loss in the form herein specified
76 within sixty (60) days thereafter and shall be subject to the pro-
77 visions hereof relating to appraisal and time of payment and of
78 bringing suit. If this Company shall claim that no liability ex-
79 isted as to the mortgagor or owner, it shall, to the extent of pay-
80 ment of loss to the mortgagee, be subrogated to all the mort-
81 gagee's rights of recovery, but without impairing mortgagee's
82 right to sue; or it may pay off the mortgage debt and require
83 an assignment thereof and of the mortgage. Other provisions

84 relating to the interests and obligations of such mortgagee may
85 be added hereto by agreement in writing.
86 **Pro rata liability.** This Company shall not be liable for a greater
87 proportion of any loss than the amount
88 hereby insured shall bear to the whole insurance covering the
89 property against the peril involved, whether collectible or not.
90 **Requirements in** The insured shall give immediate written
91 **case loss occur.** notice to this Company of any loss, protect
92 the property from further damage, forthwith
93 separate the damaged and undamaged personal property, put
94 it in the best possible order, furnish a complete inventory of
95 the destroyed, damaged and undamaged property, showing in
96 detail quantities, costs, actual cash value and amount of loss
97 claimed, and within sixty days after the loss, unless such time
98 is extended in writing by this Company, the insured shall render
99 to this Company a proof of loss, signed and sworn to by the
100 insured, stating the knowledge and belief of the insured as to
101 the following the time an 'origin of the loss, the interest of the
102 insured and of all others in the property, the actual cash value of
103 each item thereof and the amount of loss thereto, all encum-
104 brances thereon, all other contracts of insurance, whether valid
105 or not, covering any of said property, any changes in the title,
106 use, occupation, location, possession or exposures of said prop-
107 erty since the issuing of this policy, by whom and for what
108 purpose any building herein described and the several parts
109 thereof were occupied at the time of loss and whether or not it
110 then stood on leased ground, and shall furnish a copy of all the
111 descriptions and schedules in all policies and, if required, verified
112 plans and specifications of any building, fixtures or machinery
113 destroyed or damaged. The insured, as often as may be reason-
114 ably required, shall exhibit to any person designated by this
115 Company all that remains of any property herein described, and
116 submit to examinations under oath by any person named by this
117 Company, and subscribe the same, and, as often as may be
118 reasonably required, shall produce for examination all books of
119 account, bills, invoices and other vouchers, or certified copies
120 thereof if originals be lost, at such reasonable time and place as
121 may be designated by this Company or its representative, and
122 shall permit extracts and copies thereof to be made.
123 **Appraisal.** In case the insured and this Company shall
124 fail to agree as to the actual cash value or
125 the amount of loss, then, on the written demand of either, each
126 shall select a competent and disinterested appraiser and notify
127 the other of the appraiser selected within twenty days of such
128 demand. The appraisers shall first select a competent and dis-
129 interested umpire, and failing for fifteen days to agree upon
130 such umpire, then, on request of the insured or this Company,
131 such umpire shall be selected by a judge of a court of record in
132 the state in which the property covered is located. The app-
133 raisers shall then appraise the loss, stating separately actual
134 cash value and loss to each item; and, failing to agree, shall
135 submit their differences, only, to the umpire. An award in writ-
136 ing, so itemized, of any two when filed with this Company shall
137 determine the amount of actual cash value and loss. Each
138 appraiser shall be paid by the party selecting him and the ex-
139 penses of appraisal and umpire shall be paid by the parties
140 equally.
141 **Company's** It shall be optional with this Company to
142 **options.** take all, or any part, of the property at the
143 agreed or appraised value, and also to re-
144 pair, rebuild or replace the property destroyed or damaged with
145 other of like kind and quality within a reasonable time, on giv-
146 ing notice of its intention so to do within thirty days after the
147 receipt of the proof of loss herein required.
148 **Abandonment.** There can be no abandonment to this Com-
149 pany of any property.
150 **When loss** The amount of loss for which this Company
151 **payable.** may be liable shall be payable sixty days
152 after proof of loss, as herein provided, is
153 received by this Company and ascertainment of the loss is made
154 either by agreement between the insured and this Company ex-
155 pressed in writing or by the filing with this Company of an
156 award as herein provided.
157 **Suit.** No suit or action on this policy for the recovery
158 of any claim shall be sustainable in any
159 court of law or equity unless all the requirements of this policy
160 shall have been complied with, and unless commenced within
161 twelve months next after inception of the loss.
162 **Subrogation.** This Company may require from the insured
163 an assignment of all right of recovery against
164 any party for loss to the extent that payment therefor is made
165 by this Company.

IN WITNESS WHEREOF, this Company has executed and attested these presents: but this policy shall not be valid unless counter-
signed by the duly authorized Agent of this Company at the agency hereinbefore mentioned.

INSERT SIGNATURES AND
TITLES OF PROPER OFFICERS

THIRD PAGE OF STANDARD FIRE POLICY

ATTACH FORM BELOW THIS LINE

BACK OF STANDARD FIRE POLICY

Standard Fire Insurance Policy for
North Carolina

See Inside of Policy for Amount(s) of Insurance and Part(s) Insured Against

No.

Expires

Basic Amount \$

Property

Premium \$

Insured's name and mailing address

SPACE FOR COMPANY
NAME
OR
INSIGNIA

SPACE FOR
AGENT'S
STICKER OR IMPRINT

It is important that the written portions of all policies covering the same property read exactly alike.
If they do not, they should be made uniform at once.

SPACE FOR LIST OF COMPANY
OFFICERS, BRANCH OFFICES,
OR OTHER COMPANY MATERIAL

See *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

The provisions of the standard form of fire insurance policy are valid, and the rights and liabilities of both parties under the policy must be ascertained and determined in accordance with its terms. *Gardner v. Carolina Ins. Co.*, 230 N. C. 750, 55 S. E. (2d) 694 (1949).

Rights and Liabilities Determined from Policy.—

In accord with 2nd paragraph in original. See *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

The inception of the risk is not delayed until the policy is countersigned. *Pruitt v. Great American Ins. Co.*, 241 N. C. 725, 86 S. E. (2d) 401 (1955).

Cited in *Cuthrell v. Milwaukee Mechanical Ins. Co.*, 234 N. C. 137, 66 S. E. (2d) 649 (1951); *Crowell v. Eastern Air Lines, Inc.*, 240 N. C. 20, 81 S. E. (2d) 178 (1954).

III. CERTAIN OTHER CONDITIONS.

Limitation of Suit—Pleading Statutory Exception. — The statutory requirement that an action on a fire insurance policy must be instituted within twelve months after the loss unless a longer time to institute suit is agreed upon between the parties and such agreement appears on the face of the policy, is binding upon the parties in the absence of waiver or estoppel, and where insured, instituting action more than twelve months after the loss, relies upon the statutory exception he must plead facts bringing himself thereunder. *Meekins v. Aetna Ins. Co.*, 231 N. C. 452, 57 S. E. (2d) 777, 15 A. L. R. (2d) 949 (1950); *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

Time for Filing Proof of Loss, etc.—

Under the terms of the standard fire insurance policy in effect in this State, no action may be maintained on a policy unless proof of loss shall be filed within the prescribed period. *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

Limitation of Suit — Generally. — In earlier statutes the limitation agreement as to suit in the standard fire insurance policy reads as follows: "Nor unless commenced within twelve months next after the fire," whereas the new section of the 1945 act reads, "and unless com-

menced within twelve months next after the inception of the loss." In other words, the provisions of the limitation in the 1945 Act are used conjunctively, that is, there must be compliance with all the requirements of the policy, and the suit or action must be commenced within twelve months next after inception of the loss. *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

In this connection the word "inception" as defined by Webster means "act or process of beginning; commencement; initiation." Hence as used above "inception" necessarily means that the beginning, the commencement, the initiation of the loss was that caused by the fire. *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

Same—Not Construed as Statute of Limitations.—

See *Meekins v. Aetna Ins. Co.*, 231 N. C. 452, 57 S. E. (2d) 777, 15 A. L. R. (2d) 949 (1950).

Same—Waiver of Policy Provision.—Where insurer enters into negotiations with insured and promises that the claim will be paid or satisfactorily adjusted upon completion of investigation, and thereafter insurer demands additional proof of loss without denying the claim after it is too late for suit to be brought within the twelve months' period, insurer waives the policy provision requiring action to be instituted within twelve months next after loss. *Meekins v. Aetna Ins. Co.*, 231 N. C. 452, 57 S. E. (2d) 777, 15 A. L. R. (2d) 949 (1950).

Same — Nonsuit Proper When Record Discloses That More than Twelve Months Elapsed.—In an action upon a policy of fire insurance in the standard form, judgment of nonsuit is proper when the record discloses that more than twelve months elapsed between the inception of the loss and the commencement of the suit. *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

IV. LIABILITY OF INSURER IN CASE OF LOSS; SUBROGATION.

Insurer Subrogated to Rights of Insured.—

In accord with original. See *Winkler v. Appalachian Amusement Co.*, 238 N. C. 589, 79 S. E. (2d) 185 (1953).

§ 58-177. **Standard policy; permissible variations.**—No fire insurance company shall issue fire insurance policies, except policies of automobile fire, theft, comprehensive and collision, marine and inland marine insurance, on property in

this State other than those of the standard form as set forth in G. S. 58-176, and as provided in G. S. 58-126.1, except as follows:

(a) A company may print on or in its policies the date of incorporation, the amount of its paid-up capital stock, the names of its officers, and to the words at the top of the back of said policy, "Standard Fire Insurance Policy for" may be added after or before the words "North Carolina" the names of any states or political jurisdiction in which the said policy form may be standard when the policy is used.

(b) A company may print in its policies or use in its policies written or printed forms of description and specification of the property insured.

(c) A company may write or print upon the margin or across the face of a policy, in unused spaces or upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form, and all such slips, riders, and provisions must be signed by an officer or agent of the company so using them. Provided, however, such provisions shall not have the effect of making the provisions of the standard policy form more restrictive except for such restrictions as are provided for in the charter or bylaws of a domestic mutual fire insurance company doing business in no more than three adjacent counties of the state and chiefly engaged in writing policies of insurance on rural properties upon an assessment or nonpremium basis, provided all such restrictions contained in the charter and bylaws of such domestic mutual fire insurance company shall be actually included within the printed terms of the policy contract so affected as a condition precedent to their being effective and binding on any policyholder. The iron safe or any similar clause requiring the taking of inventories, the keeping of books and producing the same in the adjustment of any loss, shall not be used or operative in the settlement of losses on buildings, furniture and fixtures, or any property not subject to any change in bulk and value.

(d) Binders or other contracts for temporary insurance may be made, orally or in writing, for a period which shall not exceed sixty days, and shall be deemed to include all the terms of such standard fire insurance policy and all such applicable endorsements, approved by the Commissioner, as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard fire insurance policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

(e) Two or more companies authorized to do in this State the business of fire insurance, may, with the approval of the Commissioner, issue a combination standard form of fire insurance policy which shall contain the following provisions:

(1) A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.

(2) A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the companies executing such policy, shall be deemed to be service upon all such insurers.

(f) Appropriate forms of supplemental contract or contracts or extended coverage endorsements and other endorsements whereby the interest in the property described in such policy shall be insured against one or more of the perils which the company is empowered to assume, in addition to the perils covered by said standard fire insurance policy may be approved by the Commissioner, and their use in connection with a standard fire insurance policy may be authorized by him. In his discretion the Commissioner may authorize the printing of such supplemental contract or contracts or extended coverage endorsements and other endorsements in the form of the standard fire insurance policy. The first page of the policy may in form approved by the Commissioner be arranged to provide

space for the listing of amounts of insurance, rates and premiums, description of construction, occupancy and location of property covered for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached or printed therein, and such other data as may be conveniently included for duplication on daily reports for office records.

(g) A company may print on or in its policy, with the approval of the Commissioner, any provision which it is required by law to insert in its policies not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements, or conditions of the policy, under a separate title, as follows: "Provisions Required by Law to Be Inserted in This Policy." (1899, c. 54, s. 43; 1901, c. 391, s. 4; Rev., s. 4759; 1907, c. 800, s. 1; 1915, c. 109, s. 10; C. S., s. 6436; 1925, c. 70, s. 5; 1945, c. 378; 1949, c. 418; 1951, c. 767; c. 781, s. 5; 1955, c. 807, s. 3.)

Editor's Note.—

The first 1951 amendment excepted automobile, marine and inland marine insurance policies from the application of the section, substituted "Standard Fire Insurance Policy for" for "Standard Fire Insurance Policy of the States of" in subsection (a), inserted "or political jurisdiction" after the word "states" near the end of subsection (a), inserted in subsection (b) the words "print in its policies or", inserted near the beginning of subsection (c) the words "in unused spaces", and inserted in the third sentence of paragraph (f) the words "description of construction, occupancy and location of property cov-

ered". The second 1951 amendment increased the period mentioned in subsection (d) from "thirty" to "sixty" days.

The 1955 amendment inserted the reference to § 58-126.1 near the end of the introductory paragraph.

For brief comment on the second 1951 amendment, see 29 N. C. Law Rev. 398.

Cited in *Hodges v. Home Ins. Co.*, 233 N. C. 289, 63 S. E. (2d) 819 (1951); *Cuthrell v. Milwaukee Mechanics Ins. Co.*, 234 N. C. 137, 66 S. E. (2d) 649 (1951); *Pruitt v. Great American Ins. Co.*, 241 N. C. 725, 86 S. E. (2d) 401 (1955); *Boyd v. Bankers & Shippers Ins. Co.*, 245 N. C. 503, 96 S. E. (2d) 703 (1957).

§ 58-178. Notice by insured or agent as to increase of hazard, unoccupancy and other insurance.

Cited in *State v. Fraylon*, 240 N. C. 365, 82 S. E. (2d) 400 (1954).

§ 58-180. Effect of failure to give notice of encumbrance.

Cited in *State v. Fraylon*, 240 N. C. 365, 82 S. E. (2d) 400 (1954).

§ 58-180.1. Policy issued to husband or wife on joint property.

Right of Wife to Proceeds of Policy Issued to Husband Alone.—A policy of fire insurance issued to a husband on a house held by the entirety but occupied by him alone while separated from his wife injured to the benefit of the entire estate as owned by both husband and wife, and

where the entire estate, as so insured, was severed by absolute divorce after the fire, the wife was entitled to receive half the proceeds of the insurance moneys paid into court. *Carter v. Continental Ins. Co.*, 242 N. C. 578, 89 S. E. (2d) 122 (1955), commented on in 35 N. C. Law Rev. 134.

ARTICLE 20.

Deposits by Insurance Companies.

§ 58-182.1. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.

Title and Rights to Deposited Securities.—It is the manifest intention of the North Carolina legislature that the title and rights to securities deposited in accord with §§ 58-182.1, 58-182.3, 58-182.5, 58-182.6, and 58-188.5 be vested in the Commissioner, the Treasurer, and the

State. Continental Bank & Trust Co. v. Gold, 140 F. Supp. 252 (1956).

Federal Receiver of Foreign Insurance Company Not Entitled to Recover Deposit.—A federal receiver of a foreign insurance company, who pursuant to an order of the federal court appointing him

filed a petition and motion to recover the deposit of the foreign insurance company from State officials, was not entitled to recover the deposit, since such a deposit is not the property of the foreign insur-

ance company, but is held in trust by the State Treasurer for payment of qualified claimants against the foreign insurance company. *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-182.3. Type of deposits.

Stated in *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-182.5. Power of attorney.

Stated in *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-182.6. Securities held by Treasurer; faith of State pledged therefor; nontaxable.

Stated in *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-183. Right of company to receive interest on deposits.

Company Entitled to Interest Until It Fails to Satisfy Liability.—A foreign insurance company which makes a deposit of securities is entitled to the interest income

of the securities deposited until such time as the company fails to satisfy a liability. *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-184. Sale of deposits for payment of liabilities.

Cited in *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-185. Lien of policyholders; action to enforce.

The federal receiver of a foreign insurance company would be entitled to appear and contest any doubtful claim in an action brought under this section to sub-

ject the insurance company's deposit to the payment of unsatisfied claims of State claimants. *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

§ 58-187. Return of deposits.—If such company ceases to do business in this State, and its liabilities, whether fixed or contingent upon its contracts, to persons residing in this State or having policies upon property situated in this State have been satisfied or have been terminated, or have been fully reinsured, with the approval of the Commissioner, in a solvent company licensed to do an insurance business in North Carolina approved by the Commissioner, upon satisfactory evidence of this fact to the Commissioner of Insurance the State Treasurer shall deliver to such company, upon the order of the Commissioner of Insurance, the securities in his possession belonging to it, or such of them as remain after paying the liabilities aforesaid. (1909, c. 923, s. 6; C. S., s. 6447; 1951, c. 781, s. 1.)

Editor's Note.—The 1951 amendment inserted the words "or have been fully reinsured, with the approval of the Commissioner, in a solvent company licensed

to do an insurance business in North Carolina approved by the Commissioner." For brief comment on the amendment, see 29 N. C. Law Rev. 398.

§ 58-188.5. Registration of bonds deposited in name of Treasurer.

Stated in *Continental Bank & Trust Co. v. Gold*, 140 F. Supp. 252 (1956).

ARTICLE 21.

Insuring State Property.

§ 58-190. Appropriations; fund to pay administrative expenses.—Upon the expiration of the existing fire insurance policies on said properties and in making appropriations for any biennium after the next biennium, the Com-

missioner of Insurance shall file with the budget bureau his estimate of the appropriations which will be necessary in order to set up and maintain an adequate reserve to provide a fund sufficient to protect the State, its departments, institutions, and agencies from loss or damage to any of said properties up to fifty per centum of the value thereof. Appropriations made for the creating of such fire insurance reserves against property of the Department of Agriculture, or the State Highway Commission or any special operating fund shall be charged against the funds of such departments.

The State Property Fire Insurance Fund is authorized and empowered to pay all the administrative expenses occasioned by the administration of article 21 of chapter 58 of the General Statutes. (1945, c. 1027, s. 2; 1957, c. 65, s. 11; 1959, c. 182, s. 1.)

Editor's Note.—

The 1957 amendment substituted "Highway Commission" for "Highway and Pub-

lic Works Commission" in the first paragraph. The 1959 amendment added the second paragraph.

§ 58-191. Payment of losses; rules and regulations; sprinkler leakage insurance.—In case of total loss of any property of any State institution or partial loss thereof or the loss or damage of any other aforesaid State-owned property, the Commissioner of Insurance is authorized, empowered and directed to determine the amount of the loss and to certify the amount of loss to the department or institution concerned, to the budget bureau and to the Governor and Council of State. The Governor and Council of State may authorize transfers from the "State Property Fire Insurance Fund" to the State agency having suffered a fire damage in such amounts as they may consider necessary to restore the loss sustained, and in the event there is not a sufficient sum in said State Property Fire Insurance Fund, the Governor and Council of State may supplement said fund from the contingency and emergency fund, and if there is not a sufficient amount therein, then from the State postwar reserve fund. Such funds as shall be allocated from such reserve fund shall be paid therefrom upon warrant of the State Auditor.

The Commissioner of Insurance, with the approval of the Council of State, is authorized and empowered to adopt and promulgate all such rules and regulations as may be necessary to carry out the purpose and intent of the provisions of this article and all such rules and regulations as may be adopted in accordance herewith shall be binding upon all the departments, bureaus, agencies and institutions of the State. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or reinsurance as may be necessary to protect the State Property Fire Insurance Fund against loss on any one building and contents in excess of not less than \$50,000. The premiums on such coverage shall be paid from the State Property Fire Insurance Fund hereinbefore provided.

Upon request of any State department, agency or institution, sprinkler leakage insurance shall be provided on designated State-owned property of such department, agency or institution which is insured by the State Property Fire Insurance Fund. Premiums for such insurance coverage shall be paid by each requesting department, agency or institution in accordance with rates fixed by the Commissioner of Insurance. Losses covered by such insurance may be paid out of the State Property Fire Insurance Fund in the same manner as fire losses. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or reinsurance as may be necessary to protect the State Property Fire Insurance Fund against loss with respect to such insurance coverage. (1945, c. 1027, s. 3; 1951, c. 802; 1959, c. 182, s. 2.)

Editor's Note. — The 1951 amendment added the second paragraph.

The 1959 amendment added the third paragraph.

§ 58-191.1. **Extended coverage insurance.**—Upon request of any State department, agency or institution, extended coverage insurance shall be provided on designated State-owned property of such department, agency or institution which is insured by the State Property Fire Insurance Fund. Premiums for such insurance coverage shall be paid by each requesting department, agency or institution in accordance with rates fixed by the Commissioner of Insurance. Losses covered by such insurance may be paid for out of the State Property Fire Insurance Fund in the same manner as fire losses. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or re-insurance as may be necessary to protect the State Property Fire Insurance Fund against loss with respect to such insurance coverage. The words “extended coverage insurance,” as used in this section, mean insurance against loss or damage caused by windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles or smoke. (1957, c. 67.)

§ 58-191.2. **Use and occupancy and business interruption insurance.**—Upon request of any State department, agency or institution, use and occupancy and business interruption insurance shall be provided on State-owned property of such department, agency or institution which is insured by the State Property Fire Insurance Fund. Premiums for such insurance coverage shall be paid by each requesting department, agency or institution in accordance with rates fixed by the Commissioner of Insurance. Losses covered by such insurance may be paid for out of the State Property Fire Insurance Fund in the same manner as fire losses. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or re-insurance as may be necessary to protect the State Property Fire Insurance Fund against loss with respect to such insurance coverage. (1957, c. 67.)

§ 58-194.1. **Liability insurance required for State-owned vehicles.**—Every department, agency or institution of the State shall acquire motor vehicle liability insurance on all State-owned motor vehicles under its control. A general fund department, agency or institution which does not have sufficient funds within its existing budget to pay the premiums for such insurance may, with the approval of the Advisory Budget Commission, make application to the Director of the Budget for allocation of funds for payment of premiums out of the contingent or emergency appropriation in the manner prescribed by G. S. 143-12. (1959, c. 1248.)

SUBCHAPTER IV. LIFE INSURANCE.

ARTICLE 22.

General Regulations of Business.

§ 58-195.2. **Credit life insurance defined.**—Credit life insurance is declared to be insurance upon the life of a debtor who may be indebted to any person, firm, or corporation extending credit to said debtor. Credit life insurance may include the granting of additional benefits in the event of total and permanent disability of the debtor. (1953, c. 1096, s. 1.)

§ 58-195.3. **Any type of survivorship fund in life insurance contract prohibited.**—No life insurance company shall hereafter deliver in this State, as a part of or in combination with any insurance, endowment or annuity contract, any agreement or plan, additional to the rights, dividends, and benefits arising out of any such insurance, endowment or annuity contract, which provides for the accumulation of profits over a period of years and for payment of

all or any part of such accumulated profits only to members or policyholders of a designated group or class who continue as members or policyholders until the end of a specified period of years. Nor shall any such company deliver in this State any individual life insurance policy which provides that on the death of anyone not specifically named therein, the owner or beneficiary of the policy shall receive the payment or granting of anything of value. (1955, c. 492.)

§ 58-195.4. **Tie-in sales with life insurance prohibited.**—No life insurance company shall hereafter deliver in this State, as a part of or in combination with any insurance, endowment or annuity contract, any agreement or plan, additional to the rights, dividends, and benefits arising out of any such insurance, endowment, or annuity contract which provides for the sale, solicitation, or delivery of any stock or shares of stock in the company issuing the policy or in any other insurance company or other corporation, or benefit certificate, securities, or any special advisory board contract, or other contracts or resolutions of any kind promising returns and profits, or dividends equivalent to stock dividends as an inducement to or in connection with the sale of the insurance or to the taking of the policy. Nothing herein contained shall be construed as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. (1957, c. 752.)

§ 58-197. **Soliciting agent represents the company.**

When Knowledge of Agent Imputed to Company.—In the absence of fraud or collusion between the insured and the agent, the knowledge of the agent when acting within the scope of the powers entrusted to him will be imputed to the company, though a direct stipulation to the contrary appears in the policy or the application for the same. However, it is otherwise when

it clearly appears that an insurance agent and the insured participated in a fraud by inserting false answers with respect to material facts in an application for insurance. The knowledge of the agent in such instances will not be imputable to his principal. *Thomas-Yelverton Co. v. State Capital Life Ins. Co.*, 238 N. C. 278, 77 S. E. (2d) 692 (1953).

§ 58-201.1. **Standard Valuation Law.**

3. The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of § 58-201.2 shall be that provided by the laws in effect immediately prior to such date. The minimum standard for the valuation of all such policies and contracts issued on or after the operative date of § 58-201.2 shall be the Commissioner's reserve valuation method defined in subsection four, three and one-half per cent (3½%) interest, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection 5 (b) of § 58-201.2, and the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table.

(c) For annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table.

(d) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, Class (3) Disability Table (1926) which, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(e) For accidental death benefits in or supplementary to policies, the Inter-Company Double Indemnity Mortality Table combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Commissioner. (1959, c. 484, s. 1.)

Editor's Note. — The 1959 amendment following all of paragraph (a) of subsection 3 added the words "Mortality Table" in line three. As only subsection 3 was affected by the amendment the rest of the section is not set out.

§ 58-201.2. **Standard nonforfeiture provisions.**

5. (a) The adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent (40%) of the adjusted premium for the first policy year; (iv) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this section shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy.

Except as otherwise provided in paragraph (b) of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not be more than one hundred and thirty per cent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

(b) In the case of ordinary policies issued on or after the operative date of this paragraph (b) as defined herein, all adjusted premiums and present

values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After May 12, 1959, any company may file with the Commissioner a written notice of its election to comply with the provisions of this paragraph (b) after a specified date before January 1st, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph (b) for such company), this paragraph (b) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph (b) for such company shall be January 1, 1966.

(1959, c. 484, s. 2.)

Editor's Note. — The 1959 amendment rewrote subsection 5. As only this subsection was affected by the amendment the rest of the section is not set out.

§ 58-204.1. Insurable interest in life and physical ability of employee or agent.—An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a like insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal. (1951, c. 283, s. 1; 1957, c. 1086.)

Editor's Note.—For brief comment on this and the three following sections, see 29 N. C. Law Rev. 401.

The 1957 amendment inserted the words

“or any religious, educational, or charitable corporation, institution or body” in lines three and four.

§ 58-204.2. Insurable interest in life and physical ability of partner.—Any partner has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of any other partner or partners who are members of the same partnership for his benefit, either alone or jointly with another partner or partners of the same partnership. A partnership has a like insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of one or more partners of the partnership. (1951, c. 283, s. 2.)

§ 58-204.3. Insurable interest in life of person covered by pension plan.—A trustee under a written document providing for a pension plan for payments of money or delivery of other benefits to be made to persons eligible to receive them under the terms and provisions of such written document, shall be deemed to have and is hereby declared to have an insurable interest in the lives of any person or persons covered by the pension plan, to the extent that contracts

or policies of insurance are in conformity with and in furtherance of the purposes of the pension plan. (1951, c. 283, s. 2½.)

Stated in *Allgood v. Wilmington Sav. & Trust Co.*, 242 N. C. 506, 88 S. E. (2d) 825 (1955).

§ 58-204.4. **Construction of §§ 58-204.1 to 58-204.3.**—Sections 58-204.1 to 58-204.3 shall not be construed to limit or abridge any insurable interest or right to insure now existing at common law or by statute, and shall be construed liberally to sustain insurable interest, whether as a declaration of existing law or as an extension of or addition to existing law. (1951, c. 283, s. 3.)

§ 58-205. **Rights of beneficiaries.**

Cited in *Philadelphia Life Ins. Co. v. Crosland-Cullen Co.*, 234 F. (2d) 780 (1956).

§ 58-206. **Creditors deprived of benefits of life insurance policies except in cases of fraud.**

Cited in *Philadelphia Life Ins. Co. v. Crosland-Cullen Co.*, 234 F. (2d) 780 (1956).

§ 58-210. **Group life insurance defined.**—No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

- (1) A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:
 - a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The term "employer" as used herein may be deemed to include any county, municipality, or the proper officers, as such, of any unincorporated municipality or any department, division, agency, instrumentality or subdivision of a county, unincorporated municipality or municipality. In all cases where counties, municipalities or unincorporated municipalities or any officer, agent, division, subdivision or agency of the same have heretofore entered into contracts and purchased group life insurance for their employees, such transactions, contracts and insurance and the purchase of the same is hereby approved, authorized and validated.
 - b. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds con-

tributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The policy must cover at least 10 employees at date of issue.
- d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustee. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policy or policies issued to the employer or to the trustee of a fund established in whole or in part by the employer exceeds \$40,000, except that this limitation shall not apply to amounts of group permanent life insurance issued in connection with a pension or profit-sharing plan.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

- a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.
- b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
- c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured.

- d. The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor, or \$5,000, whichever is less.
 - e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.
- (3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:
- a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.
 - b. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
 - c. The policy must cover at least 25 members at date of issue.
 - d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides insurance on any union member which together with any other insurance under any group life insurance policies, issued to the union exceeds \$40,000.
- (4) A policy issued to the trustee of a fund established by two or more employers in the same industry or kind of business or by two or more labor unions, which trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:
- a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to memberships in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustee or the employees of the trustee, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

- b. The premium for the policy shall be paid by the trustee wholly from funds contributed by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
 - c. The policy must cover at least 100 persons at date of issue.
 - d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides insurance on any person, which together with any other insurance under any group life insurance policy or policies issued to the employers, or any of them, or to the trustee of a fund established in whole or in part by the employers, or any of them, exceeds \$40,000, except that this limitation shall not apply to amounts of group permanent life insurance issued in connection with a pension or profit-sharing plan.
- (5) A policy issued to an association of persons having a common professional or business interest, which association shall be deemed the policyholder, to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:
- a. Such association shall have had an active existence for at least two years immediately preceding the purchase of such insurance, was formed for purposes other than procuring insurance and does not derive its funds principally from contributions of insured members toward the payment of premiums for the insurance.
 - b. The members eligible for insurance under the policy shall be all of the members of the association or all of any class or classes thereof determined by conditions pertaining to their employment, or the membership in the association, or both. The policy may provide that the term "members" shall include the employees of members, if their duties are principally connected with the member's business or profession.
 - c. The premium for the policy shall be paid by the policyholder, either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance, nor if the Commissioner finds that the rate of such contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
 - d. The policy must cover at least 25 members at date of issue.

e. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the association. No policy may be issued which provides insurance on any member which together with any other insurance under any group life insurance policies issued to the association exceeds \$40,000.

(6) Notwithstanding the provisions of this section, or any other provisions of law to the contrary, a policy may be issued to the employees of the State or any other political subdivision where the entire amount of premium therefor is paid by such employees. (1925, c. 58, s. 1; 1931, c. 328; 1943, c. 597, s. 1; 1947, c. 834; 1951, c. 800; 1955, c. 1280; 1957, c. 998; 1959, c. 287.)

Editor's Note.—The 1951 amendment added subdivision (6) at the end of this section. The 1955 amendment added the last two sentences of paragraph a of subdivision (1).

The 1957 amendment substituted "\$40,-

000" for "\$20,000" in paragraph d of subdivisions (1), (3) and (4) and in paragraph e of subdivision (5).

The 1959 amendment substituted "10" for "25" in paragraph c of subdivision (1).

§ 58-211. Group life insurance standard provisions.

Applied in *Haneline v. Turner White Casket Co.*, 238 N. C. 127, 76 S. E. (2d) 372 (1953).

§ 58-211.2. Employee life insurance defined.—Employee life insurance is hereby declared to be that plan of life insurance other than salary savings life insurance under which individual policies are issued to the employees of any employer where such policies are issued on the life of more than one employee at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds, or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. (1947, c. 721; 1957, c. 1008.)

Editor's Note.—

The 1957 amendment substituted the words "life of more than one employee at date of issue" for the words "lives of not

less than ten nor more than forty-nine employees at date of issue" formerly ending the first sentence.

§ 58-213. Exemption from execution.—No policy of group insurance, nor the proceeds thereof, when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; but the proceeds thereof, when made payable to the estate of the employee insured, shall constitute a part of the estate of such employee available for the payment of debts (1925, c. 58, s. 4; 1957, c. 1361.)

Editor's Note.—Prior to the 1957 amendment the part of this section after the semicolon in line six read as follows: "nor shall the proceeds thereof, when not

made payable to a named beneficiary, constitute a part of the employee for the payment of his debts."

ARTICLE 24.

Mutual Burial Associations.

§ 58-224. Mutual burial associations placed under supervision of Burial Association Commissioner.—All mutual burial associations now organized and operating in the State of North Carolina, and all mutual burial associations hereafter organized and operating within said State, shall be under the gen-

eral supervision of a Burial Association Commissioner to be appointed by the Governor of the State of North Carolina, whose term shall be for a period of four years and his salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission. (1941, c. 130, s. 2; 1957, c. 541, s. 4.)

Editor's Note. — The 1957 amendment "subject to the approval of the Advisory Budget Commission." added at the end of the section the words

§ 58-226. Requirements as to rules and bylaws.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of any association already organized, shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which benefit shall consist of a funeral in merchandise and service, with no free embalming or free ambulance service included in such benefits; and in no case shall any cash be paid. No other free service or any other thing free shall be held out, promised or furnished in any case. Such funeral benefit shall be in the amount of one hundred dollars (\$100.00) of merchandise and service, without free embalming or free ambulance service, for persons of the age of ten years and over, and in the amount of fifty dollars (\$50.00) for persons under the age of ten years. Provided, however, where any members of any association elect to pay double the assessments provided in article 6 of this section, the benefits to such members shall be doubled; however, this election shall not be available to any member who has passed his sixty-fifth birthday; provided further, any funeral director who sells or promotes the sale of membership shall provide a funeral at a cost of the face amount of the policy, or give credit in the amount of the face value on such funeral as is selected by the family of the member of the association.

Article 4. The annual meeting of the association shall be held at (here insert the place, date and hour); each member shall have one vote at said annual meeting and fifteen members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these articles and the bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues col-

lected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Commissioner or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up to date so that the financial standing of the association may be readily ascertained by the Burial Association Commissioner or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Commissioner to employ an auditor or bookkeeper to take charge of the books of the association and do whatever work is necessary to bring the books up to date. The Burial Association Commissioner shall have the power and authority to set a fee sufficient to pay the said auditor or bookkeeper for the work done upon the books of said association and the secretary or secretary-treasurer of the association shall pay the fees as specified by the Burial Association Commissioner out of the funds of the burial association. This fee must be included in the thirty per cent allowed by law for the operation of the burial associations.

Article 13. All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty per cent (30%) of the total of the assessments collected and the net income carried upon investment of surplus funds in one calendar year. In the event the association fails to expend the thirty per cent (30%) allowed herein by the 31st day of December of any year, then the amount not used shall be placed in the surplus.

(1953, c. 1201; 1955, c. 259, ss. 3, 4.)

Editor's Note.—

The 1953 amendment added the proviso at the end of article 2.

The 1955 amendment substituted "thirty" for "twenty-five" in the last sentence of

article 4 and increased the maximum expenses allowed under article 13.

As the rest of the section was not changed by the amendments, only articles 2, 4 and 13 are set out.

§ 58-228. **Assessments against associations for supervision expense.**—In order to meet the expense of supervision, the Burial Association Commissioner shall prorate the amount of the supervisory cost (over and above any other funds in his hands for this purpose), and assess each association on a pro rata basis in accordance with the number of members of each association, which total assessment shall in no case exceed fifty thousand dollars (\$50,000.00), and each association shall remit to the Burial Association Commissioner its pro rata part of the assessment, as fixed by the Burial Association Commissioner, which expense shall be included in the thirty per cent (30%) expense allowance as provided in article 13. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within thirty days thereafter. In case any association shall fail or refuse to pay such assessment within thirty days, it shall be the duty of the Burial Association Commissioner to transfer all memberships and assets of every kind and description to the nearest next association that is found by the Burial Association Commissioner to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c. 100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2.)

Editor's Note.—

The 1951 amendment increased the maximum assessment from \$36,500.00 to \$42,500.00.

The 1955 amendment increased the

maximum assessment from \$42,500.00 to \$50,000.00. It also substituted "thirty per cent (30%)" for "twenty-five per cent (25%)" in the first sentence.

§ 58-229.2. **Deposit or investment of funds of mutual burial associations.**—Funds belonging to each mutual burial association over and above the amount determined by the Burial Association Commissioner to be necessary for

operating capital, shall be deposited in banks located in the State of North Carolina which are members of the Federal Deposit Insurance Corporation or shall be invested in building and loan or savings and loan institutions in this State insured by an instrumentality of the U. S. government or invested in securities of the State of North Carolina or any governmental unit thereof which are of bank grade as rated by the North Carolina Securities Advisory Committee or in obligations of the United States or securities the payment of which, both as to principal and interest, is guaranteed either by the United States or the State of North Carolina.

Violation of the provisions of this section shall, after hearing, be cause for revocation or suspension of license to operate a mutual burial association. (1957, c. 820, s. 1.)

§ 58-236. Right of appeal upon revocation or suspension of license.—Upon the revocation or suspension of any license or authority by the Burial Association Commissioner, under any of the provisions of article 24, the said association or individual whose license has been revoked or suspended, shall have right of appeal from the action of said Burial Association Commissioner revoking or suspending such license or authority to the superior court of the county in which such burial association may be located: Provided, said association shall give notice of appeal in writing to the Burial Association Commissioner within ten days from the date of order revoking or suspending the said license and the said association giving notice of appeal shall deposit with the Burial Association Commissioner an amount sufficient to cover appeal fees, which the Burial Association Commissioner shall pay to the clerk of the superior court. Upon receipt of said notice of appeal, the Burial Association Commissioner shall file with the clerk of the superior court of the county in which the burial association is located the decision of the Burial Association Commissioner and the clerk of the superior court shall transfer the appeal to the civil issue docket as in cases of appeal from a justice of the peace and the same shall be heard de novo. If upon the revocation or suspension of a license of a burial association by the Burial Association Commissioner and where the burial association gives the proper notice of appeal, the burial association shall be permitted to operate until a final decision has been made by the higher court. (1941, c. 130, s. 14; 1943, c. 272, s. 4; 1957, c. 820, s. 3.)

Editor's Note.—

The 1957 amendment made this section

applicable to suspension as well as to revocation of licenses.

§ 58-241.5. Commissioner authorized to subpoena witnesses, administer oaths and compel attendance at hearings.—For the purpose of holding hearings the Burial Association Commissioner shall have power to subpoena witnesses, administer oaths, and compel attendance of witnesses and parties. (1957, c. 820, s. 2.)

SUBCHAPTER V. AUTOMOBILE LIABILITY INSURANCE.

ARTICLE 25.

Regulation of Automobile Liability Insurance Rates.

§ 58-246. North Carolina Automobile Rate Administrative Office created; objects and functions; hearings on rates.

(b) To furnish upon request of any person carrying this form of insurance in the State or to any member of the North Carolina Automobile Rate Administrative Office, upon whose risk a rate has been promulgated, information as to the rating, including the method of its capitulation, and to encourage safety on the highways and streets of the State by adjusting premiums and rates, through the use of credits and debits or other proper factors, under such uniform sys-

tem of experience or other form of merit rating as may be approved by the Commissioner of Insurance.

(1953, c. 674, s. 1.)

Editor's Note.—

The 1953 amendment rewrote subsection (b). As only this subsection was affected by the amendment the rest of the section is not set out.

As to former provision of subsection (b) providing for reduced premium rates to effect the purpose of the statute, see *In re Blue Bird Taxi Co.*, 237 N. C. 373, 75 S. E. (2d) 156 (1953).

§ 58-248.1. Order of Commissioner revising improper rates, classifications and classification assignments.

Applied in *In re Blue Bird Taxi Co.*, 237 N. C. 373, 75 S. E. (2d) 156 (1953).

§ 58-248.5. Review of order of Commissioner.

Applied in *In re Blue Bird Taxi Co.*, 237 N. C. 373, 75 S. E. (2d) 156 (1953).

§ 58-248.7. Validation of experience rating plans in use prior to April 7, 1953.—All acts of the Commissioner of Insurance, prior to April 7, 1953, in authorizing and approving systems of experience rating or other forms of merit rating for use in connection with automobile liability insurance and workmen's compensation insurance, are hereby ratified, confirmed and validated.

All acts of the North Carolina Automobile Rate Administrative Office and of the Compensation Rating and Inspection Bureau of North Carolina, prior to April 7, 1953, in the application of such systems of experience rating or other forms of merit rating and in the promulgation of premium rates and modifications thereof applicable to such kinds of insurance, pursuant to such authorizations and approvals, are hereby ratified, confirmed, and validated.

All acts of insurers and insureds, prior to April 7, 1953, in the issuance and acceptance of contracts of insurance and the premium charges made or collected therefor at rates and modifications thereof pursuant to such authorizations and approvals by the Commissioner of Insurance and in accordance with such promulgations of the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, are hereby ratified, confirmed and validated.

This section shall not affect pending litigation, and shall not apply to or affect the rights of any person which have been judicially determined. (1953, c. 980.)

§ 58-248.8. Rates to distinguish between safe and nonsafe drivers.—The Commissioner of Insurance, in the manner prescribed by article 25 of subchapter V of chapter 58 of the General Statutes, is directed to establish rates which adequately and factually distinguish between classes of drivers having safe-driving records and those having a record of accidents, so that those drivers with a record of no accidents shall not be subject to unreasonable, unfair and discriminatory rates. (1957, c. 1393, s. 11.)

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

ARTICLE 26.

Nature of Policies.

§ 58-250. Form of policy.—(a) No policy of accident and health insurance shall be delivered or issued for delivery to any person in this State unless:

(1) The entire money and other considerations therefor are expressed therein; and

(2) The time at which the insurance takes effect and terminates is expressed therein; and

(3) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other persons dependent upon the policyholder; and

(4) The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions, and),

(5) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in § 58-251.1, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS", or "EXCEPTIONS AND REDUCTIONS", provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Commissioner.

(b) If any policy is issued by an insurer domiciled in this State for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the Commissioner that any such policy is not subject to approval or disapproval by such official, the Commissioner may by ruling require that such policy meet the standards set forth in subsection (a) of this section and in § 58-251.1. (1913, c. 91, s. 2; C. S., s. 6478; 1945, c. 385; 1953, c. 1095, s. 1.)

Editor's Note.—

The 1953 amendment rewrote this section. Section 13 of the amendatory act provided: "This act shall be in full force and effect from and after January 1, 1954. A policy, rider or endorsement which could have been lawfully used or delivered or issued for delivery to any person in this

State immediately before the effective date of this act may be used or delivered or issued for delivery to any such person during three years after the effective date of this act without being subject to the provisions of sections 58-250, 58-251.1 or 58-258, General Statutes, as rewritten by this act."

§ 58-250.1. Right to return policy and have premium refunded.— Every individual or family hospitalization policy, certificate, contract or plan issued for delivery in the State of North Carolina on and after January 1, 1956, must have printed thereon or attached thereto a notice stating in substance that the person to whom the policy is issued is permitted to return the policy within ten (10) days of its receipt by him and have the premium paid refunded, if, after examination of the policy, he is not satisfied with it for any reason. If a policyholder or certificate holder or purchaser of a contract or plan returns same pursuant to such notice, coverage under such policy, certificate, contract or plan shall become void immediately upon the mailing or delivery of the contract, certificate, policy or plan to the insurance company at its home or branch office or to the agent through whom it was purchased. Coverage shall exist under such

policy, certificate, contract or plan within said ten-day period until said mailing or delivery of the contract. (1955, c. 850, s. 10.)

Editor's Note.—Section 12 of the act corporations under chapter 57 to the same which inserted this section made it ap- extent as to insurers under this chapter. plicable to hospital and medical service

§ 58-251: Repealed by Session Laws 1953, c. 1095, s. 2.

Editor's Note.—The repealing act is ef- fective as of January 1, 1954. See note to § 58-250.

§ 58-251.1. **Accident and health policy provisions.** — (a) Required Provisions.—Except as provided in paragraph (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

(1) A provision as follows:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or waive any of its provisions.

(2) A provision as follows:

TIME LIMIT ON CERTAIN DEFENSES: a. After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of § 58-251.1 (b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,

2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE".

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

GRACE PERIOD: A grace period of (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of

each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the record of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's

right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

(6) A provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any period payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$..... (insert an amount which shall not exceed \$1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services, may at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured

when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(b) Other Provisions.—Except as provided in paragraph (c) of this section, no such policy delivered or issued for delivery to any person in this State shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording, approved by the Commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

(1) A provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

OTHER INSURANCE IN THIS INSURER: If an accident or health or accident and health policy or policies previously issued by the insurer to the in-

sured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "... EXPENSE INCURRED BENEFITS". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provisions no third party liability coverage shall be included as "other valid coverage".)

(5) A provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains

the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "... OTHER BENEFITS". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(6) A provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars (\$200) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue.

The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision as follows:

UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(8): Repealed by Session Laws 1955, c. 886, s. 1, effective Jan. 1, 1956.

(9) A provision as follows:

CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(10) A provision as follows:

ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows:

INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(c) Inapplicable or Inconsistent Provisions.—If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(d) Order of Certain Policy Provisions.—The provisions which are the subject of subsections (a) and (b) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(e) Third Party Ownership.—The word "insured", as used in this subchapter shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(f) Requirements of Other Jurisdictions. — (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this State, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this subchapter and which is prescribed or required by the law of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(g) Filing Procedure.—The Commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this subchapter as are necessary, proper or advisable to the administration of this subchapter. This provision shall not abridge any other authority granted the Commissioner by law. (1953, c. 1095, s. 2; 1955, c. 850, s. 8; c. 886, s. 1.)

Editor's Note.—Section 13 of the act inserting this section provided that it shall be in effect from January 1, 1954, and that a policy, rider or endorsement which could have been lawfully used or delivered

or issued for delivery to any person in this State immediately before such effective date may be used or delivered or issued for delivery to any such person during three years after such date with-

out being subject to the provisions of this section.

The first 1955 amendment reduced the time limit provided in paragraph (2) of subsection (a) from three to two years. And the second 1955 amendment, effective January 1, 1956, repealed paragraph (8) of subsection (b).

For comment on the 1955 amendments, see 33 N. C. Law Rev. 555.

As to clause excluding from coverage death caused by intentional act of any person, see *Patrick v. Pilot Life Ins. Co.*, 241 N. C. 614, 86 S. E. (2d) 201 (1955), citing repealed § 58-253 (6).

§ 58-251.2. Renewability of individual and blanket hospitalization and accident and health insurance policies.—(1) Every individual or blanket family hospitalization policy and accident and health policy, other than noncancellable or nonrenewable policies but including group, blanket and franchise policies, as defined in this chapter, covering less than ten persons, issued in North Carolina after January 1, 1956, shall include the following provision:

Renewability: This policy is renewable at the option of the policyholder unless sufficient notice of nonrenewal is given the policyholder in writing by the insurer.

Sufficient notice shall be, during the first year of any policy, or during the first year following any lapse and reinstatement, a period of thirty days prior to the premium due date. After one continuous year of coverage and acceptance of premium for any portion of the second or subsequent year sufficient notice shall be a number of full months most nearly equivalent to one-fourth the number of months of continuous coverage from the first anniversary of the date of issue or reinstatement, to the date of mailing of such notice: Provided no period of required notice shall exceed two years.

The insurer upon a showing of inadequacy of the rates chargeable on such policies upon which notice of nonrenewal has been given, and a finding as to the same by the Commissioner of Insurance, may increase such rates with the approval of the Commissioner. Thereafter, such rates shall be applicable to all policies of the same type, the holders of which receive notice of nonrenewal. The policyholder thereafter must pay the increased rate in order to continue the policy in force. The requirements of this provision shall not apply to refusal of renewal because of change of occupation of the insured to one classified by the company as uninsurable nor to increase in rate due to change of occupation of the insured to a more hazardous occupation.

(2) No insurance company issuing individual or blanket family hospitalization or accident and health policies of insurance shall have the right to unilaterally restrict coverage, reduce benefits or increase rates upon any contract of hospitalization or accident and health insurance which is subject to the provisions of this section except as provided herein.

(3) Any hospitalization or accident and health policy reissued or renewed in the name of the insured during the grace period shall be construed to be a continuation of the policy first issued. (1955, c. 886, s. 2; 1957, c. 1085, s. 2.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, inserted in the first paragraph of subsection (1) the words “but including group, blanket and franchise policies, as defined in this chapter, covering less than ten persons.”

§ 58-252. Meaning of term “pre-existing conditions” in certain policies.—At the time of issuing any new policy of individual or family hospitalization insurance or individual accident and health insurance to insureds over age sixty-five (65), the term “pre-existing conditions,” or its equivalent in said policy shall include only conditions specifically eliminated by rider. (1955, c. 850, s. 5.)

Editor's Note.—Former § 58-252 was repealed by Session Laws 1953, c. 1095, § 3, effective January 1, 1954. The above section was designated § 58-252 by the 1955 act which inserted it. Section 12 of

the 1955 act made this section applicable to hospital and medical service corporations under chapter 57 to the same extent as to insurers under this chapter.

§§ 58-253, 58-254: Repealed by Session Laws 1953, c. 1095, s. 3.

Editor's Note.—The repealing act is effective as of January 1, 1954. See note to § 58-250.

§ 58-254.2. **Industrial sick benefit insurance; provisions.** — Policies issued under the industrial sick benefit plan shall contain the provisions contained in § 58-251.1 and in addition shall contain the following:

1. A provision for grace for the payment of the additional premium or assessment or proportion thereof for such death benefits of not less than four weeks during which period the death benefit shall continue in force;

2. A provision for incontestability of the death benefit coverage after not more than two years except for

- a. Nonpayment of premiums, and
- b. Misstatement of age;

3. A provision that the death benefit is noncancellable by the company except for nonpayment of premium.

The Commissioner may approve any form of certificate to be issued under the industrial sick benefit plan which omits or modifies any of the provisions hereinbefore required, if he deems such omission or modification suitable for the character of such insurance and not unjust to the persons insured thereunder. (1945, c. 385; 1953, c. 1095, s. 4.)

Editor's Note.—

The 1953 amendment, which rewrote

this section, is effective as of January 1, 1954.

§ 58-254.3. **Blanket accident and health insurance defined.**

(f) Under a policy or contract issued to the head of a family, who shall be deemed the policyholder, whereunder the benefits thereof shall provide for the payment by the insurer of amounts for expenses incurred by the policyholder on account of hospitalization or medical or surgical aid for himself, his spouse, his child or children, or other persons chiefly dependent on him for support and maintenance.

(1953, c. 1095, s. 5.)

Editor's Note.—

The 1953 amendment, which rewrote paragraph (f) of subsection 1, is effective

as of January 1, 1954. As the rest of the section was not affected by the amendment only paragraph (f) is set out.

§ 58-254.4. **Group accident and health insurance defined.**—1. Any policy or contract of insurance against death or injury resulting from accident or from accidental means which covers more than one person except blanket accident policies as defined in § 58-254.3, shall be deemed a group accident insurance policy. Any policy or contract which insures against disablement, disease or sickness of the insured (excluding disablement which results from accident or from accidental means) and which covers more than one person, except blanket health insurance policies as defined in § 58-254.3, shall be deemed a group health insurance policy or contract. Any policy or contract of insurance which combines the coverage of group accident insurance and of group health insurance shall be deemed a group accident and health insurance policy. No policy or contract of group accident, group health or group accident and health insurance, and no certificates thereunder shall be delivered or issued for delivery in this State unless it conforms to the requirements of subsection 2.

2. No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following paragraph:

Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or

kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall comprise not less than seventy-five per cent (75%) of all persons eligible of any class or classes of employees, or agents, determined by conditions pertaining to the employment or agency.

3. The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment.

4. The term "agents" as used in this section shall be deemed to include, for the purposes of insurance hereunder, agents of a single principal who are under contract to devote all, or substantially all, of their time in rendering personal services for such principal, for a commission or other fixed or ascertainable compensation.

5. The benefits payable under any policy or contract of group accident, group health and group accident and health insurance shall be payable to the employees, or agents, or to some beneficiary or beneficiaries designated by the employee or agent, other than the employer or principal, but if there is no designated beneficiary as to all or any part of the insurance at the death of the employee or agent, then the amount of insurance payable for which there is no designated beneficiary shall be payable to the estate of the employee or agent, except that the insurer may in such case, at its option, pay such insurance to any one or more of the following surviving relatives of the employee or agent: Wife, husband, mother, father, child, or children, brothers or sisters; and except that payment of benefits for expenses incurred on account of hospitalization or medical or surgical aid, as provided in subsection 6, may be made by the insurer to the hospital or other person or persons furnishing such aid. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

6. Any policy or contract of group accident, group health or group accident and health insurance may include provisions for the payment by the insurer of benefits to the employee or agent of the insured group, on account of hospitalization or medical or surgical aid for himself, his spouse, his child or children, or other persons chiefly dependent upon him for support and maintenance.

7. Any policy or contract of group accident, group health or group accident and health insurance may provide for readjustment of the rate of premium based on the experience thereunder at the end of the first year, or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies and any dividend paid under such policies may be used to reduce the employer's or principal's contribution to group insurance for the employees of the employer, or the agents of the principal, and the excess over such contribution by the employer, or principal, shall be

applied by the employer, or principal, for the sole benefit of the employees or agents.

8. Nothing contained in this section shall be deemed applicable to any contract issued by any corporation defined in chapter 57 of the General Statutes of North Carolina. (1945, c. 385; 1947, c. 721; 1951, c. 282; 1953, c. 1095, ss. 6, 7.)

Editor's Note.—

The 1951 amendment struck out former subsections 2-7 and inserted in lieu thereof present subsections 2 through 8.

The 1953 amendment, effective January 1, 1954, deleted the words "covering not less than 25 employees of such employer

or not less than 25 agents of such principal, and" formerly appearing after the word "policyholder" in the first sentence of the second paragraph of subsection 2. The amendment also rewrote the second sentence of subsection 3.

§ 58-254.7. **Approval by Commissioner of forms, classification and rates; hearing; exceptions.**—No policy of insurance against loss or expense from the sickness, or from the bodily injury or death by accident of the insured shall be issued or delivered to any person in this State nor shall any application, rider or endorsement be used in connection therewith until a copy of the form thereof and of the classification of risks and the premium rates, or, in the case of co-operatives or assessment companies the estimated cost pertaining thereto have been filed with the Commissioner of Insurance.

No such policy shall be issued, nor shall any application, rider or endorsement be used in connection therewith, until the expiration of 30 days after it has been so filed unless the Commissioner shall sooner give his written approval thereto.

The Commissioner may within 30 days after the filing of any such form, disapprove such form (1) if the benefits provided therein are unreasonable in relation to the premium charged, or (2) if it contains a provision or provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of such policy. If the Commissioner shall notify the insurer which has filed any such form that it does not comply with the provisions of this section or sections, it shall be unlawful thereafter for such insurer to issue such form or use it in connection with any policy. In such notice the Commissioner shall specify the reasons for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

The Commissioner may at any time, after a hearing of which not less than 20 days' written notice shall have been given to the insurer, withdraw his approval of any such form on any of the grounds stated in this section. It shall be unlawful for the insurer to issue such form or use it in connection with any policy after the effective date of such withdrawal of approval. The notice of any hearing called under this paragraph shall specify the matters to be considered at such hearing and any decision affirming disapproval or directing withdrawal of approval under this section shall be in writing and shall specify the reasons therefor: Provided, that the provisions of this section shall not apply to Workmen's Compensation Insurance, accidental death or disability benefits issued supplementary to life insurance or annuity contracts, medical expense benefits under liability policies or to group accident and health insurance. (1951, c. 784.)

Editor's Note.—For brief comment on this section, see 29 N. C. Law Rev. 398.

§ 58-254.8. **Credit accident and health insurance.**—Credit accident and health insurance is declared to be insurance against death or personal injury by accident or by any specified kind or kinds of accident, and insurance against sickness, ailment, or bodily injury of a debtor who may be indebted to any person, firm, or corporation extending credit to such debtor. (1953, c. 1096, s. 2.)

§ 58-254.9. **Hospitalization insurance defined.**—Hospitalization insurance is declared to be any form of accident and health insurance which provides indemnity or payment for expenses incurred due to or in connection with hospitalization of the insured, or his dependents. (1953, c. 1096, s. 3.)

ARTICLE 27.

General Regulations.

§ 58-255: Repealed by Session Laws 1953, c. 1095, s. 8.

Editor's Note.—The repealing act is effective as of January 1, 1954.

§ 58-257. **Application.**—(a) On and after January 1, 1956, each individual or family accident, health, hospitalization policy, certificate or service plan of hospitalization and medical service corporations shall be issued only on application in writing signed by the insured or the head of the household or guardian. Each application shall also contain the certificate of the agent that he has truly and accurately recorded on the application the information supplied by the insured. Every policy subject to the provisions of this section shall contain as a part of such policy the original or a reproduction of the application required by this section. This section shall not apply to travel or dread disease policies or to policies issued pursuant to a group insurance conversion privilege. If any such policy delivered or issued for delivery to any person in this State shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(b) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(c) The falsity of any statement in the application for any policy covered by this subchapter may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer. (1913, c. 91, s. 8; C. S., s. 6485; 1953, c. 1095, s. 9; 1955, c. 850, s. 6.)

Editor's Note.—The 1953 amendment, which rewrote this section, is effective as of January 1, 1954.

The 1955 amendment substituted, in subsection (a), the present first, second, third and fourth sentences for the former first sentence, which provided that the insured should not be bound by any statement

made in the application unless a copy of the application was attached to or endorsed on the policy. Section 12 of the amendatory act made it applicable to hospital and medical service corporations under chapter 57 to the same extent as to insurers under this chapter.

§ 58-257.1. **Claim forms.**—All forms used by policyholders, beneficiaries, hospitals and physicians to report information relative to the nature and extent of loss or disability for which claim is being made under any type of accident or health policy must conform to certain standard language approved by the Commissioner of Insurance. (1955, c. 850, s. 9.)

Editor's Note.—Section 12 of the act inserting this section, as amended by Session Laws 1955, c. 1261, made this section applicable to hospital and medical service

corporations under chapter 57 to the same extent as it applies to insurers under this chapter.

§ 58-258. **Conforming to statute.**—(a) Other Policy Provisions.—No policy provision which is not subject to § 58-251.1 shall make a policy, or any

portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this subchapter.

(b) **Policy Conflicting with Subchapter.**—A policy delivered or issued for delivery to any person in this State in violation of this subchapter shall be held valid but shall be construed as provided in this subchapter. When any provision in a policy subject to this subchapter is in conflict with any provision of this subchapter, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this subchapter. (1913, c. 91, s. 9; C. S., s. 6486; 1953, c. 1095, s. 10.)

Editor's Note.—The 1953 amendment rewrote this section. Section 13 of the amendatory act provided that it shall be in effect from January 1, 1954, and that a policy, rider or endorsement which could have been lawfully used or delivered or issued for delivery to any person in

this State immediately before such effective date may be used or delivered or issued for delivery to any person during three years after that date without being subject to the provisions of this section as rewritten.

§ 58-259: Repealed by Session Laws 1953, c. 1095, s. 11.

§ 58-259.1. **Age limit.**—If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. (1953, c. 1095, s. 11.)

§ 58-260.2. **Premium rates on credit accident and health insurance.**—The maximum premium rates that may be charged on credit accident and health insurance as defined in G. S. 58-254.8 shall be established from time to time by the Commissioner of Insurance on the basis of experience of companies writing this type of credit insurance after due notice and hearing and with full rights of appeal as provided in G. S. 58-9.2 and 58-9.3. (1955, c. 1341, s. 1½.)

SUBCHAPTER VII. FRATERNAL ORDERS AND SOCIETIES.

ARTICLE 28.

Fraternal Orders.

§ 58-268. **Conditions precedent to doing business.**—Any such fraternal, beneficiary order, society, or association as defined by this chapter, chartered and organized in this State or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the Commissioner of Insurance that its business is proper and legitimate and so conducted, may be admitted to transact business in this State upon the same conditions as are prescribed by this chapter for admitting and authorizing foreign insurance companies to do business in this State, except that such fraternal orders shall not be required to have the capital required of such insurance companies. Organizers or agents shall be licensed without requiring an examination. (1899, c. 54, s. 92;

1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s. 4798; 1913, c. 46; C. S., s. 6495; 1959, c. 1190.)

Editor's Note. — The 1959 amendment added the second sentence.

§ 58-279. Qualifications for membership.

Construction of Word "Year." — The word "year" in this section should be construed as a calendar year, as set forth in § 12-3 (3). The word "year" in a funeral benefit association bylaw relative to mem-

bership in the association should be likewise construed. *Green v. Patriotic Order Sons of America*, 242 N. C. 78, 87 S. E. (2d) 14 (1955).

§ 58-281. Beneficiaries.

This section expressly grants to the insurer the right to circumscribe the statutory permissive class. Having the right to circumscribe, the insurer of course has the right to make its limitation absolute or it can fix a permissive class of beneficiaries. *Widows Fund of Sudan Temple v. Umphlett*, 246 N. C. 555, 99 S. E. (2d) 791 (1957).

no vested right in the certificate. It is a mere expectancy. *Widows Fund of Sudan Temple v. Umphlett*, 246 N. C. 555, 99 S. E. (2d) 791 (1957).

Same—One Disqualified to Take.—

Right to Change Beneficiary.—

The right of the insured to change the beneficiary is declared and guaranteed by this section. Hence anyone named as beneficiary has, during the life of the insured,

This section defines the class who may be beneficiaries in a certificate issued by a fraternal benefit society. An attempt to name a beneficiary outside of the class therein limited confers no right on the person so designated. *Widows Fund of Sudan Temple v. Umphlett*, 246 N. C. 555, 99 S. E. (2d) 791 (1957).

**Chapter 59.
Partnership.**

Article 2.

Uniform Partnership Act.

Part 3. Relations of Partners to Persons Dealing with the Partnership.

Sec.

59-39.1. Act, admission or acknowledgment by partner.

Part 6. Dissolution and Winding Up.

59-65. Power of partner to bind partnership to third persons after dissolution; publication of notice of dissolution.

Article 3.

Surviving Partners.

Sec.

59-84.1. Partnership to comply with "assumed name" statute.

Article 4.

Business under Assumed Name Regulated.

59-85 to 59-89. [Transferred]

ARTICLE 1.

Uniform Limited Partnership Act.

§ 59-2. Formation.

(b) File for record the certificate in the office of the clerk of the superior court of the county where the principal place of business is located according to the statement in such certificate.

(1953, c. 1190, s. 4.)

Editor's Note.—The 1953 amendment, effective January 1, 1954, added the part of paragraph (b) of subsection (1) appearing after the word "court." As only this

paragraph was affected by the amendment the rest of the section is not set out.

For brief comment on the 1953 amendment, see 31 N. C. Law Rev. 429.

ARTICLE 2.

Uniform Partnership Act.

Part 1. Preliminary Provisions.

§ 59-31. Name of article.

Editor's Note.—For note on partnerships in bankruptcy, see 31 N. C. Law Rev. 457.

Part 2. Nature of a Partnership.

§ 59-36. Partnership defined.

To make a partnership, two or more persons should combine their property, effects, labor, or skill in a common business or venture, and under an agreement to share the profits and losses in equal or specified proportions, and constituting each member an agent of the others in matters appertaining to the partnership and within the scope of its business. *Johnson v. Gill*, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

Co-ownership of the business is an indispensable requisite for a partnership, under this section, and where this element is lacking there can be no partnership. *McGurk v. Moore*, 234 N. C. 248, 67 S. E. (2d) 53 (1951).

Quoted in *Peirson v. American Hardware Mutual Ins. Co.*, 248 N. C. 215, 102 S. E. (2d) 800 (1958).

§ 59-37. Rules for determining the existence of a partnership.

Agreement to Share Profits Does Not Create Partnership.—While an agreement to share profits, as such, is one of the tests of a partnership, an agreement to receive part of the profits for his services and attention, as a means only of ascertaining the compensation, does not create a partnership. *Johnson v. Gill*, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

hundred dollars," payable one hundred dollars per week, or was leased to the partnership on a rental basis of one hundred dollars per week, even though it appears that the money paid for the tractor was money received from the partnership business, no inference arises therefrom that the individual was a partner in the business. *Johnson v. Gill*, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

Sale or Lease of Property to Partnership.—Where a tractor was either sold by an individual to a partnership for "ten

Applied in *McGurk v. Moore*, 234 N. C. 248, 67 S. E. (2d) 53 (1951).

Part 3. Relations of Partners to Persons Dealing with the Partnership.

§ 59-39. Partner agent of partnership as to partnership business.

Attempt by Partner to Relieve Himself of Liability by Notice to Third Person.—Where there is a general partnership of two persons, without restrictions on the authority of either partner to act within the scope of the partnership business, one of the partners cannot, by notice to a third person that he would not be personally liable for goods thereafter sold the partnership in the ordinary course of the

partnership business, relieve himself of liability for such goods thereafter ordered by the other partner while the partnership is a going concern under this section and §§ 59-45 and 59-48 of the Uniform Partnership Act. *National Biscuit Co. v. Stroud*, 249 N. C. 467, 106 S. E. (2d) 692 (1959).

Stated in *Johnson v. Gill*, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

§ 59-39.1. **Act, admission or acknowledgment by partner.**—After a cause of action has accrued on any obligation of a partnership, any act, admission or acknowledgment by any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners which removes the bar of the statute of limitations or causes the statutes to begin running anew with respect to the partner doing such act or making such admission or acknowledgment has a like effect with respect to all of the partners and with respect to partnership liability, but when any partner is not so acting and does not have

the authority of his copartners, any act, admission or acknowledgment by such partner which removes the bar of the statute of limitations or causes the statute to begin running anew has such effect only as to the partner doing such act or making such admission or acknowledgment, and shall not renew, extend or in any manner impose liability of any kind against any partner who has not authorized or ratified the same nor against the partnership. (1953, c. 1076, s. 2.)

Editor's Note.—The act inserting this section became effective July 1, 1953. For brief comment on this section, see 31 N. C. Law Rev. 397.

§ 59-40. Conveyance of real property of the partnership.—(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of § 59-39, or unless such property has been conveyed by the grantee or a person claiming through such grantee to holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority. (1959, c. 1161, s. 3.)

Editor's Note. — The 1959 amendment substituted "or" for "of" in line six of subsection (1). As only this subsection was changed, the rest of the section is not set out.

§ 59-43. Partnership bound by partner's wrongful act.

Action Against Individual Partners.—In an action by the federal government to recover from individual partners for alleged violation of the False Claims Act, this section did not impose liability upon one of the partners for a false claim filed by the other, since the action was against

the individual partners and not against the partnership. *United States v. Toepelman*, 141 F. Supp. 677 (1956).

Stated in *Johnson v. Gill*, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

Cited in *Keith v. Wilder*, 241 N. C. 672, 86 S. E. (2d) 444 (1955).

§ 59-45. Nature of partner's liability.—All partners are jointly and severally liable for the acts and obligations of the partnership. (1941, c. 374, s. 15; 1953, c. 881.)

Cross References.—

See note to § 59-39.

Editor's Note.—The 1953 amendment, effective July 1, 1953, rewrote this section.

Section States Common Law.—

In accord with original. See *Johnson v.*

Gill, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

Each Partner Is Jointly and Severally Liable, etc.—

See *Johnson v. Gill*, 235 N. C. 40, 68 S. E. (2d) 788 (1952).

Part 4. Relations of Partners to One Another.

§ 59-48. Rules determining rights and duties of partners.

Cross Reference.—

See note to § 59-39.

§ 59-51. Partner accountable as a fiduciary.

When one partner wrongfully takes partnership funds and uses them to buy or improve property, his co-partners may charge the property with a constructive trust in favor of the partnership to the

extent of the partnership funds used in its purchase or improvement. *McGurk v. Moore*, 234 N. C. 248, 67 S. E. (2d) 53 (1951).

§ 59-52. Right to an account.

Equitable jurisdiction is practically exclusive in proceedings for an account and settlement of partnership affairs, including suits for an accounting and settlement of the firm's affairs between the copart-

ners themselves. *Casey v. Grantham*, 239 N. C. 121, 79 S. E. (2d) 735 (1954).

Pleading.—Allegations of a partner that the other partner had usurped complete control and exclusive possession of the

books, records and entire assets of the partnership and was squandering its earnings and assets, and had refused, after demand, to account to plaintiff for any share of the profits or earnings of the business,

was held to state a cause of action for an accounting between the partners. *Casey v. Grantham*, 239 N. C. 121, 79 S. E. (2d) 735 (1954).

Part 5. Property Rights of a Partner.

§ 59-54. Extent of property rights of a partner.

Cited in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-55. Nature of a partner's right in specific partnership property.

Cited in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-56. Nature of partner's interest in the partnership.

The interest of partners in the partnership is personal property, even though part of the partnership assets is real estate. Hence upon the death of the partners, their respective personal representatives were properly made parties to prosecute and defend an action for an accounting

and proper application of partnership property on behalf of their intestates. *Bright v. Williams*, 245 N. C. 648, 97 S. E. (2d) 247 (1957).

Cited in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

Part 6. Dissolution and Winding Up.

§ 59-61. Causes of dissolution.

Death of Partner.—

The death of a partner ordinarily dissolves the partnership as of that date. In

re *Estate of Johnson*, 232 N. C. 59, 59 S. E. (2d) 223 (1950); *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-62. Dissolution by decree of court.

Allegations Held Sufficient Predicate for Dissolution.—Where a complaint alleges the existence of a partnership, a conspiracy to deprive plaintiff partner of possession and control of the partnership assets pursuant to which defendant partner transferred all the partnership property to defendant transferee, and seeks a

settlement and an accounting of the partnership affairs, the allegations are sufficient predicate for the dissolution of the partnership entitling plaintiff to an accounting and proper application of all the partnership property. *Bright v. Williams*, 245 N. C. 648, 97 S. E. (2d) 247 (1957).

§ 59-65. Power of partner to bind partnership to third persons after dissolution; publication of notice of dissolution.—(1) After dissolution a partner can bind the partnership except as provided in paragraph (3)

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been published at least once a week for four successive weeks in some newspaper qualified for legal advertising in each county in which the partnership business was regularly carried on, or if no such newspaper is published in the county, posted for thirty days at the courthouse and three other public places in the county.

(1951, c. 381, s. 1.)

Editor's Note.—The 1951 amendment substituted in paragraph (1) (b) (II) the present requirement of weekly publication or posting of notice for the former re-

quirement of advertisement in a newspaper of general circulation. As subsections (2) to (4) were not changed by the amendment, they are not set out.

For brief comment on the 1951 amendment, see 29 N. C. Law Rev. 409.

§ 59-67. Right to wind up.

Stated in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-68. Rights of partners to application of partnership property.

Under the principle of marshaling of assets each partner has the right to have the partnership property applied to the payment or security of partnership debts in order to relieve him from personal lia-

bility. *Casey v. Grantham*, 239 N. C. 121, 79 S. E. (2d) 735 (1954).

Stated in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-70. Rules for distribution.

Editor's Note.—For note on marshaling of assets, see 36 N. C. Law Rev. 229.

Cited in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-73. Accrual of actions.

Cited in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

ARTICLE 3.

Surviving Partners.

§ 59-74. Surviving partner to give bond.

Purpose and Scope of Bond.—The bond required by this section of surviving partners is primarily for the protection of those interested in the deceased partner's interest in the surplus after the partnership has been wound up, and such bond has no retroactive effect and does not become liable for any maladministration prior to its filing. In re *Estate of Johnson*, 232 N. C. 59, 59 S. E. (2d) 223 (1950).

file the bond required by this section or the inventory required by § 59-76. the clerk of the superior court may not properly issue an order requiring the filing of bond and inventory, but upon appeal from such orders the superior court acquires jurisdiction of the entire proceeding and the appeal is erroneously dismissed in the superior court on the ground of want of jurisdiction. In re *Estate of Johnson*, 232 N. C. 59, 59 S. E. (2d) 223 (1950).

Appeal from Order of Clerk Requiring Filing of Bond and Inventory.—Upon the failure or refusal of surviving partners to

Cited in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-75. Effect of failure to give bond.

Quoted in In re *Estate of Johnson*, 232 N. C. 59, 59 S. E. (2d) 223 (1950).

Stated in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-76. Surviving partner and personal representative to make inventory.

Cross References.—As to appeal from order of clerk requiring filing of inventory, see note under § 59-74. As to jurisdiction to appoint receiver for failure to file inventory, see note under § 59-77.

living partner stands as a trustee charged with the duty of faithful management and accounting to those entitled to the deceased partner's interest after the settlement of the debts of the partnership. In re *Estate of Johnson*, 232 N. C. 59, 59 S. E. (2d) 223 (1950).

Impressed with a Trust.—

Upon the death of a partner, his interest in the partnership property vests in the surviving partner for administration in winding up the partnership. and the sur-

Stated in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-77. When personal representative may take inventory; receiver.

Jurisdiction to Appoint Receiver.— While the clerk of the superior court has

no jurisdiction to appoint a receiver for a partnership under this section when the

surviving partners have failed or refused to file the inventory required by § 59-76, the superior court on appeal from an order of the clerk in the proceeding, does acquire jurisdiction to appoint such receiver.

In re Estate of Johnson, 232 N. C. 59, 59 S. E. (2d) 223 (1950).

Stated in *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-78. **Notice to creditors.**—Every surviving partner, within thirty days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within twelve months from the date of first publication of such notice. The notice shall be published once a week for four weeks in a newspaper (if there be any) published in the county where the partnership existed. If there should be no newspaper published in the county, then the notice shall be posted at the courthouse and three other public places in the county. (1901, c. 640, s. 3; Rev., s. 2542; C. S., s. 3281; 1951, c. 381, s. 2.)

Editor's Note.—The 1951 amendment substituted "three" for "four" in the last line of the section.

§ 59-82. **Surviving partner to account and settle.**—In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within twelve months from the date of the first publication of notice to creditors, file with the clerk of the superior court of the county where the partnership was located, an account, under oath, stating his action as surviving partner, and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court. (1901, c. 640, s. 7; Rev., s. 2546; C. S., s. 3285; 1947, c. 781; 1957, c. 783, s. 6.)

Editor's Note.—The 1957 amendment deleted the words "and in no case to exceed five per cent out of the share of the deceased partner" formerly ending the last sentence.

Surviving Partner Is Required to Make Settlement with Personal Representative of Deceased Partner.—The deceased partner's interest being personal property, this section requires the surviving partner to make settlement with the personal representative of the deceased partner; and there is placed upon the personal representative of deceased partner the duty to

require that a true accounting be made either by the surviving partner or by a receiver under court supervision in accordance with § 28-172. *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

And Right to Sue for Accounting Vests Exclusively in Such Personal Representative.—The right to sue for an accounting of the partnership assets and affairs upon the death of one of the partners vests exclusively in the personal representative of the deceased partner. *Ewing v. Caldwell*, 243 N. C. 18, 89 S. E. (2d) 774 (1955).

§ 59-84.1. **Partnership to comply with "assumed name" statute.**—Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of articles 14 and 15 of chapter 66 of the General Statutes in all cases in which the same are applicable. (1951, c. 381, s. 9.)

ARTICLE 4.

Business under Assumed Name Regulated.

§ 59-85: Transferred to § 66-68 by Session Laws 1951, c. 381, s. 7.

§ 59-86: Transferred to § 66-69 by Session Laws 1951, c. 381, s. 7.

§ 59-87: Transferred to § 66-70 by Session Laws 1951, c. 381, s. 7.

§ 59-88: Transferred to § 66-71 by Session Laws 1951, c. 381, s. 7.

§ 59-89: Transferred to § 66-72 by Session Laws 1951, c. 381, s. 8.

Chapter 60.

Railroads and Other Carriers.

Article 12.

Carriage of Passengers.

Sec.

60-89. Railroad passenger fares.

ARTICLE 1.

General Provisions.

§ 60-6. Discrimination by rebate or reduced charges, misdemeanor.

Cited in *Candler v. Asheville*, 247 N. C. 398, 101 S. E. (2d) 470 (1958).

ARTICLE 5.

Powers and Liabilities.

§ 60-37. Powers of railroad corporations enumerated.

6. To Intersect with Highways and Waterways.—To construct its road across, along or upon any stream of water, watercourse, street, highway, plankroad, turnpike, railroad or canal which the route of its road shall intersect or touch; but the company shall restore the stream or watercourse, street, highway, plankroad or turnpike road, thus intersected or touched, to its former state or to such state as not unnecessarily to have impaired its usefulness. Nothing in this chapter contained shall be construed to authorize the erection of any bridge or any other obstruction across, in or over any stream or lake navigated by motor boats, commensurate in size to sailboat, or sailboats or vessels, at the place where any bridge or other obstructions may be proposed to be placed, nor to authorize the construction of any railroad not already located in, upon or across any streets in any city without the assent of the corporation of such city.

8. To Transport Persons and Property.—To take and convey persons and property on its railroad or by water by the power or force of stream, electricity or animals or by any mechanical power, and to receive compensation therefor. (1953, c. 675, ss. 6. 7.)

Editor's Note. — The 1953 amendment inserted the words "motor boats, commensurate in size to sailboat, or sailboats or vessels" in lieu of "steam or sailboats" formerly appearing in lines eight and nine of subsection 6. It also inserted the words "or by water" in line two of subsection 8. As only the subsections mentioned were affected by the amendment the rest of the section is not set out.

For note on misuse of railroad right of way, see 29 N. C. Law Rev. 312.

A conveyance of land for use as a railroad right of way by deed in regular form of bargain and sale, reciting a valuable consideration, is presumptively a deed of purchase within the meaning of this section and must be interpreted as an ordinary deed, so that when the granting clause is sufficient in form to convey the fee simple and the habendum and war-

rants are in harmony therewith, it conveys the fee and not a mere easement. *McCotter v. Barnes*, 247 N. C. 480, 101 S. E. (2d) 330 (1958).

Duty When Railroad Changes Grade of Street. — Where a railroad accepts the benefits of statutory authorization and changes the grade of a street or highway it must assume and comply with the burden imposed and restore the street to a useful condition. If, to meet the burden so imposed, it becomes necessary to go beyond the railroad right of way and change the grade of a street, thereby impairing access of an abutting property owner, compensation must be paid for the diminution in value resulting from the denial of access. *Thompson v. Seaboard Air Line R. Co.*, 248 N. C. 577, 104 S. E. (2d) 181 (1958).

One railroad company will not be al-

lowed to preclude competition by another in a particular area by arbitrarily refusing such other railroad reasonable use of its right of way and trackage. *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Use of Common Trackage.—The right of each of two railroads to equal use of common trackage does not mean identical use, and where one of them constructs a spur from its independent line to serve a certain area adjacent to such line, but the common trackage is used by it in its operation serving such spur, the other has the right to construct and use a spur from the common trackage when this is the sole feasible means it has to serve industries in the same area, provided such operations will not impair the use of the common trackage by the other. *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Railroad companies forming corporation

§ 60-43. Obstructing highways; defective crossings; failure to repair after notice misdemeanor.

Duty When Railroad Changes Grade of Street. — Where a railroad accepts the benefits of statutory authorization and changes the grade of a street or highway it must assume and comply with the burden imposed and restore the street to a useful condition. If, to meet the burden so imposed, it becomes necessary to go

to provide common trackage held entitled to equal use of such trackage. *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Turnouts, Sidings and Switches.—In the absence of express statutory or charter authorization, the power to construct a railroad includes authority to construct such spur, industrial, switching and other auxiliary tracks as may be necessary to serve the public needs along or near the main line. *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Railroads have authority under this section to provide “turnouts, sidings, and switches” to serve industrial plants along or near their main lines. *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

Cited in *Thompson v. Seaboard Air Line R. Co.*, 248 N. C. 577, 104 S. E. (2d) 181 (1958).

beyond the railroad right of way and change the grade of a street, thereby impairing access of an abutting property owner, compensation must be paid for the diminution in value resulting from the denial of access. *Thompson v. Seaboard Air Line R. Co.*, 248 N. C. 577, 104 S. E. (2d) 181 (1958).

ARTICLE 7.

Lease, Sale, and Reorganization.

§ 60-60. Lease or merger of competing carrier declared a misdemeanor.

The State encourages competition among common carriers, as a matter of public policy, so that the public may have the

resulting benefits. *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

ARTICLE 8.

Liability of Railroads for Injuries to Employees.

§ 60-64. Common carrier defined; employee defined.

Applied in *Graham v. Atlantic Coast Line R. Co.*, 240 N. C. 338, 82 S. E. (2d) 346 (1954).

ARTICLE 9.

Construction and Operation of Railroads.

§ 60-81. Negligence presumed from killing livestock.

Cited in *State v. Scoggin*, 236 N. C. 19, 72 S. E. (2d) 54 (1952).

ARTICLE 10.

Railroad and Other Company Police.

§ 60-84. **Oath, bond, and powers of company police.**—Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath. Such policemen shall severally possess, within the limits of each county in which the railroad or motor vehicle carrier for which such policemen are appointed may run or in which the company may be engaged in work or business, all the powers of policemen in the several towns, cities and villages in any such county: Provided, that every policeman appointed under this and § 60-83 shall, before entering upon the duties of his office, file in the Governor's office a bond in the sum of five hundred dollars (\$500.00), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of his office. This bond may be in cash, or it may be executed by a surety company duly authorized to transact business in this State, or it may have at least two individual sureties each owning real estate in this State, and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond: Provided, that where individual sureties are used, the sufficiency of each such surety must be passed upon and approved by the clerk of the superior court of the county in which the surety resides. (1871-2, c. 138, s. 53; Code, s. 1990; Rev., s. 2607; 1907, c. 128, s. 2; c. 462; C. S., s. 3485; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1943, c. 676, s. 2; 1959, c. 124, s. 1.)

Editor's Note.—

The 1959 amendment rewrote the sec-

ond sentence with proviso and added the third sentence with proviso.

§ 60-87. **Police powers cease on company's filing notice.**—Whenever any company shall no longer require the services of any policeman so appointed as aforesaid, it may file a notice to that effect in the office of the Governor and thereupon the power of such officer shall cease and determine. (1871-2, c. 138, s. 56; Code, s. 1993; Rev., s. 2610; C. S., s. 3488; 1943, c. 676, s. 3; 1959, c. 124, s. 2.)

Editor's Note.—

The 1959 amendment struck out the words "and the office of the Utilities Com-

mission" formerly appearing after "Governor" in line three.

ARTICLE 12.

Carriage of Passengers.

§ 60-89. **Railroad passenger fares.**—The North Carolina Utilities Commission shall make reasonable and just rates and charges covering the carriage of passengers by railroad within North Carolina, and regulate the same. (Ex. Sess. 1908, c. 144, s. 1; C. S., s. 3489; Ex. Sess. 1920, c. 51, s. 1; 1953, c. 170.)

Editor's Note.—

The 1953 amendment rewrote this section, which formerly established the fares.

ARTICLE 13.

Carriage of Freight.

§ 60-110. **No charge in excess of printed tariffs; refunding overcharge; penalty.**

Recovery of Excess Caused by Error in Tariff Distance Table. — Where carriers charged rates in accordance with the published tariffs on file, but because of error in the tariff distance table the charges are

excessive, the shippers may recover the excess charged by petition before the Utilities Commission, the remedy by civil action under this section and §§ 62-138 and 62-139 to recover overcharges and

penalties being the proper remedy only when the charges are collected in excess of the published tariffs. *State v. Norfolk*

Southern Ry. Co., 249 N. C. 477, 106 S. E. (2d) 681 (1959).

ARTICLE 14.

Street and Interurban Railways.

§ 60-136. **Passengers to take certain seats; violation of requirement misdemeanor.**

Stated in *State v. Jackson*, 135 F. Supp. 682 (1955).

ARTICLE 16.

Pipe Line Companies.

§ 60-146. **Right of eminent domain conferred upon pipe line companies; other rights.**—Any pipe line company transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances by pipe line for the public for compensation, and incorporated under the laws of the State of North Carolina, or foreign corporations domesticated under the laws of North Carolina, may exercise the right of eminent domain under the provisions of chapter forty and acts amendatory thereof, and for the purpose of constructing and maintaining its pipe lines and other works shall have all the rights and powers given railroads and other corporations by chapters fifty-six and sixty and acts amendatory thereof, provided the pipe lines of such companies transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances shall originate within this State. Nothing herein shall prohibit any such pipe line company granted the right of eminent domain under the laws of this State from extending its pipe lines from within this State into another state for the purpose of transporting natural gas or coal in suspension into this State, nor to prohibit any such pipe line company from conveying or transporting natural gas, gasoline, crude oil, coal in suspension, or other fluid substances from within this State into another state. All such pipe line companies shall be deemed public service companies and shall be subject to the laws of this State regulating such corporations. (1937, c. 280; 1951, c. 1002, s. 3; 1957, c. 1045, s. 2.)

Editor's Note.—The 1951 amendment inserted in the fourth line the words "or foreign corporations domesticated under the laws of North Carolina".

The 1957 amendment inserted the words "coal in suspension" in the first and second sentences. It also inserted "or coal in suspension" in the second sentence.

Chapter 61.

Religious Societies.

§ 61-1. **Trustees may be appointed and removed**

That religious bodies must act through section. *Pressly v. Walker*, 238 N. C. and appoint trustees is recognized by this 732, 78 S. E. (2d) 920 (1953).

§ 61-2. **Trustees may hold property.**

Applied in *Pressly v. Walker*, 238 N. C. 732, 78 S. E. (2d) 920 (1953).

§ 61-3. **Title to lands vested in trustees, or in societies.**

Applied in *Pressly v. Walker*, 238 N. C. 732, 78 S. E. (2d) 920 (1953).

Chapter 62. Utilities Commission.

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ARTICLE 1.

Organization of the Commission.

§ 62-1. **Number and appointment of commissioners; terms.**—The North Carolina Utilities Commission shall consist of five commissioners who shall be appointed by the Governor. The terms of the commissioners now serving shall expire on the first day of July next after the expiration of the term for which they have been appointed and their successors shall be appointed for terms of six years commencing on the first day of July of the year of expiration of the present terms; provided, however, the appointment to fill the existing vacancy in a four-year term shall be for a full six-year term expiring on July 1, 1965. The salary of each commissioner shall be the sum of twelve thousand dollars (\$12,000.00) per year, except that the commissioner designated as chairman shall receive five hundred dollars (\$500.00) additional compensation per annum. The prohibition of the practice of law by judges provided in G. S. 7-59 shall also apply to members of the Utilities Commission. (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319.)

Editor's Note.—

The 1959 amendment rewrote this section.

§ 62-2. Organization of Commission; adoption of rules and regulations.—To facilitate the work of the Commission and for administrative purposes, the chairman of the Commission, with the consent and approval of the Commission, may organize the work of the Commission in several divisions and may designate a member of the Commission as the head of any division or divisions and assign to members of the Commission various duties in connection therewith. Subject to the provisions of the State Personnel Act (article 2 of chapter 143 of the General Statutes) the Commission shall prepare and adopt rules and regulations governing the personnel, departments or divisions and all internal affairs and business of the Commission. (1941, c. 97, s. 3; 1949, c. 1009, s. 2; 1957, c. 1062, s. 1.)

Editor's Note.—

The 1957 amendment added the second sentence.

§ 62-4. Present Utilities Commissioner appointed to new Commission; chairman to administer and execute rules and regulations.—The present Utilities Commissioner is hereby named a commissioner of the North Carolina Utilities Commission for a term of six years, beginning with February first, one thousand nine hundred and forty-one, and is hereby designated chairman of said Commission, to hold such office during his term. Thereafter the Governor of the State of North Carolina is hereby vested with the right to designate the chairman of the North Carolina Utilities Commission.

In order to carry out the administrative purposes and objectives necessary for the efficient operation of the internal affairs and activities of the Commission, the chairman shall be the chief executive and administrative officer of the Commission and shall execute, administer and carry out the rules and regulations prepared and adopted by the Commission governing the personnel, departments or divisions and the internal affairs and business of the Commission. The chairman shall be solely responsible and charged with the duty of authorizing and approving all maintenance, subsistence and travel expense of all members of the Commission and its employees, and such expense should be certified by the persons who incur same; the chairman shall not approve any such expense unless he is satisfied that it was incurred for necessary business of the Commission, and the chairman may delegate to the department or division heads the duty of approval of such expense for employees in their departments or divisions. (1941, c. 97, s. 4; 1957, c. 1062, s. 2.)

Editor's Note. — The 1957 amendment added the second paragraph.

§ 62-6. Biennial report to Governor.—It shall be the duty of the Commission to make to the Governor biennial reports of its transactions and recommend from time to time such legislation as it may deem advisable under the provisions of this chapter. The Governor may in his discretion cause an annual report to be made by the Commission if he shall deem such annual report to be advisable. The Commission shall cause to be printed for distribution such number of copies of such biennial report as may be prescribed by the Governor and the Attorney General under the provisions of G. S. 143-169. (1899, c. 164, s. 27; Rev., s. 1117; 1911, c. 211, s. 9; 1913, c. 10, s. 1; C. S., s. 1065; 1933, c. 134, s. 8; 1941, c. 97; 1955, c. 981; 1957, c. 1152, s. 1.)

Editor's Note. — The 1955 amendment reduced the number of copies to be printed of the former annual report.

The 1957 amendment rewrote this sec-

tion which formerly related to the Commission's duty to report annually to the Governor.

§ 62-10.2. Appointment of assistant attorney general assigned to Utilities Commission.—The Attorney General shall assign an assistant attor-

ney general and such staff attorneys as may be necessary to the Utilities Commission and shall be under the direction of the Attorney General and perform such legal services as may be necessary in connection with the duties of said Commission, including the drafting of such orders, tentative orders, findings of fact and conclusions of law as any member of the Commission may require, and such other legal research, advice and appearances on behalf of the Commission as the Commission may direct. The Attorney General may require this assistant attorney general and such staff counsel to perform such other legal duties as may be determined by him. In any case in which the Attorney General shall file a complaint or shall intervene in any proceeding and the Commission determines that there may be a conflict in the position of the Commission and the Attorney General, the Commission shall have the right, with the approval of the Governor, to employ an attorney to represent it in said proceeding and the compensation of said attorney shall be paid from the Contingency and Emergency Fund. (1949, c. 1029, s. 3; 1959, c. 400.)

Editor's Note.—

The 1959 amendment rewrote this section.

ARTICLE 2.

Procedure before the Commission.

§ 62-16. **Service of process and notices.**—The clerk of the Commission may serve any notice issued by it and his return thereof shall be evidence of said service; and it shall be the duty of the sheriffs and all officers authorized by law to serve process issuing out of the superior courts, to serve any process, subpoenas and notices issued by the Commission, and such officers shall be entitled to the same fees as are prescribed by law for serving similar papers issuing from the superior court. Service of notice of all hearings, investigations and proceedings by the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions governing civil actions in the superior courts of this State, and may be made personally by an authorized agent of the Commission or by mailing in a sealed envelope, registered, with postage prepaid, or by certified mail. (1949, c. 989, s. 1; 1957, c. 1152, s. 2.)

Editor's Note.—

The 1957 amendment added the words

“or by certified mail” at the end of the section.

§ 62-18. **Rules of evidence.**—In hearings and investigations conducted under the provisions of this chapter, the Commission shall apply the rules of evidence applicable in civil actions in the superior court, in so far as practicable, but no decision or order of the Commission shall be made or entered in any such proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record. Oral evidence shall be taken only on oath or affirmation. The rules of privilege shall be effective to the same extent that they are now or hereafter recognized in civil actions in the superior court. The Commission may exclude incompetent, irrelevant, immaterial and unduly repetitious or cumulative evidence. All evidence, including records and documents in the possession of the Commission of which it desires to avail itself, shall be made a part of the record in the case by definite reference thereto at the hearing. Any party introducing any document or record in evidence by reference shall bear the expense of all copies required for the record in the event of an appeal from the Commission's order. Every party to a proceeding shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witnesses regardless of which party first called such witnesses to testify and to rebut the evidence against him. If a respondent does not testify in his own be-

half, he may be called and examined as if under cross-examination. (1949, c. 989, s. 1; 1959, c. 639, s. 2.)

Editor's Note.—

The 1959 amendment inserted the sixth sentence.

Admissibility of Annual Reports of Municipalities.—In a proceeding by a utility for an increase in rates, wherein municipalities engaged in resale of electrical energy purchased from the utility protested against the proposed schedules of the utility, copies of annual reports of the municipality to the Commission pursuant to the requirements of § 62-98, which showed profits made by the municipalities from resale of electrical energy, were admissible in evidence on the question of whether the proposed schedules were fair and equitable as between groups or classifications to be served under such schedules. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

§ 62-20. **Use of affidavits.**—At any time, ten or more days prior to a hearing or a continued hearing, any party or the Commission may send by registered or certified mail or deliver to the opposing parties a copy of any affidavit proposed to be used in evidence, together with the notice as herein provided. Unless an opposing party or the Commission at least five days prior to the hearing if the affidavit and notice are received at least twenty days prior to such hearing, otherwise at any time prior to or during such hearing sends by registered or certified mail or delivers to the proponent a request to cross-examine the affiant at the hearing, the right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant at the hearing is not afforded after request therefor is made as herein provided, the affidavit shall not be received in evidence. The notice accompanying the affidavit shall set forth the name and address of the affiant and shall contain a statement that the affiant will not be called to testify orally and will not be subject to cross-examination unless the opposing parties or the Commission demand the right of cross-examination by notice mailed or delivered to the proponent at least five days prior to the hearing if the notice and affidavit are received at least twenty days prior to such hearing otherwise at any time prior to or during such hearing. (1949, c. 989, s. 1; 1957, c. 1152, s. 3.)

Editor's Note.—

The 1957 amendment inserted the words

"or certified" in the first and second sentences.

§ 62-23. **Hearings to be public; record of proceedings.**

Formal Hearing.—An informal conference between members of the Commission and representatives of the utility involved in a rate proceeding, which was called at the suggestion of the Commission, and which involved only a single question as to whether the protesting municipalities

having industrial users could secure an industrial rate, and at which conference no testimony and no record was taken, was not a formal hearing within the meaning of this section. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

§ 62-24. **Complaints against public utilities.**

Cited in *State v. Martel Mills Corp.*, 232 N. C. 690, 62 S. E. (2d) 80 (1950).

§ 62-25. Complaints by public utilities.

Cited in *State v. Martel Mills Corp.*,
232 N. C. 690, 62 S. E. (2d) 80 (1950).

§ 62-26.1. Hearings by the Commission, a commissioner or examiner.—Except as otherwise provided in this chapter, any matter requiring a hearing shall be heard and decided by the Commission or shall be referred to one of the commissioners or a qualified member of the Commission staff as examiner for hearing, report and recommendation of an appropriate order or decision thereon. Subject to the limitations prescribed in this article, a commissioner or examiner, to whom a hearing has been referred by order of the Commission, shall have all the rights, duties, powers and jurisdiction conferred by this chapter upon the Commission. The Commission, in its discretion, may direct any hearing by the Commission or any commissioner or examiner to be held in such place or places within the State of North Carolina as it may determine to be in the public interest and as will best serve the convenience of interested parties. Before any member of the Commission staff enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the Commission an oath similar to the oath required of members of the Commission. (1949, c. 989, s. 1; 1959, c. 639, s. 3.)

Editor's Note. — The 1959 amendment struck out "by written order of the Commission" which formerly appeared immediately following the word "shall" the second time such word appears in the first sentence.

§ 62-26.3. Rules of practice. — Prior to each decision or order by the Commission in a proceeding initially heard by it and prior to any recommended decision or order of a commissioner or examiner, the parties shall be afforded opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the Commission for the consideration of the Commission, commissioner, or examiner, as the case may be, proposed findings of fact and conclusions of law and brief. Within the time prescribed by the commissioner or examiner the parties shall be afforded an opportunity to file exceptions to his recommended decision or order and brief in support thereof, provided the time so fixed shall be not less than fifteen days from the date of such recommended decision or order. The record shall show the ruling upon each requested finding and conclusion or exception. All final orders and decisions of the Commission shall be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and shall include

- (1) Findings and conclusions and the reasons or basis therefor upon all the material issues of fact, law, or discretion presented in the record, and
- (2) The appropriate rule, order, sanction, relief, or statement of denial thereof.

In all contested proceedings in which a commissioner or examiner has filed a report, recommended decision or order to which exceptions have been filed by one or more parties to the proceeding, the Commission, before making its final decision or order, shall afford the parties an opportunity for oral arguments. When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the Commission and shall immediately become effective unless the order is stayed or postponed by the Commission, provided, the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed. When exceptions are filed, as herein provided, it shall be the duty of the Commission to consider the same and if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding in the premises as may be necessary or proper to carry out the

purposes of this chapter. The Commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order or decision thereon. (1949, c. 989, s. 1; 1959, c. 639, s. 4.)

Editor's Note. — The 1959 amendment inserted "fifteen days from the date" in lieu of "ten days from the receipt by such party" in the second sentence.

§ 62-26.4. Final orders and decisions; service; compliance.—A copy of every final order or decision under the seal of the Commission, shall be served by registered or certified mail upon the person, corporation, or municipal corporation against whom it runs or his attorney and notice thereof shall be given to the other parties to the proceeding or their attorney. Such order shall take effect and become operative as designated therein and shall continue in force either for a period which may be designated therein, or until changed or revoked by the Commission. If an order cannot, in the judgment of the Commission, be complied with within the time designated therein, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. (1949, c. 989, s. 1; 1957, c. 1152, s. 4.)

Editor's Note.—The 1957 amendment inserted the words "or certified" in line three.

§ 62-26.6. Right of appeal; filing of exceptions.—No party to a proceeding before the Commission may appeal from any final order or decision of the Commission unless within thirty (30) days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, by order made within thirty (30) days, the party aggrieved by such decision or order shall file with the Commission notice of appeal which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission. The Commission shall within thirty (30) days after the filing of notice of appeal and exceptions to the final order or within thirty (30) days after any order which may be issued finally determining the exceptions to the final order, whichever is later, transmit the entire record in the proceeding, or a copy thereof, certified under the seal of the Commission, to the superior court of the county agreed upon by the parties, or in the absence of such agreement, to the superior court of any county in which the business involved in the proceeding is conducted, or is proposed to be conducted, or in which the remedy or relief sought is to be applied or enforced, together with the notice of appeal; provided, however, the Commission may, on motion of any party to the proceeding or on its own motion, set the exceptions to the final order upon which such appeal is based for further hearing before the Commission. Any party may appeal from all or any portion of any final order or decision of the Commission in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party, other than the Commission, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal. The judge holding the court for the county to which the record is sent or the resident judge of the judicial district embracing said county shall hear and determine all matters arising on such appeal, as in this article provided, and may, in the exercise of discretion, remove the case to any other county. After final determination of the appeal, the clerk of the superior court shall return to the Commission such records as were transmitted by it to

such court, together with a certified copy of the decision of the court. (1949, c. 989, s. 1; 1955, c. 1207, s. 1; 1959, c. 639, s. 1.)

Editor's Note.—The 1955 amendment, effective June 1, 1955, eliminated the necessity of filing petition for rehearing on appeal to the superior court.

The 1959 amendment inserted "after the filing of notice of appeal and exceptions to the final order or within thirty (30) days after any order which may be issued finally determining the exceptions to the final order, whichever is later," beginning in line ten.

An affected party must file exceptions to the determination or decision within ten days after notice of the determination or decision. And an appeal from the Utilities Commission is limited to parties to the proceeding, and a party is not affected by a ruling of the Utilities Commission unless the decision affects or purports to affect some right or interest of a party to the controversy and is in some way determinative of some material question involved. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Service of Notice of Appeal.—Where an interested party intervenes and contests an application filed by a utility for au-

thority to amend its rate schedule and the application is granted, notice of appeal of such interested party from the order of the Commission must be served upon the utility and where such interested party merely mails a copy of such notice to the utility the attempted appeal is ineffectual. State v. Martel Mills Corp., 232 N. C. 690, 62 S. E. (2d) 80 (1950).

The requirement that notice of appeal from an order of the Commission shall be served on the original complainant connotes service by some officer authorized by law to make service of process, notices, and the like. State v. Martel Mills Corp., 232 N. C. 690, 62 S. E. (2d) 80 (1950).

Stated in State v. City Coach Co., 234 N. C. 489, 67 S. E. (2d) 629 (1951) (con. op.); State v. Youngblood Truck Lines, Inc., 243 N. C. 442, 91 S. E. (2d) 212 (1956).

Cited in State v. Fredrickson Motor Exp., 232 N. C. 174, 59 S. E. (2d) 578 (1950); State v. Atlantic Coast Line R. Co., 233 N. C. 365, 64 S. E. (2d) 272 (1951); State v. Carolina Coach Co., 236 N. C. 533, 73 S. E. (2d) 562 (1952).

§ 62-26.7. Appeal docketed; priority of trial.

Utilities Commission as Party.—When the Utilities Commission sits as a court of record to determine the rights of rival claimants to a valuable franchise, it is somewhat anomalous to find it appearing in the Supreme Court to uphold its order from

which one or the other party had appealed. However, this procedure seems to have been authorized by the General Assembly in this section and § 62-26.12. State v. City Coach Co., 234 N. C. 489, 67 S. E. (2d) 629 (1951).

§ 62-26.8. Parties on appeal.

Quoted in State v. City Coach Co., 234 N. C. 489, 67 S. E. (2d) 629 (1951) (con. op.).

Cited in State v. Martel Mills Corp., 232 N. C. 690, 62 S. E. (2d) 80 (1950).

§ 62-26.9. No evidence admitted on appeal; remission for further evidence.—No evidence shall be received at the hearing on appeal but if any party shall satisfy the court that evidence has been discovered since the hearing before the Commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the Commission with directions to take such subsequently discovered evidence, and after consideration thereof, to make such order as the Commission may deem proper, from which order an appeal shall lie as in the case of any other final order, from which order an appeal may be taken as provided in G. S. § 62-26.6. (1949, c. 989, s. 1; 1955, c. 1207, s. 2.)

Editor's Note. — The 1955 amendment, effective June 1, 1955, struck out the words "except that no additional petition for re-

hearing shall be required" formerly appearing at the end of the section.

§ 62-26.10. Record on appeal; extent of review.

The court shall also compel action of the Commission unlawfully withheld or unlawfully or unreasonably delayed. In making the foregoing determinations, the

court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commission. Upon any appeal to the superior court, the rates fixed, or any rule, regulation, finding, determination, or order made by the Commission under the provisions of this chapter, shall be prima facie just and reasonable. If on any appeal the court may determine that an issue is presented which, for constitutional reasons, must be submitted to a jury, the court may order a jury trial as to such issue. (1949, c. 989, s. 1; 1955, c. 1207, s. 3.)

Editor's Note. — The 1955 amendment, effective June 1, 1955, deleted the words "in his petition for rehearing by the Commission" formerly appearing at the end of the third sentence of the last paragraph and substituted in place thereof the words "in his notice of appeal filed with the Commission." As only this paragraph was changed by the amendment, the rest of the section is not set out.

Appeals from the Utilities Commission are confined to questions of law upon grounds specifically set forth in appellant's petition for rehearing by the Commission. *State v. Queen City Coach Co.*, 233 N. C. 119, 63 S. E. (2d) 113 (1951). See *State v. Mead Corp.*, 238 N. C. 451, 78 S. E. (2d) 290 (1953).

In an application for a certificate under § 62-121.11 the Utilities Commission must act within the authority conferred by the statute, yet the findings from the evidence and the exercise of judgment thereon within the scope of its powers are matters for the Commission, and its order will not be disturbed when sustained by its findings upon competent, material and substantial evidence. *State v. Fredrickson Motor Exp.*, 232 N. C. 180, 59 S. E. (2d) 582 (1950).

Determination by Commission Is Prima Facie Just and Reasonable.—A determination by the Commission is made by statute, not simply prima facie evidence of its validity, but prima facie just and reasonable. *State v. Ray*, 236 N. C. 692, 73 S. E. (2d) 870 (1953); *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955); *State v. Casey*, 245 N. C. 297, 96 S. E. (2d) 8 (1957).

But Appellant May Show That Order Was Unsupported by Evidence.—By this section, upon appeal the orders made by

the Utilities Commission "shall be prima facie just and reasonable," but this does not preclude the appellant from showing that the evidence offered rebuts the prima facie effect of the order, and that the order was unsupported by competent, material and substantial evidence in view of the entire record. *State v. Atlantic Coast Line R. Co.*, 235 N. C. 273, 69 S. E. (2d) 502 (1952).

Additional Findings of Fact by Superior Court Not Authorized.—When an appeal to the superior court is taken from an order entered by the North Carolina Utilities Commission, the review is limited to the record as certified and to the questions of law presented therein. There is no provision for additional findings of fact by the judge for the purpose of determining the validity of the order entered by the Commission. *State v. Fox*, 236 N. C. 553, 73 S. E. (2d) 464 (1952); *State v. Ray*, 236 N. C. 692, 73 S. E. (2d) 870 (1953). See *State v. Mead Corp.*, 238 N. C. 451, 78 S. E. (2d) 290 (1953).

And where the trial judge made findings of fact and upon the findings so made rendered judgment that the order of the Commission was null and void, the Supreme Court will remand the case to the superior court for judgment on the questions of law presented by the record as certified, or for remand to the Utilities Commission for additional findings if any may be deemed necessary. *State v. Fox*, 236 N. C. 553, 73 S. E. (2d) 464 (1952).

Stated in *State v. Atlantic Coast Line R. Co.*, 238 N. C. 701, 78 S. E. (2d) 780 (1953).

Cited in *State v. City Coach Co.*, 234 N. C. 489, 67 S. E. (2d) 629 (1951); *State v. New Hope Road Water Co.*, 248 N. C. 27, 102 S. E. (2d) 377 (1958).

§ 62-26.12. Appeal to Supreme Court.

Cross Reference.—

As to commission appearing before Su-

preme Court to uphold its own order, see note to § 62-26.7.

ARTICLE 2A.

Fees and Charges.

§ 62-26.16. **Particular fees and charges fixed; payment.**—The North Carolina Utilities Commission shall receive and collect the following fees and charges, and no other:

(a) \$25.00 with each notice of appeal to the superior court, and with each notice of application for a writ of certiorari.

(b) \$15.00 with each application for a certificate or permit for motor carrier operating rights, and with each application to amend such certificate or permit so as to extend or enlarge the scope of operations thereunder, or as filing fee for each broker who applies for a brokerage license under the provision of G. S. 62-121.55, Volume 2B.

(c) \$15.00 with each application for a general increase in rates, fares or charges. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations.

(d) \$15.00 with each application for discontinuance of train service, or for a change in or discontinuance of station facilities.

(e) \$15.00 with each application for a certificate of public convenience and necessity, or for any amendment thereto so as to extend or enlarge the scope of operations thereunder.

(f) \$10.00 with each application for approval of the issuance of securities, or for approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction.

(g) \$10.00 with each application, petition, or complaint not embraced in (b) through (f) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions or complaints made by any county, city or town.

(h) \$1.00 for the registration with the Commission of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the Commission, and a fee of twenty-five cents (25¢) for the annual re-registration of each such motor vehicle.

(i) Thirty cents (30¢) for each page (8½ inches x 11 inches) of transcript of testimony, but not less than \$5.00 for any such transcript.

(j) Fifteen cents (15¢) for each one hundred words of copies of papers, orders, certificates or other records, but not less than \$1.00 for any such record, plus \$1.00 for certifying any such paper, order or record.

All witness fees, officers' fees for serving papers, and cost of serving notice by publication shall be paid by the party at whose instance or for whose benefit such fees and costs are incurred.

No application, petition, complaint, notice of appeal, notice of application for writ of certiorari, or other document or paper the filing of which requires the payment of a fee under this article, shall be deemed filed until the fees herein required shall have been paid to the Commission.

The fees and charges as set forth in subparagraphs (a), (g), (i) and (j) of this section shall not apply to the State of North Carolina or to any board, department, commission, institution or other agency of the State; and all applications, petitions or complaints submitted by the State of North Carolina or any board, department, commission, institution or other agency of the State shall be filed without the payment of the fees required by this section. All transcripts,

papers, orders, certificates, or other records necessary to perfect an appeal, or to determine whether an appeal is to be taken, shall be furnished without charge to the Attorney General upon his request in cases in which the Attorney General appears in the public interest or as representing any board, department, commission, institution or other agency of the State. (1953, c. 825, s. 1; 1955, c. 64; 1957, c. 1152, s. 15.)

Editor's Note. — The 1955 amendment deleted from the end of subsection (g) the former reference to "any board, department, commission, institution or other agency of the State of North Carolina." It also added the last paragraph to the

section.

The 1957 amendment added at the end of subsection (b) the words "or as filing fee for each broker who applies for a brokerage license under the provision of G. S. 62-121.55, Volume 2B."

§ 62-26.17. Fees and charges supplemental; disposition.—All fees and charges received by the Commission under § 62-26.16 shall be in addition to any other tax or fee provided by law and shall be paid by the Commission to the State Treasurer to be credited to the Commission as an allotment deposit. (1953, c. 825, s. 2.)

ARTICLE 3.

Powers and Duties of the Commission.

§ 62-27. General powers of Commission.

The Commission has no jurisdiction over parties unless they are public utilities within the meaning of § 62-65 (e) (2). *State v. New Hope Road Water Co.*, 248 N. C. 27, 102 S. E. (2d) 377 (1958).

Commission Can Authorize Sale of Facilities of Power Company to Municipality.—A power company, with the consent and approval of the Commission, has the right to sell its facilities to a city, and

thereby permit the city to assume the obligation for meeting the public convenience and necessity for the service theretofore rendered by the power company. The Commission has not only the authority but the duty to pass upon such a contract and to determine whether or not it is in the public interest to permit its consummation. *State v. Casey*, 245 N. C. 297, 96 S. E. (2d) 8 (1957).

§ 62-29. Express and implied powers.

Quoted in *State v. Casey*, 245 N. C. 297, 96 S. E. (2d) 8 (1957).

§ 62-30. Supervisory powers.

(3) By electric light, power, water, and gas companies, pipe lines originating in North Carolina for the transportation of petroleum products, and corporations, other than such as are municipally owned or conducted, and all other companies, corporations, or individuals engaged in furnishing electricity, electric light current, power, or in transmitting or selling the same or producing the same from the watercourses of this State: Provided, that the exemption given to municipally owned or conducted electric light, power, water and gas companies from supervision by the Utilities Commission shall not apply to municipally owned electric light or power systems which are leased to and operated by private individuals, firms, or corporations. The Commission shall not have jurisdiction over water companies whose sole operation consists of selling water to less than twenty-five (25) residential customers.

(1959, c. 639, s. 12.)

I. GENERAL CONSIDERATION.

Editor's Note.—

The 1959 amendment added the last sentence of subsection (3). As only this subsection was affected by the amendment the rest of the section is not set out.

Municipal Corporations Left Free from

Supervision.—This section gives the Commission general supervision over rates and service by electric light, power, water and gas companies, other than such as are municipally owned or conducted; thus expressing legislative purpose to leave municipal corporations free from the supervi-

sion of the Commission. *Grimesland v. Washington*, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

A sanitary district which, as a part of its functions, furnishes drinking water to the public and also filtered water for industrial consumers is a quasi-municipal corporation, and is not under the control and supervision of the North Carolina Utilities Commission as to services or rates. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378 (1950).

Fees and Charges Made by Municipality.—

A rider approved by the Commission,

which provided that the utility involved in a rate hearing would meter the protesting municipalities separately for purchases by the municipalities for normal resale and purchases by the municipalities for resale to industrial users, but which contained a provision that the municipalities were free to contract in respect to the price they would require the industrial users to pay, did not fix the rate at which the municipalities would be required to sell to industrial users in violation of this section. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Applied in *Fulghum v. Selma*, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

§ 62-34. Reports; cancelling certificates for failure to file report.—The Utilities Commission shall at least once every twelve months require any public utility to file annual reports in such form and of such content as the Commission may require and special reports concerning any matter about which the Commission is authorized to inquire or to keep itself informed, or which it is authorized to enforce. All reports shall be under oath when required by the Commission. The Commission may issue an order, without notice or hearing, cancelling or suspending any certificate of convenience and necessity thirty (30) days after the date of service of such order for failing to file the required annual report at the time it was due. In the event the report is filed during the thirty (30)-day period, the order of cancellation or suspension shall be null and void. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97; 1959, c. 639, s. 7.)

Editor's Note. — The 1959 amendment added the third and fourth sentences.

§ 62-39. To require transportation and transmission companies to maintain facilities.

Questions of convenience to individuals and to the public find their limitations in the criterion of reasonableness and justice. No absolute rule can be set up and applied to all cases. The facts in each case must be considered to determine whether public convenience and necessity require the service to be maintained or permit its discontinuance. The benefit to the one of the abandonment must be weighed against the inconvenience to which the other may be subjected. The question to be decided is whether the loss resulting from the agency is out of proportion to any benefit to an individual or the public. *State v. Atlantic Coast Line R. Co.*, 233 N. C. 365, 64 S. E. (2d) 272 (1951). See *State v. Atlantic Coast Line R. Co.*, 235 N. C. 273, 69 S. E. (2d) 502 (1952); *State v. Atlantic Coast Line R. Co.*, 238 N. C. 701, 78 S. E. (2d) 780 (1953).

The maintaining of an uneconomic service resulting in an economic waste cannot be justified or excused by the showing that the service has been in the convenience and necessity of some individual. The convenience and necessity required are those

of the public and not of an individual or individuals. *State v. Atlantic Coast Line R. Co.*, 233 N. C. 365, 64 S. E. (2d) 272 (1951).

But Loss Must Be Viewed in Relation to Over-All Operations.—The power conferred by this section upon the Utilities Commission to require transportation companies to maintain substantial service to the public in the performance of an absolute duty will not be denied even though the service may be unremunerative when singled out and related only to a particular instance or locality, if the loss be viewed in relation to and as a part of the over-all operations of transportation, rather than as incidental and collateral thereto. *State v. Atlantic Coast Line R. Co.*, 233 N. C. 365, 64 S. E. (2d) 272 (1951). See *State v. Atlantic Coast Line R. Co.*, 235 N. C. 273, 69 S. E. (2d) 502 (1952).

Discontinuance of Agency Service. — A railroad company will not be required to continue agency service at one of its stations at an annual loss, where the remaining service would provide for the needs and convenience of the public, simply be-

cause to discontinue such service would inconvenience the principal shipper at that station. *State v. Atlantic Coast Line R. Co.*, 233 N. C. 365, 64 S. E. (2d) 272 (1951).

Evidence held insufficient to justify discontinuance of agency service. *State v. Atlantic Coast Line R. Co.*, 235 N. C. 273, 69 S. E. (2d) 502 (1952).

An order of the Commission requiring

§ 62-45. To require construction of sidetracks.

Cited in *Seaboard Air Line R. Co. v. Atlantic Coast Line R. Co.*, 240 N. C. 495, 82 S. E. (2d) 771 (1954).

§ 62-47. May authorize operation of fast mail trains; discontinuance of passenger service.

Editor's Note.—

For note on abandonments and partial

discontinuances of passenger service by railroads, see 31 N. C. Law Rev. 137.

§ 62-60. To fix rate of speed through towns; procedure.—If a railroad company is of the opinion that an ordinance of a city or town through which a line of its railroad passes regulating the speed at which trains may run while passing through said city or town, is unreasonable or oppressive, such railroad company may file its petition before the Utilities Commission, setting forth all the facts, and asking relief against such ordinance, and that the Utilities Commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, in a registered letter, or by certified mail, to the mayor or chief officer of the town or municipality, together with a notice from the Utilities Commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the city or town named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the Utilities Commission shall hear the petition, but any hearing granted by the Utilities Commission shall be had at the town, city or locality where the conditions complained of are alleged to exist, or some member of the said Commission shall take evidence, both for the petition and against it, at such city, town or locality, and report to the full Commission before any decision is made by the Commission.

(1957, c. 1152, s. 5.)

Editor's Note.—The 1957 amendment inserted in line nine of the first paragraph the words "or by certified mail." As only

this paragraph was changed, the second and third paragraphs are not set out.

ARTICLE 4.

Public Utilities Act of 1933.

§ 62-65. Definitions.

(e) The term "public utility," when used in this article, includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this State equipment or facilities for:

- (1) Producing, generating, transmitting, delivering or furnishing gas, electricity, steam or any other agency for the production of light, heat or power to or for the public for compensation;
- (2) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than twenty-five (25) residential customers;

- (3) Transporting persons or property by street, suburban or interurban rail-ways for the public for compensation;
- (4) Transporting persons or property by motor vehicles for the public for compensation, but not including taxicab, operating on call, or truck transfer service in cities or towns;
- (5) Transporting or conveying gas, crude oil or other fluid substance by pipe line for the public for compensation;
- (6) Conveying or transmitting messages or communications by telephone or telegraph, where such service is offered to the public for compensa-tion;
- (7) The term "public utility" shall for rate making purposes only include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others. The business of any public utility other than of the character defined in subdivisions 1 to 7, inclusive, of subsection (e) of this section is not subject to the provisions of this article.

(1959, c. 639, s. 13.)

Editor's Note. — The 1959 amendment added the proviso to paragraph (2) of subsection (e). As only subsection (e) was affected by the amendment the rest of the section is not set out.

Where parties constructed water mains from end of municipal lines to their prop-erties, permitting others to tap into the mains, and the municipality installed meters and furnished water to the others

directly, parties were not public utilities within subsection (e) (2) of this section so as to give the Utilities Commission jurisdiction. *State v. New Hope Road Water Co.*, 248 N. C. 27, 102 S. E. (2d) 377 (1958).

Quoted in part in *Grimesland v. Wash-ington*, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

§ 62-66. Rates must be just and reasonable.

Quoted in *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

§ 62-70. Discrimination prohibited.

Different Rate Schedules for Muni-cipalities and Industrial Users of Electrical Energy.—The Commission in determining whether there is a justifiable basis for establishment of different rate schedules for municipalities engaged in resale of electrical energy and industrial users must consider the use characteristics and the load factors as well as the amount of electrical energy purchased under the respec-tive schedules. *State v. Municipal Cor-porations*, 243 N. C. 193, 90 S. E.(2d) 519 (1955).

The Commission was justified in placing municipalities engaged in resale of electrical energy, and industrial users, under different schedules based upon a difference in the load factor. *State v. Municipal Cor-porations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Rates charged REA cooperatives were not available to municipalities engaged in

resale of electrical energy due to the fol-lowing factors: (1) The cooperatives were required to extend their lines through sparsely settled rural areas with resulting line losses, and (2) the cooperatives were created and operated on a nonprofit basis pursuant to the established public policy of State and federal government. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

The obligation of a public service corpo-ration to serve impartially and without un-just discrimination is fundamental. It is not essential that consumers who are charged different rates for service should be competitors in order to invoke this principle. There must be substantial dif-ferences in service or conditions to justify difference in rates. There must be no un-reasonable discrimination between those receiving the same kind and degree of service. *State v. Mead Corp.*, 238 N. C.

451, 78 S. E. (2d) 290 (1953); *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Giving Preference to Parent Corporation.—A power company which is a subsidiary of one of its commercial customers may not give a preference to its parent corporation, but must give equal treatment to all its customers similarly situated. *State v. Mead Corp.*, 238 N. C. 451, 78 S. E. (2d) 290 (1953).

Evidence.—An attempted justification of rate differentials by a classification of power furnished as “secondary” and “primary” was held insupportable on the

facts. *State v. Mead Corp.*, 238 N. C. 451, 78 S. E. (2d) 290 (1953).

Question for Decision of Court.—Where the Utilities Commission concluded upon undisputed facts that there was no unlawful discrimination by a power company in the rates charged its commercial customers, whether the conclusion was supported by competent, material and substantial evidence in view of the entire record, was held to present a question of law for the decision of the court. *State v. Mead Corp.*, 238 N. C. 451, 78 S. E. (2d) 290 (1953).

§ 62-71. Change of rates.

Whenever there is filed with the Commission by any public utility any schedule stating a new rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than ninety (90) days beyond the time when such rate or rates would otherwise go into effect unless the Commission shall find that a longer time will be required, in which case the Commission may extend the period for not to exceed six (6) months: Provided, and notwithstanding any such order of suspension, the public utility may put such suspended rate or rates into effect on the date when it or they would have become effective, if not so suspended, by filing with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission to the persons entitled thereto of the amount of the excess and interest at the rate of six per cent (6%) per annum from the date that such rates were put into effect, if the rate or rates so put into effect are finally determined to be excessive; or there may be substituted for such bond, other arrangements satisfactory to the Commission for the protection of the parties interested. If the public utility fails to make refund within thirty (30) days after such final determination any person entitled to such refund may sue therefor, in any court of this State of competent jurisdiction and be entitled to recover, in addition to the amount of the refund due, all court costs, but no suit may be maintained for that purpose unless instituted within two years after such final determination. Any number of persons entitled to such refund may join as plaintiffs and recover their several claims in a single action; in which action the court shall render a judgment severally for each plaintiff as his interest may appear. During any such period of suspension the Commission may, in its discretion, require that the public utility involved shall furnish to its consumers or patrons a certificate or other evidence of payments made by them. (1933, c. 307, s. 7; 1959, c. 422.)

Editor's Note. — The 1959 amendment inserted, near the middle of the second paragraph, the words “and interest at the rate of six per cent (6%) per annum from

the date that such rates were put into effect.” As the first paragraph was not affected by the amendment it is not set out.

§ 62-74. Compelling efficient service, extension of services and facilities, additions and improvements.

Protest Is Not Notice. — A protest filed by a city in a proceeding by a power company for an increased cash fare on its city

busses was not sufficient to constitute such notice as is required by this section so as to authorize the Commission to consider

whether or not the service rendered by the power company was adequate or inadequate. *State v. Greensboro*, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

§ 62-79. Annual reports; cancelling certificates for failure to file report.—The Commission may require any public utility to file annual reports in such form and of such content as the Commission may require and special reports concerning any matter about which the Commission is authorized to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the Commission. The Commission may issue an order, without notice or hearing, cancelling or suspending any certificate of convenience and necessity thirty (30) days after the date of service of order for failing to file the required annual report at the time it was due. In the event the report is filed during the thirty (30)-day period, the order of cancellation or suspension shall be null and void. (1933, c. 307, s. 15; 1959, c. 639, s. 8.)

Editor's Note.—The 1959 amendment added the third and fourth sentences.

§ 62-82. Assumption of certain liabilities and obligations to be approved by Commission; refinancing of utility securities.

Common Capital Stock of Corporation Is Security.—The common capital stock of a corporation is a security within the meaning of that term as used in this sec-

tion and § 62-83. *State v. Carolina Tel. & Tel. Co.*, 243 N. C. 46, 89 S. E. (2d) 802 (1955).

§ 62-83. Commission may approve in whole or in part or refuse approval.

Common Capital Stock as Security.—See note to § 62-82.

Commission Has Authority to Control Issuance and Sale of Capital Stock.—In view of the language used by the legislature in conferring power of the Utilities Commission to supervise and control the issue and sale of securities by a public

utility, the Commission had the authority not only to veto the sale of unissued common stock of a utility at par but also to impose the condition that such stock should be sold at a price not less than \$125 per share. *State v. Carolina Tel. & Tel. Co.*, 243 N. C. 46, 89 S. E. (2d) 802 (1955).

§ 62-96. Abandonment and reduction of service.

Quoted in *State v. Casey*, 245 N. C. 297, 96 S. E. (2d) 8 (1957).

§ 62-98. Reports from municipalities operating own utilities.

Cross Reference.—As to admissibility of records in utility rate hearing, see § 62-18.

ARTICLE 5.

Miscellaneous Provisions as to Public Utilities.

§ 62-101. Certificate of convenience and necessity.

This section does not apply to municipal corporations. *Grimesland v. Washington*, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

A municipal corporation in the operation of a municipally owned electric power plant with transmission lines extended to supply consumers beyond its corporate

limits is not required under this section to obtain from the Utilities Commission a certificate of public convenience and necessity before it can lawfully operate. *Grimesland v. Washington*, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

ARTICLE 5A.

Reorganization.

§ 62-102.1. Corporations whose property and franchises sold under order of court or execution.—When the property and franchises of a public

service corporation are sold under a judgment or decree of a court of this State, or of the district court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale vests in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchise, subject to all the conditions, limitations and restrictions of the corporation; and the purchaser and his associates, not less than three in number, thereupon become a new corporation, by such name as they select, and they are the stockholders in the ratio of the purchase money by them contributed; and are entitled to all the rights and franchises and subject to all the conditions, limitations and penalties of the corporation whose property and franchises have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of the sale succeeds to all the franchises, rights and privileges of the original corporation only when the sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when the railroad is sold as an entirety. If a purchaser at any such sale is a corporation, such purchasing corporation shall succeed to all the properties, franchises, powers, rights, and privileges of the original corporation: Provided, that this shall not affect vested rights and shall not be construed to alter in any manner the public policy of the State now or hereafter established with reference to trusts and contracts in restraint of trade. (Code, ss. 697, 698; 1897, c. 305; 1901, c. 2, s. 99; Rev., s. 1238; 1913, c. 25, s. 1; 1919, c. 75; C. S., s. 1221; 1955, c. 1371, s. 2.)

§ 62-102.2. New owners to meet and organize.—The persons for whom the property and franchises have been purchased shall meet within thirty days after the delivery of the conveyance made by virtue of said process or decree, and organize the new corporation, ten days' written notice of the time and place of the meeting having been given to each of the said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary. (1901, c. 2, ss. 100, 101, 102; Rev., ss. 1239, 1240; C. S., s. 1222; 1955, c. 1371, s. 2.)

§ 62-102.3. Certificate to be filed with Secretary of State.—It is the duty of the new corporation, within one month after its organization to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the Secretary of State, to be filed and recorded in his office, and there remain of record. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation. (1901, c. 2, s. 103; Rev., s. 1241; C. S., s. 1223; 1955, c. 1371, s. 2.)

§ 62-102.4. Effect on liens and other rights.—Nothing contained in this article in any manner impairs the lien of a prior mortgage, or other encumbrance, upon the property or franchises conveyed under the sale, when by the terms of the process or decree under which the sale was made, or by operation of law, the sale was made subject to the lien of any such prior mortgage or other encumbrance. No such sale and conveyance or organization of such new corporation in any way affects the rights of any person, body politic, or corporate, not a party to the action in which the decree was made, nor of the said party except as determined by the decree. When a trustee has been made a party to

such action and his cestui que trust, for reason satisfactory to the court, has not been made a party thereto, the rights and interest of the cestui que trust are concluded by the decree. (1901, c. 2, s. 103; Rev., s. 1241; C. S., s. 1224; 1955, c. 1371, s. 2.)

ARTICLE 6A.

Insurance and Safety Regulations for Motor Vehicles Carrying Passengers for Hire.

§§ 62-121.1 to 62-121.4: Repealed by Session Laws 1957, c. 1152, s. 14.

ARTICLE 6B.

Motor Carriers of Property.

§ 62-121.5. Declaration of policy.

Purpose of Article.—This article was enacted to preserve and continue motor carrier transportation services. *State v. Fredrickson Motor Exp.*, 232 N. C. 178, 59 S. E. (2d) 580 (1950).

Quoted in *State v. Fox*, 239 N. C. 253, 79 S. E. (2d) 391 (1954); *State v. Youngblood Truck Lines, Inc.*, 243 N. C. 442, 91 S. E. (2d) 212 (1956).

§ 62-121.6. Delegation of jurisdiction.

Rule Denying Rights under Grandfather Clause.—The Utilities Commission does not have the power to promulgate a rule, pursuant to the provisions of this section, and then to interpret or enforce the rule in such manner as to deny the exercise of rights which the legislature in clear and express terms preserved to all motor vehicle carriers of property who

were in bona fide operation on January 1, 1947, and who have met the additional requirements contained in G. S. 62-121.11. *State v. Fox*, 239 N. C. 253, 79 S. E. (2d) 391 (1954).

Cited in *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952); *State v. Youngblood Truck Lines, Inc.*, 243 N. C. 442, 91 S. E. (2d) 212 (1956).

§ 62-121.7. Definitions.

Lessor of Vehicles Held Not Contract Carrier.—Where the owner of trucks leased them to another corporation under an agreement requiring lessor to carry insurance and maintain the vehicles and giving lessee control over the operation of the trucks with right to use same exclusively for the transportation and delivery of lessee's goods, the lessor was not a contract carrier within the meaning of §§ 20-38 and 62-121.9 as they stood in

1949, since the lessor merely leased its vehicles and was not a carrier of any kind, and lessee was solely a private carrier, and therefore lessor was not liable for additional assessment at the "for hire" rates under the statute. *Equipment Finance Corp. v. Schedt*, 249 N. C. 334, 106 S. E. (2d) 555 (1959).

Cited in *State v. Youngblood Truck Lines, Inc.*, 243 N. C. 442, 91 S. E. (2d) 212 (1956).

§ 62-121.8. **Exemption from regulations.**—(1) Nothing in this article shall be construed to include persons and vehicles engaged in one or more of the following services if not engaged at the time or at other times in the transportation of other property by motor vehicle for compensation: (a) transportation of property for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State; (b) transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair; (c) transportation of newspapers; (d) transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market; (e) transportation for and under the control of co-operative associations organized and operating under the Federal Agricultural Marketing Act,

U. S. C. A. Title 12, § 1141(j), or under the State Co-operative Marketing Act, chapter 54, subchapter 5, General Statutes of North Carolina of 1943, as amended, or for any federation of such co-operative associations; provided, such federation possessés no greater powers or purposes than such co-operative associations; (f) transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof; (g) transportation of raw products of the forest, including firewood, logs, crossties, stovebolts, pulpwood, and rough lumber, but not including manufactured products therefrom; (h) pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the commercial zone of any city or town, as defined by the Commission between their terminals and places of collection or delivery of freight; (i) transportation by a bona fide private carrier, as defined in this article; (j) transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle.

Provided that none of the provisions of this section nor any of the provisions of this article shall be construed so as to prohibit or regulate the transportation of property by any motor carrier when the movement is within a municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities, as defined by the Commission; provided further that the Commission shall have the power in its discretion, in any particular case, to fix the limits of any such zone and that nothing herein shall be construed as an abridgment of the police powers of any municipality over such operation wholly within any such municipality. Nothing in this article shall be construed to prohibit or regulate the transportation of household effects of families from one residence to another by persons who do not hold themselves out as being, and are not generally engaged in the business of transporting such property for compensation.

(2) Nothing in this section or in this article shall be so construed as to deny the Commission the right at any time to require of any person or carrier purporting to operate under the provisions of this section satisfactory proof that such person or carrier is, in fact, so operating, and to that end the Commission may conduct such investigations and make such orders as it deems necessary to enforce compliance with this section. (1947, c. 1008, s. 4; 1951, c. 987, s. 1; 1955, c. 1194, ss. 1, 2.)

Editor's Note.—The 1951 amendment inserted the words "transportation of insecticides, fungicides and the ingredients thereof" at the beginning of clause (d) in subsection (1).

The 1955 amendment, effective October 1, 1955, changed subsection (1) by deleting former clauses (d) relating to trans-

portation of household effects of a family from one residence to another, or to or from a place of storage and (k) relating to transportation of property within a municipality, etc., and by relettering the remaining clauses in alphabetical order. It also added the last paragraph.

§ 62-121.9. General powers and duties of the Commission.

Editor's Note.—As to revocation of license plates for violation of article, see § 20-64.1.

The interchange of freight between an intrastate and an interstate carrier, even though the property is being moved in interstate commerce, is left to the state

commissions. *State v. Fox*, 239 N. C. 253, 79 S. E. (2d) 391 (1954).

Commission Cannot Deny Rights Granted under Grandfather Clause.—See note to § 62-121.11.

Cited in *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.10. Issuance of certificates in lieu of outstanding certificates.

Cited in *State v. Fredrickson Motor Exp.*, 232 N. C. 178, 59 S. E. (2d) 580 (1950); *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.11. Issuance of certificates to qualified common carriers by motor vehicle operating on and continuously since January 1st, 1947.

(4) (a) Any person holding an exemption permit and engaged in the transportation of household effects on and prior to February 15, 1955, shall be eligible to apply to the North Carolina Utilities Commission for a certificate of public convenience and necessity authorizing the transportation of household goods as defined by the North Carolina Utilities Commission, between all points and places within the State of North Carolina. Applications under this subsection shall be made on or before October 1, 1955, to the Commission in writing on forms furnished by the Commission, shall be verified under oath by the applicant and shall be accompanied by a full and complete report of the operations of the applicant, or its predecessor, during one or more calendar months of the year 1954 or the year 1955, chosen by the applicant as showing bona fide operation for the handling of household goods prior to and since February 15, 1955, the equipment owned or used in the operation of the applicant, and a current balance sheet showing assets and liabilities and the net worth of the applicant.

(b) The Commission, upon findings that the applicant was engaged in bona fide operation under an exemption permit and engaged in the transportation of household effects on and prior to February 15, 1955; that the applicant has so operated continuously since that date, and that the applicant is fit, willing and able to perform the service for which application is made, shall issue a certificate to such applicant authorizing the irregular route operation for which application is made.

(c) It shall be the duty of the Commission under this section, to issue a certificate as a matter of course and without further proceedings, to each carrier engaged in the transportation of household goods on October 1, 1955, under a certificate heretofore issued by the Commission to each such carrier authorizing the handling of household goods as defined by the North Carolina Utilities Commission throughout the State of North Carolina. (1947, c. 1008, s. 7; 1955, c. 1194, s. 3.)

Editor's Note.—The 1955 amendment, effective October 1, 1955, added subsection (4). As subsections (1), (2) and (3) were not changed they are not set out.

The effect of the grandfather clause in this section is to preserve substantial parity between future and prior operations and to preserve to carriers, upon proper application, their rights existing at the time of the effective date of the statute. *State v. Fox*, 239 N. C. 253, 79 S. E. (2d) 391 (1954).

Commission Cannot Enforce Rule Denying Carrier Rights under Grandfather Clause. — On the effective date of this article, plaintiff intrastate carrier was interchanging freight with interstate carriers, and was authorized to continue its operations under the grandfather clause. Thereafter, under the provisions of § 62-121.6, the Utilities Commission promulgated a rule prohibiting the interchange of freight between carriers except upon its approval. The Interstate Commerce Commission advised plaintiff that he could conduct operations in interstate commerce only to the extent permitted him in intrastate commerce, and thereafter plaintiff's

application to the Utilities Commission for authority to exchange freight in intrastate commerce was denied on the ground that applicant did not intend to exercise such right. It was held that the Utilities Commission was without power to promulgate a rule denying plaintiff the exercise of rights conferred on him under the grandfather clause, and plaintiff is entitled as a matter of right under the grandfather clause to permission to interchange freight with intrastate carriers whether he intends to exercise such right or not, if such permission is necessary in order for him to retain his right to interchange freight with interstate carriers, without being required to show public convenience and necessity. *State v. Fox*, 239 N. C. 253, 79 S. E. (2d) 391 (1954).

The phrase "in bona fide operation as a common carrier" as used in this section would seem to carry the implication that applicant was one who was rendering substantial service as such in good faith, actively, openly, honestly. *State v. Fredrickson Motor Exp.*, 232 N. C. 174, 59 S. E. (2d) 578 (1950).

The fact that an applicant for a certifi-

cate under this section, which had been conducting trucking operations extending over a radius of 150 miles held a previously issued franchise certificate authorizing transportation within a radius of seven miles only, does not preclude a finding that its operations were bona fide within the meaning of this section there having been no effort made by the State to exclude or curtail its operations and there being no evasion, deceit, or defiance of authority. *State v. Fredrickson Motor Exp.*, 232 N. C. 178, 59 S. E. (2d) 580 (1950).

Authorizing Exchange of Freight between Irregular and Regular Carrier.—The Utilities Commission has no jurisdiction to determine a petition of an irregular truck carrier to be authorized to exchange freight with a regular truck carrier when the regular truck carrier does not join in the petition, and the petition nowhere alleges that the regular truck carrier had made or is desirous of making an agreement with the petitioner for interchange of freight. *State v. Youngblood Truck Lines, Inc.*, 243 N. C. 442, 91 S. E. (2d) 212 (1956).

An irregular route common carrier has no legal right to compel a regular route common carrier to interchange intrastate freight. Interchange between such carriers must be based on an agreement and, in the absence of such interchange agreement, voluntarily made by such carriers and submitted by them to the Commission, the Commission has no jurisdiction of the subject matter. *State v. Youngblood Truck Lines, Inc.*, 248 N. C. 625, 104 S. E. (2d) 199 (1958).

Petition and Exhibits Considered as Evidence in Passing upon Application.—While the burden of proof is upon applicant under this section, its verified petition and exhibits attached thereto showing that applicant was a common carrier or property by motor vehicle in intrastate commerce on 1 January, 1947, with map

outlining territory, list of motor vehicles owned by it, financial statement, and report of operations for typical months prior to 1 January, 1947, and showing continuous operations since that date, may be considered by the Utilities Commission as evidence, and there being no evidence contra, and no evidence that applicant was unfit or otherwise disqualified, was sufficient to support the Commission's findings that applicant had operated continuously and with reasonable frequency during the period in question, and sustained the issuance of franchise irrespective of the question of public convenience and necessity. *State v. Fredrickson Motor Exp.*, 232 N. C. 174, 59 S. E. (2d) 578 (1950).

Considering Operations for Other Months than One Selected as Typical.—Where application for a certificate is filed within the time allowed under this section and in the report of operations for a month prior to 1 January, 1947, selected by applicant as typical, applicant asks opportunity, if necessary, to offer proof of operations for other months, the Commission has power to permit an amendment to show operations for other months and to consider the addenda thus filed in passing upon the application. *State v. Fredrickson Motor Exp.*, 232 N. C. 180, 59 S. E. (2d) 582 (1950).

Where Order of Commission Not Disturbed.—In an application for a certificate under this section the Utilities Commission must act within the authority conferred by the statute, yet the findings from the evidence and the exercise of judgment thereon within the scope of its powers are matters for the Commission, and its order will not be disturbed when sustained by its findings upon competent, material and substantial evidence. *State v. Fredrickson Motor Exp.*, 232 N. C. 180, 59 S. E. (2d) 582 (1950).

Cited in Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.13. Issuance of certificates to persons whose operations were abandoned because of service with the armed forces.

Cited in Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.14. Issuance of temporary authority.

Cited in State v. Fredrickson Motor Exp., 232 N. C. 174, 59 S. E. (2d) 578 (1950).

§ 62-121 15. Applications and hearings.

(3) Upon filing of an application for a certificate or a permit, the Commission shall, within a reasonable time, fix a time and place for hearing such ap-

plication not less than thirty (30) days after such filing. The Commission shall prepare a calendar from time to time containing notice of such hearings. This calendar shall be mailed to the applicant. It shall also be mailed to any other carrier, organization of carriers or other persons who desire to receive notice of such hearings upon payment of an annual fee of five dollars (\$5.00). The person or group who pays this fee shall receive all calendars of hearings for a period of one (1) year beginning on July 1st.

(1959, c. 639, s. 11.)

Editor's Note. — The 1959 amendment rewrote subsection (3). As only this subsection was affected by the amendment the rest of the section is not set out.

Cited in *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.16. Terms and conditions of certificate.

Obligations Inherent in Acceptance of Certificate.—Inherent in the acceptance of a certificate and the exercise of the rights and privileges evidenced thereby, is the correlative obligation to serve the shipping public faithfully in accordance with reasonable rules and regulations pre-

scribed by the Utilities Commission and in conformity with the requirements of provisions of the Truck Act prescribing duties to be performed by the carrier for the protection of the shipping public. *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.23. Security for protection of the public.

Quoted in *Textile Ins. Co. v. Lambeth*, 250 N. C. 1, 108 S. E. (2d) 36 (1959).

§ 62-121.26. Transfers of certificates and permits.

Certificate Holder Not Released from Liability for Nonperformance of Duties.—This section does not confer upon the Utilities Commission the power to release the holder of a certificate of convenience and necessity from liability for the nonperformance of public duties incident to the certificate. And the Commission possesses no such power in the absence of a delegation thereof by the legislature. *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

A lease of intrastate motor vehicle common-carrier operating rights, approved by

the Utilities Commission, does not release lessor, the holder of the certificate of convenience and necessity, from liability for nonperformance of franchise duties or torts incident to operation, and a shipper may hold lessor liable for lessee's failure to make prompt remittance of C. O. D. collections as required by G. S. 62-121.37. In the instant case the Utilities Commission, in approving the lease, did not attempt to relieve lessors of such obligations, nor would it have the power to do so. *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.27. Suspension or revocation of certificates and permits.

Cited in *Hough-Wylie Co. v. Lucas*, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.28. Rates and charges of common carriers.

Duty to Establish Joint Rates and Divide Revenues.—Motor carriers of freight in intrastate commerce who exchange freight in the course of delivery are not only given authority but are required to establish joint rates, and provide for the division of revenues derived from such shipments by contract, subject only to the limitation that the contract shall not unduly prefer or prejudice any of the participating carriers. *State v. Thurston Motor Lines, Inc.*, 240 N. C. 166, 81 S. E. (2d) 404 (1954).

Authority of Commission to Interfere with Division of Revenue from Inter-

changed Freight.—The Utilities Commission is given authority to intervene and vacate a contract for division of revenue from interchanged freight between two intrastate motor carriers only upon its finding after hearing the contractual agreement between the carriers for the division of revenue from such shipments is, or will be unjust, unreasonable and inequitable, or unduly preferential or prejudicial as between the contracting carriers, and when an order is entered by the Commission without such jurisdictional finding, the cause must be remanded. A finding merely that the Commission does not accept the contractual

practice of the carriers as being equitable is insufficient. And the provision of subsection (2), giving the Commission discretionary power to prohibit the establishment of joint rates, is inapplicable. *State v. Thurston Motor Lines, Inc.*, 240 N. C. 166, 81 S. E. (2d) 404 (1954).

Quoted in *State v. Youngblood Truck Lines, Inc.*, 248 N. C. 625, 104 S. E. (2d) 199 (1958).

Cited in *State v. Youngblood Truck Lines, Inc.*, 243 N. C. 442, 91 S. E. (2d) 212 (1956).

§ 62-121.29. Tariffs of common carriers.

(7) In any proceeding to determine the justness or reasonableness of any rate or charge of any such carrier, there shall not be taken into consideration or allowed as evidence any elements of value or the earning power of the property of such carrier, good will, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this article any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees on such certificate. The Commission is specifically authorized to consider, among other things, evidence of the relationship of operating expenses to operating revenues in any such proceeding. (1947, c. 1008, s. 25; 1959, c. 209.)

Editor's Note. — The 1959 amendment added subsection (7). As the rest of the section was not affected by the amendment it is not set out.

Cited in *State v. Youngblood Truck Lines, Inc.*, 248 N. C. 625, 104 S. E. (2d) 199 (1958).

§ 62-121.32. Accounts, records and reports.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the thirty-first day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Raleigh within four months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) hereof shall also be under oath, whenever the Commission so requires. The Commission may issue an order, without notice or hearing, cancelling or suspending any certificate of convenience and necessity thirty (30) days after the date of service of such order for failing to file the required annual report at the time it was due. In the event the report is filed during the thirty (30)-day period, the order of cancellation or suspension shall be null and void.

(1959, c. 639, ss. 5, 9.)

Editor's Note. — The 1959 amendment extended the time for filing annual reports provided for in paragraph (2) from three months to four months after the close of the year and added the third and

fourth sentences thereof. As only paragraph (2) was affected by the amendment the rest of the section is not set out.

Cited in *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ 62-121.33. Orders, notices and service of process. — (a) It shall be the duty of every motor carrier operating under a certificate or permit issued under the provisions of this article to file with the Commission a designation in writing of the name and post-office address of a person upon whom or which service of notices or orders may be made under this article. Such designation may from time to time be changed by like writing similarly filed. Service of notices or orders in proceedings under this article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier.

(b) Except as otherwise provided in this article, all orders of the Commission shall take effect within such reasonable time as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction. (1947, c. 1008, s. 29; 1957, c. 1152, s. 6.)

Editor's Note.—The 1957 amendment by certified mail with return receipt reinserted in subsection (a) the words “or requested.”

§ 62-121.34. Unlawful operation.

Cited in Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.37. Embezzlement of C. O. D. shipments.

The lessor-holders of a certificate of convenience and necessity are liable and answerable jointly with the lessee-operator to the shipper for losses sustained by reason of wrongful conversion of C. O. D. moneys collected by the lessee-operator company. Hough-Wylie Co. v. Lucas, 236 N. C. 90, 72 S. E. (2d) 11 (1952).

§ 62-121.40: Repealed by Session Laws 1953, c. 825, s. 3.

ARTICLE 6C.

Bus Act of 1949.

§ 62-121.43. Short title.

Applied in Bryant v. Barber, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

§ 62-121.44. Declaration of policy.

Policy of the Law Stated.—The policy of the law controlling the granting of bus franchises is to provide adequate, economical and efficient bus service at reasonable cost to all communities of the State, without discrimination, undue privileges or advantages or unfair or destructive competitive practices, all to the end of promoting the public interest. **State v. Queen City Coach Co.**, 233 N. C. 119, 63 S. E. (2d) 113 (1951).

Quoted in State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ 62-121.45. Delegation of jurisdiction.

Stated in State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952); **Bryant v. Barber**, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

Cited in State v. Carolina Coach Co., 236 N. C. 583, 73 S. E. (2d) 562 (1952).

§ 62-121.46. Definitions.

(10) “Interstate commerce” means commerce between any place in this State and any place in another state or between places in this State through another state, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

(19) “Industrial plant” means any plant, mill, or factory engaged in the business of manufacturing

(20) “Route” means the course of way which is traveled; the road or highway over which motor vehicles operate. (1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13.)

Editor's Note.—The 1953 amendment added subsections (19) and (20). And the 1957 amendment deleted the words “or air” formerly appearing at the end of subsection (10). As the rest of the section was not affected by the amendments only subsections (10), (19) and (20) are set out.

Comparison of Definitions in Federal Motor Carrier Act.—See State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Subdivision (6) Is Not Retroactive.—

The provisions contained in subdivision (6) are definitive or regulatory and intended to be applied prospectively with respect to applications for permits as contract carriers under the general provisions of the Bus Act of 1949, and have no bearing on or relation to the grandfather rights confirmed in the act. To make these definitive and regulatory provisions retroactive so as to place a limitation on the rights of a carrier under the grandfather clause contained in the act, would be in

contravention of his constitutional rights and contrary to due process of law. Moreover, such a construction would completely nullify the grandfather clause and make it feckless. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

The definition contained in subdivision (6) includes charter service. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Cited in *State v. Carolina Coach Co.*, 236 N. C. 583, 73 S. E. (2d) 562 (1952).

§ 62-121.47. Exemptions from regulations.—(1) Nothing in this article shall be construed to include persons and vehicles engaged in one or more of the following services if not engaged at the time or other times in the transportation of other passengers by motor vehicle for compensation: (a) Transportation of passengers for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State; (b) transportation of passengers by taxicabs when not carrying more than six (6) passengers or transportation by other motor vehicle performing bona fide taxicab service and not carrying more than six (6) passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between fixed termini; provided, no taxicab while operating over the regular route of a common carrier outside of a town or a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in (h) of this paragraph, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers; (c) transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations; (d) transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft; (e) transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service; (f) transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services; (g) transportation of bona fide employees of an industrial plant to and from their regular employment; (h) transportation of passengers when the movement is within a town or municipality exclusively, or within contiguous towns or municipalities and within a residential and commercial zone adjacent to and a part of such town or municipality or contiguous towns or municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone.

The Commission shall have and retain jurisdiction to fix rates and charges of carriers operating under (e) and (h) of this subsection in the manner provided in this article, and shall have jurisdiction to hear and determine controversies with respect to extensions and services, and the Commission's rules of practice shall include appropriate provisions for bringing such controversies before the Commission and for the hearing and determination of the same, provided nothing in this paragraph shall include taxicabs.

(3) None of the provisions of this section nor any of the other provisions of this article shall apply to motor vehicles used solely for the transportation of passengers to or from religious services and/or in the transportation of bona fide

employees of an industrial plant to and from places of their regular employment. (1953, c. 1140, s. 2; 1959, c. 102; c. 639, s. 14.)

Editor's Note.—The 1953 amendment inserted "solely" in line two of subsection (3). The first 1959 amendment inserted in the second paragraph of subsection (1) the words "in the manner provided in this article." The second 1959 amendment re-wrote the provisions of (b) of subsection (1) preceding the proviso. As only subsections (1) and (3) were affected by the amendments the rest of the section is not set out.

The Utilities Commission is not vested with power to require the operators of services enumerated in this section to obtain a franchise from it and does not have any supervision or jurisdiction over such operation, except the operations set forth in subdivisions (e) and (h) of subsection (1), and as to them it retains "jurisdiction to fix rates and charges," and "to hear and determine controversies with respect to extensions and services." *Winston-Salem v. Winston-Salem City Coach Lines, Inc.*, 245 N. C. 179, 95 S. E. (2d) 510 (1956).

Jurisdiction of Commission over City Bus Lines.—The Commission has been given specific authority to fix city bus fares. *State v. Greensboro*, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

Any provisions with respect to rates and services contained in a franchise contract between a utilities company and a municipal corporation, authorizing the utilities company to transport passengers over its streets, are subject to the orders of the Utilities Commission in respect thereto. *Winston-Salem v. Winston-Salem City Coach Lines, Inc.*, 245 N. C. 179, 95 S. E. (2d) 510 (1956).

Same—Dispute as to Curtailment of Services by Bus Carrier.—Where a municipality has granted a franchise to a utilities company to operate passenger buses over its streets, the parties may mutually agree upon extensions and services, changes in routes, or curtailment of services, when in the opinion of the governing board of the municipality such changes, are, under the

existing conditions, for the best interest of all concerned, including the public. However, when the parties are unable to agree to a proposed curtailment of existing services, the matter is within the exclusive jurisdiction of the Utilities Commission and the municipality may not enjoin the utility from the proposed curtailment of services, although the utility may not change its schedules or curtail its services unless given authority to do so by the Utilities Commission. *Winston-Salem v. Winston-Salem City Coach Lines, Inc.*, 245 N. C. 179, 95 S. E. (2d) 510 (1956).

Subsection (3) an Exception to Subsection (1).—The particular provision of subsection (3) of this section must be regarded as an exception to the general provision of subsection (1). *State v. Carolina Coach Co.*, 236 N. C. 583, 73 S. E. (2d) 562 (1952).

Operations Devoted Exclusively to Transportation of Employees to and from Work.—The North Carolina Utilities Commission does not have regulatory supervision of operations devoted exclusively to the transportation by motor vehicle of the bona fide employees of industrial plants to and from the places of their employment even in cases where the persons conducting such operations are engaged at the same time or at other times in carrying on the callings of common carriers by motor vehicle. *State v. Carolina Coach Co.*, 236 N. C. 583, 73 S. E. (2d) 562 (1952).

Transportation to and from Federal Military Reservation.—This section exempts from the regulations of the Utilities Commission carriers in intrastate commerce transporting passengers for hire to and from federal military reservations or bases only if such carriers have been procured by the United States government to carry passengers for it, or the transportation of such passengers is under the control of the United States. *Bryant v. Barber*, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

Quoted in part in *State v. Johnson*, 233 N. C. 588, 64 S. E. (2d) 829 (1951).

§ 62-121.48. General powers and duties of the Commission.

(9) Before the Commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more motor carriers, the motor carrier or carriers to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the Commission, at least twenty days' notice of the time and place when and where the contemplated action in the premises will be considered and disposed of, and such carriers shall be afforded a reason-

able opportunity to introduce evidence and to be heard thereon, and shall have process to enforce the attendance of witnesses, to the end that justice may be done. Every such general order, rule, regulation or requirement made and entered by the Commission shall be forthwith recorded verbatim in its official register, showing thereon the effective date of such general order, rule, regulation or requirement which shall be not less than ten days subsequent to the entry thereof in said official register and shall also file a copy of same with the Secretary of State as required by chapter 143, article 18, General Statutes of North Carolina of 1943. The Commission may, without prior notice and hearing, make and enter any order, rule, regulation, or requirement, not affecting rates, charges, or tariffs, upon an unanimous finding by the Commission of the existence of an emergency and order such order, rule, regulation or requirement in effect upon notice given to each affected motor carrier by registered mail, or by certified mail, pending a hearing thereon as provided in this subsection. Any such emergency order, rule, regulation or requirement shall be subject to continuation, modification, change, or revocation after notice and hearing as in this section provided and all such emergency orders, rules, regulations, and requirements shall be supplanted and superseded by any final order, rule, regulation or requirement entered by the Commission after such notice and hearing.

(1953, c. 1140, s. 5; 1957, c. 1152, s. 7.)

Cross Reference.—As to revocation of license plates for violation of article, see § 20-64.1.

Editor's Note.—The 1953 amendment struck out the words "by name" formerly appearing after the word "carriers" the first time it appears in line three of subsection (9). It also struck out the former second sentence.

The 1957 amendment inserted in lines twenty and twenty-one of subsection (9) the words "or by certified mail."

As only subsection (9) was affected by the amendments the rest of the section is not set out.

Rules and Regulations.—The Commission may impose upon the holder of a permit any reasonable rules and regulations with respect to the operations thereunder which are now in effect or which may be adopted hereafter for the regulation of motor vehicle carriers performing similar service. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ 62-121.49. Issuance of certificates in lieu of outstanding certificates.

An appellant who did not hold a franchise certificate as a common carrier to operate over designated highways and between fixed termini, as provided in former §§ 62-105 and 62-106, now repealed but in effect at the time of the passage of the

1949 act from which this article is codified, is not entitled to a certificate of public convenience and necessity under the terms of the grandfather clause granted in this section. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ 62-121.50. Issuance of permits to qualified contract carriers operating on and continuously since October 1, 1948.

What Applicant Must Show.—The only burden resting on a contract carrier seeking authorization to continue his charter business is to show that he was a bona fide operator engaged in charter service and in the transportation by motor vehicle of passengers in intrastate commerce for compensation, at the time of and prior to the passage of this article, and that he had continued to render such service since its passage; that he had the necessary equipment; was financially responsible and otherwise qualified to perform the service he seeks to render on a continuing basis. An applicant seeking to preserve rights

confirmed to him in a grandfather clause, is required to show neither public convenience and necessity, nor public need. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Carrier Entitled to Permit as Charter and Contract Carrier.—A carrier is entitled, as a matter of law, to a permit under this section that will permit him to continue operating his business as a charter and contract carrier if he was engaged in bona fide operations rendering such service prior to the passage of the Bus Act of 1949 and is continuing to render such service since the passage of the

Act. State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

The purpose of a grandfather clause is to protect and preserve bona fide rights existing at the time of the passage of the legislation which contains such clause. Other provisions in this article intended to apply to applicants seeking rights thereunder, separate and apart from any

grandfather rights confirmed therein, will not be permitted to impinge upon or defeat such rights as are intended to be protected by the grandfather clause. State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952). See note to § 62-121.46.

Applied in Bryant v. Barber, 237 N. C. 480, 75 S. E. (2d), 410 (1953).

§ 62-121.52. Applications and hearings.

(4) The Commission may in its discretion require the applicant to give notice of the time and place of such hearing, together with a brief description of the purpose of said hearing and the exact route or routes and authority applied for, to be published not less than once each week for two successive weeks in one or more newspapers of general circulation in the territory proposed to be served. The Commission may in its discretion require the applicant to give such other and further notice in the form and manner prescribed by the Commission to the end that all interested parties and the general public may have full knowledge of such hearing and its purpose. If the Commission in its discretion requires the applicant to give notice by publication, as required by this subsection, then a copy of the published notice shall be immediately mailed by the applicant to the Commission, and upon receipt of same the chief clerk shall cause the said copy of notice to be forthwith entered in the Commission's docket of pending proceedings. The applicant shall, prior to any hearing upon his application, be required to satisfy the Commission that such notice by publication has been duly made, and in addition to any other fees or costs required to be paid by the applicant, the applicant shall pay into the office of the Commission the cost of the notices herein required to be mailed by the Commission.

(5) Any motor carrier desiring to protest the granting of an application for a certificate or permit, in whole or in part, may become a party to such proceedings by filing with the Commission, not less than ten (10) days prior to the date fixed for the hearing, unless the time be extended by order of the Commission, its protest in writing under oath, containing a general statement of the grounds for such protest and the manner in which the protestant will be adversely affected by the granting of the application, in whole or in part. Such protestant may also set forth in his protest its proposal, if any, to render, either alone or in conjunction with other motor carriers, the service proposed by the applicant, either in whole or in part. Upon the filing of such protest it shall be the duty of the protestant to file three copies with the Commission, and the applicant shall certify that a copy of said protest has been delivered or mailed to the applicant or applicant's attorney. When no protest is filed with the Commission within the time herein limited, or as extended by order of the Commission, the Commission may proceed to hear the application and make the necessary findings of fact and issue or decline to issue the certificate or permit applied for without further notice. Persons other than motor carriers shall have the right to appear before the Commission and give evidence in favor of or against the granting of any application, and with permission of the Commission may be accorded the right to examine and cross-examine witnesses. No certificate or permit shall be amended so as to enlarge or in any manner extend the scope of operations of a motor carrier without complying with the provisions of this section.

(1953, c. 825, s. 3; 1957, c. 1152, ss. 8, 9.)

Editor's Note.—The 1953 amendment deleted the former fourth sentence of subsection (5) which read: "The protestant shall be required, at the time of filing such protest, to pay into the office of the

Commission a filing fee of five dollars (\$5.00)."

The 1957 amendment rewrote subsection (4). It also rewrote the third sentence of subsection (5) which formerly required

the filing of four copies, one of which the Commission was required to mail to the applicant.

As only subsections (4) and (5) were affected by the amendments the rest of the section is not set out.

Duplication of Service.—

In accord with original. See *State v. City Coach Co.*, 234 N. C. 489, 67 S. E. (2d) 629 (1951).

The question of duplication of service must be determined under the provisions of the statute which was in effect at the time the order of the Commission was entered. *State v. City Coach Co.*, 234 N. C. 489, 67 S. E. (2d) 629 (1951).

"Route" Not Synonymous with "Territory".—"Route" as used in this article means the highway or road traveled in serving communities, districts, or territories adjacent to it, and is not synonymous with "territory." *State v. Queen City Coach Co.*, 233 N. C. 119, 63 S. E. (2d) 113 (1951); *State v. Ray*, 236 N. C. 692, 73 S. E. (2d) 870 (1953).

This section does not purport to protect against all competition but is designed to protect authorized carriers against ruinous competition, and the statute does not prohibit service of the same points by different carriers over separate routes when such duplicate service is in the public interest. *State v. Queen City Coach Co.*, 233 N. C. 119, 63 S. E. (2d) 113 (1951); *State v. Ray*, 236 N. C. 692, 73 S. E. (2d) 870 (1953).

Application by carrier to serve communities being served by another carrier, who intervenes and protests the application, as distinguished from an application for duplication of routes, does not require the Utilities Commission to find that the existing carrier's service is inadequate and to afford such existing carrier opportunity to remedy the inadequacy. *State v. Queen*

City Coach Co., 233 N. C. 119, 63 S. E. (2d) 113 (1951).

Protection as to Duplication in Route.—This section prohibits the granting of a franchise over any part of the route of an existing carrier except upon the prescribed conditions, and not merely a duplication of the same route from terminus to terminus, but the application to serve communities being served by the intervening carrier need not be denied in toto because there would be a duplication of routes along a short distance, since the existing carrier may be protected as to the duplication in route by proper restrictions in the certificate. *State v. Queen City Coach Co.*, 233 N. C. 119, 63 S. E. (2d) 113 (1951). See §§ 62-121.53, 62-121.54.

Charter Service.—Under the definition of a common carrier by motor vehicle in § 62-121.46, no common carrier by motor vehicle would be authorized to render charter service were it not for the permissive privilege to render such service contained in subdivision (9) of this section. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

A common carrier by motor vehicle was not expressly authorized by statute to render charter service, in this State, prior to the enactment of this section. And prior to such time, contract carriers were not regulated by nor under the control of the North Carolina Utilities Commission. Even so, prior to the enactment of this article, contract carriers and common carriers engaged extensively in rendering such service. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Amendment Held Not to Enlarge Scope of Operation within Meaning of Subdivision (5).—See *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

Applied in *Bryant v. Barber*, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

§ 62-121.53. Terms and conditions of certificate.

Cited in *State v. Queen City Coach Co.*, 233 N. C. 119, 63 S. E. (2d) 113 (1951).

§ 62-121.54. Issuance of permits, terms and conditions.

Cited in *State v. Queen City Coach Co.*, 233 N. C. 119, 63 S. E. (2d) 113 (1951).

§ 62-121.61. Insurance or bond required.

A carrier and its insurer cannot be sued in the same cause of action as subsection (3) of this section specifically provides that

the insurer "shall not be joined in the action against the assured." *Leppard v. Jordan's Truck Line*, 116 F. Supp. 130 (1953).

§ 62-121.62. Transfers of certificates and permits.—No certificates or permits issued under the provisions of this article shall be sold, assigned, pledged, transferred, or control changed through stock transfer or otherwise, or

any rights thereunder leased, nor shall any merger or combination affecting any motor carrier be made through acquisition of control by stock purchases or otherwise, except after application to and written approval by the Commission as in this section provided, provided that the above provisions shall not apply to regular trading in listed securities on recognized markets. The applicant shall give not less than ten (10) days' written notice of such application by registered mail or by certified mail to all connecting and competing carriers. When the Commission is of the opinion that the transaction is consistent with the purposes of this article, the Commission may, in the exercise of its discretion, grant its approval, provided, however, that when such transaction will result in a substantial change in the service and operations of any motor carrier party to the transaction, or will substantially affect the operations and services of any other motor carrier, the Commission shall not grant its approval except upon notice and hearing as required in § 62-121.52 upon an application for an original certificate or permit. In all cases arising under this section it shall be the duty of the Commission to require the successor carrier to satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured. The Commission may attach to its approval of any transaction arising under this section such other conditions as the Commission may determine are necessary to effectuate the purposes of this article. It shall be considered against the policy declared in § 62-121.44 for any person to obtain a certificate or permit for the purpose of transferring the same to another, and an offer of such transfer within one year after the same was obtained shall be prima facie evidence that such a certificate or permit was obtained for the purpose of sale. (1949, c. 1132, s. 20; 1953, c. 1140, s. 3; 1957, c. 1152, s. 10.)

Editor's Note.—The 1953 amendment inserted in line three of the first sentence the words "or control changed through stock transfer or otherwise." It also added at the end of the sentence the words "provided that the above provisions shall not apply to regular trading in listed securi-

ties on recognized markets."

The 1957 amendment inserted in lines nine and ten the words "or by certified mail."

Cited in *State v. Carolina Coach Co.*, 236 N. C. 583, 73 S. E. (2d) 562 (1952).

§ 62-121.65. Tariffs of common carriers.

Cited in *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ 62-121.66. Rates and charges of contract carriers; schedules.

The word "tariff," used in connection with the rates of a common carrier, does not have any special legal significance that would differentiate it in effect from the word "rates," used in this section in connection with a contract carrier. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d)

41 (1952).

A contract carrier issued a permit under § 62-121.50 must file his rates in compliance with the provisions of this section. *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

§ 62-121.67. Accounts, records and reports.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the thirty-first day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Raleigh within four months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) hereof shall also be under oath, whenever the Commission so requires. The Commission may issue an order, upon ten (10) days' notice by registered mail, cancelling or suspending

any certificate of convenience and necessity thirty (30) days after the date of service of such order for failing to file the required annual report at the time it was due. In the event the report is filed during the thirty (30)-day period, the order of cancellation or suspension shall be null and void.

(1959, c. 639, ss. 6, 10.)

Editor's Note. — The 1959 amendment extended the time for filing annual reports provided for in paragraph (2) from three months to four months after the close of

the year and added the third and fourth sentences thereof. As only paragraph (2) was affected by the amendment the rest of the section is not set out.

§ 62-121.68. Designation of process agent; service of notices and orders.—It shall be the duty of every motor carrier operating under a certificate or permit issued under the provisions of this article to file with the Commission a designation in writing of the name and post-office address of a person upon whom or which service of notices or orders may be made under this article. Such designation may from time to time be changed by like writing similarly filed. Service of notices or orders in proceedings under this article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier. (1949, c. 1132, s. 26; 1957, c. 1152, s. 11.)

Editor's Note.—The 1957 amendment inserted in lines eight and nine the words

“or by certified mail with return receipt requested.”

§ 62-121.69. Free transportation.—No carrier shall, directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, commission agents employees, and members of their immediate families, and such persons as the Commission may designate in its employ, or the employ of the Motor Vehicle Department for the inspection of equipment and supervision of traffic upon the highways of the State: Provided, that motor carriers under this article may exchange free transportation within the limits of this section, and may accept as a passenger a totally blind person accompanied by a guide at the usual and ordinary fare charged to one person under such reasonable regulations as may have been established by the carrier. (1949, c. 1132, s. 27; 1953, c. 1279.)

Editor's Note.—The 1953 amendment added the provision as to a blind person accompanied by a guide.

§ 62-121.72. Unlawful operation.

(6) Any person who, at any bus terminal, solicits or otherwise attempts to induce any person to use some form of transportation for compensation other than that lawfully using said terminal premises by contract with the terminal operator or by valid order of the Utilities Commission shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than fifty dollars (\$50.00) or imprisoned not to exceed thirty (30) days, or both, in the discretion of the court.

(7) If any passenger on the motor vehicle of any motor carrier shall refuse to pay his fare or be or become intoxicated, it shall be lawful for the driver of any motor vehicle of a motor carrier and other employees of such motor carrier to put him and his baggage out of said motor vehicle or bus, using no unnecessary force, at any usual stopping place. (1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957 c. 1152, s. 16.)

Editor's Note.—

The 1953 amendment added subsection

(6); and the 1957 amendment added subsection (7). As the rest of the section was

not affected by the amendments it is not set out.

Restraining Illegal Operation Along Route.—Under subsection (2) a franchise carrier may maintain an action in the superior court to restrain another carrier from illegal operation along his route without a certificate or permit from the Util-

ities Commission when such illegal operation by such other carrier interferes with its franchise rights. *Bryant v. Barber*, 237 N. C. 480, 75 S. E. (2d) 410 (1953).

Cited in *State v. Johnson*, 233 N. C. 588, 64 S. E. (2d) 829 (1951); *Candler v. Asheville*, 247 N. C. 398, 101 S. E. (2d) 470 (1958).

§ 62-121.75: Repealed by Session Laws 1953, c. 825, s. 3.

§ 62-121.79. Repeal of inconsistent acts.

Cited in *State v. Fleming*, 235 N. C. 660, 71 S. E. (2d) 41 (1952).

ARTICLE 7.

Rate Regulation.

§ 62-122. Commission to fix rates for public utilities.

Cannot Fix Fares by Contract.—

In accord with original. See *Winston-Salem v. Winston-Salem City Coach Lines, Inc.*, 245 N. C. 179, 95 S. E. (2d) 510 (1956).

City Bus Fares.—The Commission has

been given specific authority to fix city bus fares. *State v. Greensboro*, 244 N. C. 247, 93 S. E. (2d) 151 (1956). See § 62-121.47 and annotation thereto.

Cited in *State v. Martel Mills Corp.*, 232 N. C. 690, 62 S. E. (2d) 80 (1950).

§ 62-123. Rates established deemed just and reasonable.

Section Makes Rates Prima Facie Valid, Just and Reasonable.—This section makes the rates fixed by the Commission not only prima facie evidence of their validity, but also prima facie evidence that they are just and reasonable. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Rates Other than Those Fixed Deemed Unjust.—Under this section the rates approved by the Commission shall be deemed to be just and reasonable, and any different rate shall be deemed unjust and unreasonable. *State v. Norfolk Southern Ry. Co.*, 249 N. C. 477, 106 S. E. (2d) 681 (1959).

Hence, in a proceeding to recover excessive freight charges collected because of an error in the tariff distance table filed

with the Utilities Commission, the charges being in conformity with the tariff schedule for a greater distance than the correct distance between the termini, evidence offered by the carriers as to whether the higher rate was fair and reasonable for the shorter distance was properly excluded, since the carriers should not be permitted to change the rate by reason of a mistake in their tariff distance table, and petitioners were entitled to recover that part of the excess charged which was not barred by the limitation contained in this section. *State v. Norfolk Southern Ry. Co.*, 249 N. C. 477, 106 S. E. (2d) 681 (1959).

Cited in *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378 (1950).

§ 62-124. How maximum rates fixed.

Editor's Note.—The language of this section is lifted almost verbatim out of the opinion in *Smyth v. Ames*, 169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819 (1897). The question of a "just and reasonable" rate is there fully discussed. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Statute Is Constitutional.—The power to grant franchises to public service corporations and to fix their rates rests in the General Assembly, which power the General Assembly may delegate to an administrative agency provided the General Assembly prescribes rules and standards to guide such agency in the exercise of the

delegated authority. The statute delegating to the Utilities Commission this authority is constitutional in fixing adequate rules and standards. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

A public utility corporation is entitled to a just and reasonable rate of return based upon the fair value of the properties used and useful in rendering the service for which the rate is established. *State v. Greensboro*, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

Manner of Arriving at Rate.—

What is a "just and reasonable" rate which will produce a fair return on the in-

vestment depends on (1) the value of the investment—usually referred to in rate-making cases as the rate base—which earns the return; (2) the gross income received by the applicant from its authorized operations; (3) the amount to be deducted for operating expenses, which must include the amount of capital investment currently consumed in rendering the service; and (4) what rate constitutes a just and reasonable rate of return on the predetermined rate base. In finding these essential, ultimate facts, the Commission must consider all the factors particularized in the statute and “all other facts that will enable it to determine what are reasonable and just rates, charges and tariffs.” It must then arrive at its own independent conclusion, without reference to any specific formula, as to (1) what constitutes a fair value, for rate-making purposes, of applicant’s investment used in rendering intrastate service—the rate base, and (2) what rate of return on the predetermined rate base will constitute a rate that is just and reasonable both to the applicant and to the public. While both original cost and replacement value are to be considered, neither constitutes a proper rate base. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Where a public utility uses for operating capital moneys collected by it in taxes for the federal government which it is not required to pay to the federal government until a later date, the Utilities Commission should take such capital into consideration in fixing rates, which action is neither a condemnation nor condonement of the practice. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Income Produced by Increase of Facilities.—In fixing the rate for a telephone company, the Utilities Commission must take into consideration the net income to be produced by the increase in the number of telephones in service at the end of any test period adopted by the Commission. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Large Sum of Money on Hand for Working Capital.—When, in fixing rates which will produce a fair return on the investment of a utility, it is made to appear that it has on hand continuously a large sum of money it is using as working capital and to pay current bills for materials and supplies, that is a fact which must be taken into consideration. And if the fund on hand is sufficient, no additional sum should be allowed at the expense of the public. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Acceptance by Commission of “book

value” or “cost less depreciation” as rate base is in conflict with the express terms of the standard prescribed in this section. The conclusion is inescapable that by accepting the book value as the rate base, it, ex necessitate, excluded consideration of present cost of replacement and all other factors from effective consideration. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

“Value” Does Not Mean “Market Value” as Second-Hand Property.—The term “value” in this section does not refer to the original or the replacement cost of the property or to the exchange or sales price it would command, as used or second-hand property, on the market. It has reference to the value of the property actually in use, serving its purpose as a part of a composite public utility, earning an income for its owner. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Only Properties Used and Useful in Rendering Service Considered.—In a proceeding by a power company for an increase in the cash fares on its city bus system, the Commission was correct in considering the value only of the properties used and useful in connection with the operation of the bus system without regard to the value of the electric properties of the power company. *State v. Greensboro*, 244 N. C. 247, 93 S. E. (2d) 151 (1956).

In fixing intrastate rates for a telephone company operating in several states, the Utilities Commission should take into consideration the net return such utility earns on its properties in such other states to the extent of not requiring customers in North Carolina, in order to maintain the utility’s financial condition, to pay a substantially higher rate than permitted in other states. A substantial differential might be considered some evidence that the rates charged in this State are unreasonable and unjust to the local public. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Increasing Intrastate Rates to Conform with Interstate Rates Allowed by Interstate Commerce Commission.—Order of Utilities Commission increasing intrastate rates of State carriers so that such rates would conform with an increase in interstate rates allowed by Interstate Commerce Commission was invalid where order was unsupported by proof of the fair value of the properties of the carriers used and useful in conducting their intrastate business, separate and apart from their interstate business. *State v. State*, 243 N. C. 12, 89 S. E. (2d) 727 (1955).

The financial condition of a public utility and the demand for its bonds and securities which affect its capacity to compete, on the open market, for additional equity and debt capital are ordinarily material considerations in fixing rates. But these factors are of little moment where the applicant has available at all times a fund provided by its parent company from which it may borrow at will for needed improvements or enlargements. What it has to pay for its borrowings from this fund is of more importance. These are some of the "other facts" the statute requires the Commission to consider. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Depreciation Deductions. — For rate-making purposes a public utility is allowed to deduct annually as an operating expense so much of its capital investment as is actually consumed during the current year in rendering the service required of it. But the cost represents the amount of the investment, and it is the actual cost, not theretofore recouped by depreciation deductions, that must constitute the base for this allowance. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Broadly speaking, depreciation is the loss not restored by current maintenance which is due to all the factors causing the ultimate retirement of the property. While property remains in the plant, the estimated depreciation rate is applied to the book cost and the resulting amounts are charged currently as expenses of operation. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

In establishing rates a public utility is entitled to deduct each year as an operating expense only such depreciation as represents the investment currently consumed and not provided against by maintenance. Thus the integrity of the investment is maintained, and this is all the utility has a right to demand. The rate should be fixed, as near as may be, so that it will extend over the usable life of the property being depreciated. Otherwise the al-

lowance will be unjust either to the utility or to the public. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Same—Current Rather than Cost Value of Capital Investment.—An instruction that the current rather than the cost value of capital investment shall be used as the basis for estimating depreciation allowances is incorrect. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

The rate of depreciation allowed by the federal government for income tax purposes is not necessarily the proper rate to be allowed for rate-making purposes. Indeed, for rate-making purposes it would ordinarily be excessive, especially in respect to buildings and like permanent improvements. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Using Property Which Has Been Fully Depreciated for Other Purposes. — It would be unfair to a utility not to take into consideration the present fair value of property now in use but which has been fully depreciated for other purposes. On the other hand, if the rate of depreciation allowed for rate-making purposes is in excess of the investment currently consumed, over and above maintenance costs, it is unfair to the public, for then the company is permitted to recover annually a part of its investment which is not currently consumed. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

The Utilities Commission is not compelled to provide a 6% rate of return to a public utility. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

Nor is its former allowance of a rate of return *res judicata* barring the Commission from fixing a lesser rate in a subsequent proceeding. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

A schedule of rates fixed by the Commission under the standard prescribed by the legislature is binding upon the interested parties and the courts, provided it is within the bounds of reason. *State v. State*, 239 N. C. 333, 80 S. E. (2d) 133 (1954).

§ 62-125. Hearing before Utilities Commission upon request for change of rates, etc.

Original Complainant.—A utility which files application for authority to amend its rate schedule and complains that its rates are insufficient to provide reason-

able and necessary revenue is the original complainant in the proceeding. *State v. Martel Mills Corp.*, 232 N. C. 690, 62 S. E. (2d) 80 (1950).

§ 62-128. Long and short hauls.

Cited in *Candler v. Asheville*, 247 N. C. 398, 101 S. E. (2d) 470 (1958).

ARTICLE 8.

Railroad Freight Rates.

§ 62-137. Rates between points connected by more than one route.

Under this section mileage is calculated over the shortest rail line between the point of origin and the point of delivery. *State v. Norfolk Southern Ry. Co.*, 249 N. C. 447, 106 S. E. (2d) 681 (1959).

§ 62-138. Action for double amount of overcharge; penalty.

Cross References.—

See note to § 60-110.

§ 62-139. Double penalty.

Cross Reference.—See note to § 60-110.

ARTICLE 9.

Penalties and Actions.

§ 62-149. Notice served by certified mail.—Wherever in this chapter the North Carolina Utilities Commission is required, permitted or allowed to give or serve any notice by registered mail or by registered mail with return receipt requested, or wherever in this chapter any person is required to give any notice to the North Carolina Utilities Commission or to any other person, firm or corporation by registered mail or by registered mail with return receipt requested, all such notices shall be deemed to be proper, valid and lawful if given or served by certified mail or by certified mail with return receipt requested. (1957, c. 1152, s. 12.)

Chapter 63.**Aeronautics.**

ARTICLE 1.

Municipal Airports.

§ 63-6. Acquisition of sites; appropriation of moneys.

Cited in *Matson v. United States*, 171 F. Supp. 283 (1959).

ARTICLE 2.

State Regulation.

§ 63-11. Sovereignty in space.

Cited in *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

§ 63-12. Ownership of space.

Cited in *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

§ 63-13. Lawfulness of flight.

An aircraft can lawfully fly over the land and water of this State, unless done in violation of the provisions of this section. *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

And flying a plane over the land or

pond of another does not constitute a trespass unless the flight is at such low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to

be injurious to the health and happiness, or imminently dangerous to persons or property below. *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

The burden of proof is upon the party asserting a violation of this section, and evidence merely that the plane engaged in crop spraying operations was seen flying over the land of plaintiff at an alti-

tude of 100 feet or more, without evidence that such flight disturbed any person on the ground or was imminently dangerous to persons or property, is insufficient to make out a cause of action for trespass. *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

Cited in *Barrier v. Troutman*, 231 N. C. 47, 55 S. E. (2d) 923 (1949).

§ 63-18. Dangerous flying a misdemeanor.

Cited in *Barrier v. Troutman*, 231 N. C. 47, 55 S. E. (2d) 923 (1949).

ARTICLE 3.

Stealing, Tampering with, or Operating Aircraft While Intoxicated.

§ 63-27. **Operation of aircraft while intoxicated made crime.**—Any person who operates an airplane or other aircraft, whether on the ground or in the air or on water while in an intoxicated condition, shall be guilty of a misdemeanor and punishable by fine not to exceed one hundred dollars or by imprisonment not to exceed sixty days, or both, in the discretion of the court. (1929, c. 90, s. 3; 1953, c. 675, s. 8.)

Editor's Note. — The 1953 amendment inserted the words "or on water" in line three.

§ 63-28. **Infliction of serious bodily injury by operation of aircraft while intoxicated made felony.**—Any person who, operating an airplane or other aircraft whether on the ground or in the air or on water while in an intoxicated condition, does serious bodily injury to another shall be guilty of a felony. (1929, c. 90 s. 4; 1953, c. 675, s. 9.)

Editor's Note. — The 1953 amendment inserted the words "or on water" in line two.

ARTICLE 4.

Model Airport Zoning Act.

§ 63-30. Airport hazards not in public interest.

Cited in *Barrier v. Troutman*, 231 N. C. 47, 55 S. E. (2d) 923 (1949).

§ 63-31. Adoption of airport zoning regulations.

Cited in *Matson v. United States*, 171 F. Supp. 283 (1959).

ARTICLE 6.

Public Airports and Related Facilities.

§ 63-50. Airports a public purpose.

Editor's Note.—For brief comment on this section, see 28 N. C. Law Rev. 332.

§ 63-53. Specific powers of municipalities operating airports.

Local Modification. — City of Laurin- town of Maxton, as to subsection (d):
burg, as to subsection (d): 1957, c. 1210; 1957, c. 1210.

Chapter 64.

Aliens.

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| <p>Sec.
64-3. Nonresident aliens; right to take real or personal property; reciprocity.</p> <p>64-4. Burden of establishing reciprocal rights.</p> | <p>Sec.
64-5. Nonresident aliens; absence of reciprocity; escheat.</p> |
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§ 64-3. **Nonresident aliens; right to take real or personal property; reciprocity.**—The right of aliens not residing within the United States or its territories to take real property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. (1959, c. 1208.)

§ 64-4. **Burden of establishing reciprocal rights.**—The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal rights set forth in G. S. 64-3. (1959, c. 1208.)

§ 64-5. **Nonresident aliens; absence of reciprocity; escheat.**—If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property. (1959, c. 1208.)

Chapter 65.

Cemeteries.

Article 2.

Care of Confederate Cemetery.

- Sec.
65-4. State Prison Department to furnish labor.

Article 6.

Cemetery Associations.

- 65-17.1. Quorum at stockholders' meeting of certain nonprofit cemetery corporations; calling meeting; amendment of charter.

Article 7.

Cemeteries Operated for Private Gain.

- Sec.
65-23. Perpetual care fund to be turned over to trustee; investment of minimum required fund; use of income.
- 65-23.1. Separate fund composed of excess over minimum required perpetual care fund.
- 65-23.2. Appointment of new trustee of perpetual care fund; trust agreement.
- 65-23.3. Compensation of trustee of perpetual care fund.

ARTICLE 1.

Care of Rural Cemeteries.

§ 65-3. County commissioners to have control of abandoned cemeteries; trustees.

Editor's Note.—As to condemnation of Avery County, see Session Laws 1955, c. adjoining lands for cemetery purposes in 1013.

ARTICLE 2.

Care of Confederate Cemetery.

§ 65-4. State Prison Department to furnish labor.—The State Prison Department is hereby authorized and directed to furnish at such time, or times, as may be convenient, such prisoner's labor as may be available, to properly care for the Confederate Cemetery situated in the city of Raleigh, such services to be rendered by the State's prisoners without compensation. (1927, c. 224, s. 1; 1933, c. 172; 1957, c. 349, s. 10.)

Editors' Note.—The 1957 amendment "State Highway and Public Works Commission" substituted "State Prison Department" for "mission."

ARTICLE 4.

Trust Funds for the Care of Cemeteries.

§ 65-7. Money deposited with clerk of superior court.

Local Modification.—Washington: 1957, c. 1126.

ARTICLE 5.

Removal of Graves.

§ 65-14. Conveyance by church; removal of graves.

Local Modification.—Burke: 1959, c. 1217.

§ 65-15. Removal after abandonment of cemetery.

Right of Action for Removal of Grave in Violation of This Section.—See King v. Smith, 236 N. C. 170, 72 S. E. (2d) 425 (1952).

ARTICLE 6.

Cemetery Associations.

§ 65-17.1. Quorum at stockholders' meeting of certain nonprofit cemetery corporations; calling meeting; amendment of charter.—Notwithstanding any conflicting provision of law or of the charter or bylaws of any corporation affected by this section, in the case of any nonprofit cemetery corporation chartered prior to the year 1900 whose charter has expired prior to May 18 1955, a quorum at any meeting of stockholders called for the purpose of electing directors, or of amending the charter of such corporation, or both, shall consist of the holders of ten per cent (10%) or more of the outstanding shares of the capital stock of such corporation having voting powers, present in person or represented by proxy; and a meeting of the stockholders of such corporation for such purpose or purposes may be called by any two stockholders after ten days' notice by registered mail to all stockholders of record at their last known addresses as shown by the stock book of such corporation. The concurrence of a majority of the shares represented at such meeting shall be sufficient to authorize

an amendment or amendments to the charter of such corporation in accordance with the provisions of G. S. 55-31. (1955, c. 1084.)

ARTICLE 7.

Cemeteries Operated for Private Gain.

§ 65-18. Cemeteries to which article applies.

Local Modification.—By virtue of Session Laws 1953, c. 561, s. 1, the reference to Durham County in the recompiled volume should be deleted. Section 2 of the act made this article applicable to Durham County except as provided in section 3, which modifies § 65-26.

By virtue of Session Laws 1957, c. 1300, the reference to Buncombe County in the recompiled volume should be deleted.

Applied in Blue Ridge Memorial Park, Inc. v. Union Nat. Bank, Inc., 237 N. C. 547, 75 S. E. (2d) 617 (1953).

§ 65-20. Reports by cemeteries to Burial Association Commissioner.

The Burial Association Commissioner may levy and collect a penalty of twenty-five dollars (\$25.00) for each day after thirty that reports called for in this section are overdue. Penalties collected shall be paid into the administrative fund of the Burial Association Commissioner and used for the general purposes of his office. (1943, c. 644, s. 3; 1955, c. 258, s. 3.)

Editor's Note.—The 1955 amendment, effective June 30, 1955, added the above paragraph at the end of this section. As the rest of the section was not changed by the amendment, it is not set out.

Cited in Mills v. Carolina Cemetery Park Corp., 242 N. C. 20, 86 S. E. (2d) 893 (1955).

§ 65-22. Requirements for advertising of perpetual care fund.—No such cemetery shall hereafter cause or permit advertising of perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in said fund from all sales made subsequent to the passage of this article shall be equal to not less than five dollars per grave space, sold, said sum to be deposited in perpetual care fund as provided in § 65-23. (1943, c. 644, s. 5; 1957, c. 529, s. 1.)

Editor's Note.—The 1957 amendment substituted "five dollars" for "four dollars."

§ 65-23. Perpetual care fund to be turned over to trustee; investment of minimum required fund; use of income.—The perpetual care fund of any cemetery licensed hereunder, as hereinafter authorized, shall immediately be turned over to and deposited with a reliable trustee, to be approved by the North Carolina Burial Association Commissioner under an irrevocable trust agreement for safekeeping and for investment as hereinafter provided. The trustee is authorized to invest, sell and reinvest, said fund in such securities as may be approved by the trustee and by the cemetery, said investments may include:

(a) Any securities which guardians, appointed under provisions of chapter 33 of the General Statutes, are permitted by law to invest funds for their wards.

(b) Shares, common or preferred stock or securities of any corporation organized under the laws of the United States of America or of any state, the District of Columbia, any territory or possession of the United States of America; provided, however, that not more than fifteen per cent (15%) of said funds required by this chapter to be deposited with such trustee shall be invested in stocks or securities of any one corporation, and not more than thirty-three and one-third per cent (33-1/3%) of said funds shall be invested in stock, either common or preferred. The amount paid for such stock or security shall be determinative of

whether the permissible per centum of investment therein has been equaled or exceeded.

(c) Common trust funds maintained by the trustee for the purpose of furnishing investments to itself as fiduciary, as authorized by chapter 36, article 6 of the General Statutes of North Carolina entitled "Uniform Common Trust Fund Act". Investments in common trust funds as defined herein shall not be considered as investment in stock and shall not be subject to limitations provided in subsection (b) of this section.

The regulations and limitations established by this section shall apply only to so much of the trust funds as are now required or may hereafter be required as a minimum amount to be paid into perpetual care funds.

The income derived from investment of the perpetual care fund required by this section shall be used by the cemetery to defray the expense of development, upkeep and maintenance of such cemetery. (1943, c. 644, s. 6; 1955, c. 797, s. 1.)

Editor's Note.—The 1955 amendment re-wrote this section.

§ 65-23.1. Separate fund composed of excess over minimum required perpetual care fund.—If any cemetery licensed under this article shall deposit or shall have heretofore deposited in a perpetual care fund, an amount in excess of that required by contract or by law, such excess shall be separated by the trustee from the perpetual care trust fund required by G. S. 65-23 and placed in a separate fund which shall be an irrevocable trust and designated as Perpetual Care Trust Fund "A." and such excess trust fund shall not be subject to the limitations as to investments as set forth in G. S. 65-23; but said funds shall be invested, sold and reinvested by the trustee in such stocks, bonds, notes, or other securities as the cemetery may direct; and the trustee in connection with investments of such excess funds shall have no responsibility except to carry out the written instructions of the cemetery with respect to such investments; to hold the securities or instruments evidencing the same and to pay to the cemetery the income, if any, derived therefrom less its charges for handling; provided, however, that stocks purchased for investment shall not be purchased for more than the market value as of date of purchase of such stock. The income received by the cemetery from the excess trust fund (fund "A") shall be used only for the development, upkeep and maintenance of the cemetery. Provided, however, that nothing contained herein shall permit the investment of perpetual care trust funds in stocks, bonds, or debentures of any cemetery as defined in this chapter. (1955, c. 797, s. 2.)

§ 65-23.2. Appointment of new trustee of perpetual care fund; trust agreement.—The trustee of any perpetual care fund authorized and established by this chapter may refuse to serve as trustee of either the fund authorized by G. S. 65-23 or G. S. 65-23.1 and in event of such refusal the cemetery may, with the approval of the Burial Association Commissioner, appoint another trustee to administer said fund. There is no requirement that the same trustee administer the trust authorized by G. S. 65-23 and that authorized by G. S. 65-23.1. The trustee may, by permission of said Burial Association Commissioner, be changed from time to time, but the trust shall be irrevocable, and the form and substance of the agreement relating thereto shall be approved by the Burial Association Commissioner. (1955, c. 797, s. 3.)

§ 65-23.3. Compensation of trustee of perpetual care fund.—The trustee of the perpetual care trust fund authorized by G. S. 65-23 or G. S. 65-23.1 shall receive as compensation such amounts as may be agreed upon by the cemetery and the trustee and approved by the Burial Association Commissioner. (1955, c. 797, s. 4.)

§ 65-24. Amount set aside in perpetual care fund; use of income.—Such cemetery shall set aside in its perpetual care fund not less than five dollars per grave space hereafter sold. The income only derived from the investment of such fund may be used to defray expense of development, upkeep and maintenance of such cemetery. Provided that for the purpose of this section a grave space shall be considered to be sold at such time as the purchaser thereof has acquired unconditional right of interment therein. (1943, c. 644, s. 7; 1955, c. 258, s. 1; 1957, c. 529, s. 6.)

Editor's Note.—The 1955 amendment, effective June 30, 1955, substituted "five dollars" for "four dollars" in the first sentence. The 1957 amendment added the proviso.

§ 65-25. Sale of lots under "certificate plan;" certificate indemnity fund.

Every cemetery licensed under this article shall set aside for and deposit in its perpetual care fund not less than five dollars per grave space agreed by cemetery to be reserved under certificate, or sold by cemetery under any other form of contract.

(1957, c. 529, s. 2.)

Local Modification.—Buncombe (temporary): 1957, c. 1300. in the first part of the fourth sentence. As the rest of the section was not changed it is not set out.

Editor's Note.—The 1957 amendment substituted "five dollars" for "four dollars"

§ 65-26. License and provision for perpetual care requisite for establishment of cemetery.—No corporation, association, partnership, or individual, shall, after the ratification of this article, be permitted to establish a public cemetery for private gain or profit without obtaining a license therefor, as provided in this article, and without providing for the perpetual care of such cemetery in accordance with the terms of this article, including the setting aside of an initial perpetual care fund of not less than five thousand dollars, same to be in addition to the five dollars per grave space required by this article, to be deposited in such fund. Said perpetual care fund and all additions thereto shall be held and invested as required under § 65-23. (1943, c. 644, s. 9; 1957, c. 529, s. 3.)

Local Modification.—Durham: 1953, c. 561, s. 3. Applied in Blue Ridge Memorial Park, Inc. v. Union Nat. Bank, Inc., 237 N. C. 547, 75 S. E. (2d) 617 (1953).

Editor's Note.—The 1957 amendment substituted "five dollars" for "four dollars."

§ 65-27. Deposits in perpetual care fund when fund amounts to \$100,000.00.—When the amount deposited in the perpetual care fund of such cemetery shall amount to one hundred thousand dollars, anything in this article to the contrary notwithstanding, the amount to be deposited in said fund thereafter shall be equal to not less than two dollars per grave space, instead of five dollars, said sum to be deposited in the perpetual care fund as provided in § 65-23. (1943, c. 644, s. 10; 1957, c. 529, s. 4.)

Editor's Note.—The 1957 amendment substituted "five dollars" for "four dollars."

§ 65-28. Amount of deposits for perpetual care fund in certain instances.—When such cemetery shall sell its lots for not exceeding thirteen dollars but not less than eight dollars per grave space, as to such grave space so sold the amount to be deposited in the perpetual care fund shall be three dollars per grave space; if such lots shall be sold for less than eight dollars per grave space, the amount deposited in the perpetual care fund shall be two dollars per grave space. (1943, c. 644, s. 11; 1957, c. 529, s. 5.)

Editor's Note.—The 1957 amendment substituted "but not" for "or" in line two.

§ 65-29. Agreements as to retention of perpetual care fund where cemetery property sold to municipality.

Applied in *Blue Ridge Memorial Park, Inc. v. Union Nat. Bank, Inc.*, 237 N. C. 547, 75 S. E. (2d) 617 (1953).

§ 65-36. Funds for expenses of supervision.—In order to meet the expenses of the supervision of the cemeteries herein provided for, the Burial Association Commissioner shall assess each cemetery operating under the terms of this article the sum of twenty-five dollars (\$25.00) plus an amount calculated in proportion to the number of grave spaces sold in the preceding year so that the total assessments on all cemeteries shall in the aggregate amount to three thousand dollars (\$3,000.00) each year, which said amount shall be deposited and commingled with all other funds coming into the hands of the Burial Association Commissioner and he may use said sum of money derived from this section in the discharge of the duties delegated to him by the laws of North Carolina. The assessments provided for in this section shall be due and payable on the first day of July, one thousand nine hundred and forty-five, and on the first day of July of each and every year thereafter. If any cemetery shall fail or refuse to pay the said assessment to the Burial Association Commissioner within thirty (30) days after the making of said assessment, then and in that event the said Burial Association Commissioner is hereby directed and empowered to cancel the license of such cemetery. (1945, c. 351, s. 2; 1955, c. 258, s. 2.)

Editor's Note.—The 1955 amendment, effective June 30, 1955, increased the amount of the assessment.

Chapter 66.

Commerce and Business.

Article 9.

Collection of Accounts.

Sec.

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Business under Assumed Name Regulated.

- 66-68. Certificate to be filed; contents.
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Article 15.

Person Trading as "Company" or "Agent."

- 66-72. Person trading as "company" or "agent" to disclose real parties.

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Sec.

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tile substances capable of producing toxic effects; definition.
66-86. Penalty for selling product in violation of article.
66-87. Injunctions.
66-88. Application of article after enactment of federal legislation.

Article 18.

Labeling of Household Cleaners.

- 66-85. Labeling cleaners containing vola-

ARTICLE 1.

Regulation and Inspection.

§ 66-9. **Gas and electric light bills to show reading of meter.** — It shall be the duty of all gas companies and electric light companies selling gas and electricity to the public to show, among other things, on all statements or bills rendered to consumers, the reading of the meter at the end of the preceding month, and the reading of the meter at the end of the current month, and the amount of electricity, in kilowatt hours, and of gas, in feet, consumed for the current month; provided, however, that nothing herein contained shall be construed to prohibit any gas or electric company from adopting any method of and times of reading meters and rendering bills that may be approved by the North Carolina Utilities Commission.

Any gas or electric light company failing to render bills or statements, as provided for in this section, shall be subject to a penalty of ten dollars for each violation of this section or failure to render such statements, recoverable before a justice of the peace by any person suing for the same; but this section shall not apply to bills and accounts rendered customers on flat rate contracts. (1915, c. 259; C. S., s. 5082; 1959, c. 987.)

Editor's Note.—The 1959 amendment added the proviso to the first paragraph.

§ 66-10. **Failure of junk dealers to keep record of purchases misdemeanor.**

Every person, firm or corporation engaged in the business of buying or dealing in what is commonly known as "junk", including scrap metal of every kind, nature or description, glass, waste paper, burlap, cloth, cordage, rubber, leather, belting of every kind, or brass, in addition to the above requirements, shall make and keep a record of the name and address of the person from whom such junk is purchased and the license number, if any, and if there is no license, a description of the vehicle in which such junk is delivered. Any person, firm or corporation who or which fails to comply with the requirements of this paragraph shall be guilty of a misdemeanor and upon conviction shall be fined not in excess of fifty dollars (\$50.00) in the discretion of the court. (1917, c. 46; C. S., s. 5090; 1957, c. 791.)

Local Modification. — Beaufort, Bertie, Harnett, Martin, Onslow, Perquimans and Washington: 1953, c. 1154.

By virtue of Session Laws 1957, c. 1325, the reference to Buncombe County in the recompiled volume should be deleted, and

this section is made applicable to the county.

Editor's Note. — The 1957 amendment added the above paragraph to this section. As the first paragraph was not changed it is not set out.

ARTICLE 9.

Collection of Accounts.

§ 66-41. **Permit from Insurance Commissioner.**—Any person, firm or corporation within the State of North Carolina engaging in the collection of accounts for a percentage consideration of the account collected, or upon any other

basis than regular employment, shall, before engaging in such business within the State of North Carolina, apply to and receive from the Insurance Commissioner, a permit to engage in such business, which permit shall at all times be prominently displayed in each office of the person, firm, or corporation to whom or to which the permit is issued, and the number of said permit shall be printed in bold type upon all letterheads, stationery and forms used by the person, firm or corporation holding said permit. (1931, c. 217, s. 1; 1959, c. 1194, s. 1.)

Editor's Note.—The 1959 amendment substituted "each" for "the main" in line seven.

Contract in Violation of Article Not Enforceable.—A contract entered into and signed in this State between plaintiff, a

nonresident collection agency, and defendant, a State resident, calling for the collection of the accounts of the defendant in this State, was not enforceable in this State. *Divine v. Watauga Hospital*, 137 F. Supp. 628 (1956).

§ 66-42. Application to Commissioner for permit.—The person, firm, or corporation desiring to secure a permit as provided in § 66-41, shall make application to the Insurance Commissioner upon such form as the Commissioner may provide, and shall submit with such application any and all information which the Commissioner may require to assist him in determining the financial condition, business integrity, method of operation and protection to the public offered by the person, firm or corporation filing the application. Information required shall include evidence of good moral character, that no unsatisfied judgments are against the person, firm or corporation filing the application, and a financial statement showing that the applicant's assets exceed liabilities. All information submitted shall be sworn to by the responsible officer, member of the firm, or individual, as in each case necessary, and the Commissioner shall have the right to require any and all additional information which, in his judgment, might assist him in determining whether or not the applicant is entitled to the permit sought. (1931, c. 217, s. 2; 1959, c. 1194, s. 2.)

Editor's Note.—The 1959 amendment inserted the second sentence.

§ 66-42.1. Bond requirement.—As a condition precedent to the issuance of any permit under G. S. 66-41 to any person, firm or corporation, such person, firm or corporation shall file with the Insurance Commissioner and shall thereafter maintain in force while licensed a bond in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State. Such bond shall be in an amount and in such form as the Insurance Commissioner may require, except that the bond shall be for not less than five thousand dollars (\$5,000.00) and conditioned upon the faithful accounting and payment over of any funds collected for any other person, firm or corporation. The bond shall be continuous in form and shall remain in full force and effect until all monies collected have been accounted for, and it shall be expressly stated in the bond that it is for the benefit of any person, firm or corporation for whom said collection agency engages in the collection of accounts. (1959, c. 1194, s. 3.)

§ 66-42.2. Record of business in State.—Each person, firm or corporation licensed as collection agency in North Carolina shall maintain an office in this State and keep and maintain a full and correct record of all business done in this State, and all such records shall be open to inspection by the Commissioner or his duly authorized deputy upon demand. (1959, c. 1194, s. 3.)

§ 66-42.3. Licenses to meet requirements of article.—All licenses and renewals of licenses issued by the Insurance Department on or after July 1, 1959, under the provisions of this article, shall meet the requirements of this article. (1959, c. 1194, s. 3½.)

§ 66-47. Violation of article a misdemeanor.

Cited in *Divine v. Watauga Hospital*, 137 F. Supp. 628 (1956).

ARTICLE 10.

Fair Trade.

§ 66-52. Authorized contracts relating to sale or resale of commodities bearing trademark, brand or name.

Editor's Note.—For note on constitutionality of fair trade acts, see 31 N. C. Law Rev. 509.

ARTICLE 11.

Government in Business.

§ 66-58. Sale of merchandise by governmental units.—(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or subdivision of any such unit, department or agency, or any individual employee or employees of any such unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of service to the public ordinarily and customarily rendered by private enterprises, or to contract with any person, firm or corporation for the operation or rendering of any such businesses or services on behalf of any such unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of operating or rendering of any of the businesses or services herein referred to is hereby prohibited.

(b) The provisions of subsection (a) of this section shall not apply to:

1. Counties and municipalities.
2. The State Board of Health or the Department of Agriculture for the sale of serums, vaccines, and other like products.
3. The Division of Purchase and Contract, except that said agency shall not exceed the authority granted in the act creating the agency.
4. The State Hospitals for the Insane.
5. The State Commission for the Blind.
6. The North Carolina School for the Blind at Raleigh.
7. The North Carolina School for the Deaf at Morganton.
8. The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to class room work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25c) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State College, and the other schools and colleges for higher education maintained or supported by the State.
9. The Department of Conservation and Development, except that said department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction.

10. Child caring institutions or orphanages receiving State aid.

11. Highlands School in Macon County.

12. The North Carolina State Fair.

13. Rural Electric Memberships Corporations.

14. Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided such leases shall be awarded by the Division of Purchase and Contract to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(c) The provisions of subsection (a) shall not prohibit:

1. The sale of products of experiment stations or test farms.

2. The sale of learned journals, works of art, books or publications of the State Historical Commission or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.

3. The business operation of endowment funds established for the purpose of producing income for educational purposes.

4. The operation of lunch counters by the State Commission for the Blind of the type operated on January 1, 1951, in State buildings in the city of Raleigh.

5. The operation of concession stands in the State Capital during the sessions of the legislature.

6. The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.

7. The operation by penal, correctional or institutions for the care of the blind, or mentally or physically defective, or by the State Department of Agriculture, of dining rooms for the inmates or patients or members of the staff while on duty and for the accommodation of persons visiting such inmates or patients, and other bona fide visitors.

8. The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.

9. The operation by the public schools of school cafeterias.

10. Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.

11. The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.

(d) A department, agency or educational unit named in subsection (b) shall not perform any of the prohibited acts for or on behalf of any other department, agency or educational unit.

(e) Any person, whether employee of the State of North Carolina or not, who shall violate, or participate in the violation of this section, shall be guilty of a misdemeanor. (1939, c. 122; 1951, c. 1090, s. 1; 1957, c. 349, s. 6.)

Editor's Note. — The 1951 amendment rewrote this section. The 1957 amendment rewrote paragraph 6 of subsection (c).

ARTICLE 12.

Coupons for Products of Photography.

§ 66-59. Title of article.

Article Invalid as Applied to Interstate Commerce.—This article is repugnant to the Commerce Clause—Article 1, Section 8, Clause 3, of the Constitution of the

United States. Therefore, the statute is declared invalid and inoperative as applied to persons engaged in interstate commerce.

State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-60. Definitions.

Quoted in State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-61. Coupons redeemable in products of photography prohibited unless bond given.

The bonding requirement of this section reaches beyond the justifiable purpose of the article, and engrafts upon the bond unlimited liability for any and all representations and obligations of any solicitor, without regard for the presence or absence of elements of fraud. Also, in burdening the bond with unlimited liability for any "representation, or other obligation" of any solicitor, the statute in effect suspends settled rules of law governing the relation of principal and agent, under which ordinarily the principal may not be held liable for acts and conduct of the agent beyond the scope of the agent's authority, actual or apparent. These conditions, when interpreted in the light of common knowledge, would seem

so to fetter the bond with contingent liabilities as to make compliance onerously difficult, if not prohibitory. Here the section moves close to, if not beyond, the permissive bounds of the due process and equal protection clauses of the constitutions. State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

Section Is Discriminatory and Unduly Burdensome on Interstate Commerce. — The fixed-sum bonding requirement in this section, in failing to provide flexibility in reasonable relation to the volume of sales, is inherently discriminatory and unduly burdensome on interstate commerce. State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-62. Method of withdrawing bond.

Quoted in State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-63. Remedies for loss sustained through nonperformance of obligation in connection with sale of coupons.

Quoted in State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-64. Violation a misdemeanor.

Quoted in State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

ARTICLE 13.

Miscellaneous Provisions.

§ 66-67. **Disposition by laundries and dry cleaning establishments of certain unclaimed clothing.**—If any person shall fail to claim any garment, clothing, household article or other article delivered for laundering, cleaning or pressing to any laundry or dry cleaning establishment as defined in G. S. 105-85, or any dry cleaning establishment as defined in G. S. 105-74, for a period of four months after the surrender of such articles for processing, the laundry or dry cleaning establishment shall have the right to dispose of such garments, clothing, household articles or other articles by whatever means it may choose, without liability or responsibility to the owner. Provided, however, that before such laundry or dry cleaning establishment may claim the benefit of this section it shall at the time of receiving such garments, clothing, household articles or other articles, have a notice of dimensions of not less than 12 by 18 inches, prominently displayed in a conspicuous place in the office, branch office or retail outlet where said clothes, garments or articles are received, if the same be received at an office, on which notice shall appear the words "NOT RESPONSIBLE FOR GOODS LEFT ON HAND FOR MORE THAN FOUR MONTHS": Pro-

vided further, that any garment or clothing or other article of a value of more than seventy-five dollars (\$75.00) may not be disposed of for a period of two years after the surrender of such articles for processing, in which case such garments, clothing or other articles may be disposed of 30 days after a notice thereof has been sent by registered mail, with return receipt requested, to the last known address of the owner of such garment, clothing or other article; provided further, that the provisions of this section shall also be applicable with respect to the storage of garments, furs, rugs, clothing or other articles after the completion of the period for which storage was agreed to be provided. (1947, c. 975; 1953, c. 1054.)

Editor's Note. — The 1953 amendment rewrote this section.

ARTICLE 14.

Business under Assumed Name Regulated.

§ 66-68. Certificate to be filed; contents.—(a) Before any person or partnership other than a limited partnership engages in business in any county in this State under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof, or before a corporation engages in business in any county other than under its corporate name, such person, partnership, or corporation must file in the office of the clerk of the superior court of such county a certificate giving the following information:

(1) The name under which the business is to be conducted;

(2) The name and address of the owner, or if there is more than one owner, the name and address of each.

(b) If the owner is an individual or a partnership, the certificate must be signed and duly acknowledged by the individual owner, or by each partner. If the owner is a corporation, it must be signed in the name of the corporation and duly acknowledged as provided by G. S. 47-41.

(c) Whenever a partner withdraws from or a new partner joins a partnership, a new certificate shall be filed.

(d) It is not necessary that any person, partnership, or corporation file such certificate in any county where no place of business is maintained and where the only business done in such county is the sale of goods by sample or by traveling agents or by mail. (1913, c. 77, s. 1; C. S., s. 3288; 1951, c. 381, ss. 3, 7.)

Editor's Note. — The 1951 amendment transferred this section from § 59-85 and rewrote the section, making it applicable to corporations, inserting the specific references to partnerships, and making other changes.

Section 10 of the amendatory act provides: "Notwithstanding any express repeal contained in this act or any repeal

implied from its terms and provisions, the existing laws of the State prescribing any punishment for any acts omitted or committed shall continue in effect with respect to all such acts committed or omitted prior to July 1, 1951."

For comment on the 1951 amendments to this article, see 29 N. C. Law Rev. 377, 409.

§ 66-69. Index of certificates kept by clerk.—Each clerk of the superior court of this State shall keep an index which will show alphabetically every assumed name with respect to which a certificate is hereafter so filed in his county.

For the indexing and filing of each such certificate he shall receive a fee of twenty-five cents (25c). (1913, c. 77, s. 2; C. S., s. 3299; 1951, c. 381, ss. 4, 7.)

Editor's Note. — The 1951 amendment transferred this section from § 59-86. The amendment also rewrote the section, eliminating the former provision making a

copy of a certificate presumptive evidence. The deleted provision now appears with slight changes in wording as § 66-69.1.

§ 66-69.1. Copy of certificate prima facie evidence.—A copy of such certificate duly certified by the clerk of the superior court in whose office it has

been filed shall be prima facie evidence of the facts required to be stated therein. (1913, c. 77, s. 2; C. S., s. 3299; 1951, c. 381, ss. 5, 7.)

§ 66-70. Corporations and limited partnerships not affected.—This article shall in no way affect or apply to any corporation created and organized under the laws of this State, or to any corporation organized under the laws of any other state and lawfully doing business in this State, nor shall it in any manner affect the right of any persons to form limited partnerships as provided by the laws of this State. (1913, c. 77, s. 3; C. S., s. 3290; 1951, c. 381, s. 7.)

Editor's Note.—The 1951 amendment to § 66-68 (formerly § 59-85) made that transferred this section from § 59-87. It section applicable to corporations and should be noted that the 1951 amendment partnerships.

§ 66-71. Violation of article a misdemeanor; civil penalty.—(a) Any person, partner or corporation failing to file the certificate as required by this article—

(1) Shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than thirty days, and

(2) Shall be liable in the amount of fifty dollars (\$50.00) to any person demanding that such certificate be filed if he fails to file the certificate within seven days after such demand. Such penalty may be collected in a civil action therefor.

(b) The failure of any person to comply with the provisions of this article does not prevent a recovery by such person in any civil action brought in any of the courts of this State. (1913, c. 77, s. 4; 1919, c. 2; C. S., s. 3291; 1951, c. 381, ss. 6, 7.)

Editor's Note. — The 1951 amendment transferring the reference to "partner or corporation" and the provision for a civil penalty, and making other changes. amended also rewrote the section, in-

ARTICLE 15.

Person Trading as "Company" or "Agent."

§ 66-72. Person trading as "company" or "agent" to disclose real parties.—If any person shall transact business as trader or merchant, with the addition of the words "factor," "agent," "& Company" or "& Co.," or shall conduct such business under any name or style other than his own, except in case of a corporation, and fail to disclose the name of his principal or partner by a sign placed conspicuously at the place wherein such business is conducted, then all the property, stock of goods and merchandise, and choses in action purchased, used and contracted in the course of such business shall, as to creditors, be liable for the debts contracted in the course of such business by the person in charge of same. Provided, this section shall not apply to any person transacting business under license as an auctioneer, broker, or commission merchant; in all actions under this section it is incumbent on such trader or merchant to prove compliance with the same. (1905, c. 443; Rev., s. 2118; C. S., s. 3292; 1951, c. 381, s. 8.)

Editor's Note.—The 1951 amendment transferred this section from § 59-89.

ARTICLE 16.

Unfair Trade Practices in Diamond Industry.

§ 66-73. Definitions.—For the purpose of this article:

- (1) "The diamond industry" or "the industry" as used in this article is a trade, industry or business which shall be construed to embrace all persons, firms, corporations and organizations engaged in selling, offer-

ing for sale, or the distribution in commerce of diamonds (other than industrial diamonds), whether cut, polished or in the rough, synthetic diamonds and imitation diamonds, and of any jewelry item or other products containing diamonds, synthetic diamonds or imitation diamonds.

- (2) "A member of the diamond industry" shall be construed to mean any person, firm, corporation or organization engaged in the business of selling, offering for sale, or distributing in commerce, diamonds (other than industrial diamonds), whether cut, polished, or in the rough, synthetic diamonds and imitation diamonds, and of any jewelry items or other products containing diamonds, synthetic diamonds, or imitation diamonds.
- (3) A "diamond" is a natural mineral consisting essentially of pure carbon crystallized in the isometric system and is found in many colors. Its hardness is 10; its specific gravity approximately 3.52; and it has a refractive index 2.42.
- (4) "Unfair trade practices" as referred to herein are unfair methods of competition, unfair or deceptive acts or practices and other illegal practices which are prohibited by law. (1957, c. 585, s. 1.)

§ 66-74. What constitutes unfair trade practice.—It is an unfair trade practice for any member of the diamond industry:

- (1) To use, or cause or promote the use of, any trade promotional literature, advertising matter, guarantee, warranty, mark, brand, label, trade name, picture, design or device, designation, or other type of oral or written representation, however disseminated or published, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to the type, kind, grade, quality, color, cut, quantity, size, weight, nature, substance, durability, serviceability, origin, preparation, production, manufacture, distribution, or customary or regular price, of any diamond or other product of the industry, or which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in any other material respect.
- (2) In the sale, offering for sale, or distribution of products of the industry to use the unqualified word "diamond" as descriptive of or as an identification for any object or product not meeting the requirements specified in the definition of diamond hereinabove set forth, or which, through meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

The foregoing provisions of subsection (2) have application to the unqualified use of the word "diamond". They are not to be construed as inhibiting:

- a. The use of the words "rough diamond" as descriptive of or as a designation for, uncut or unfaceted objects or products meeting the requirements specified in the mentioned definition of diamond; or
- b. The use of the word "diamond" as descriptive of or as a designation for objects or products meeting the requirements of said definition of diamond, but which have not been symmetrically fashioned with at least seventeen (17) polished facets when in immediate conjunction with the word "diamond", there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond which denotes shape and which usually has less than seventeen (17) facets (e. g., "rose diamond"); or

c. The use of the words "imitation diamond" as descriptive of or as a designation for objects or products which do not meet the requirements of said definition of diamond but have an appearance similar to that of a cut and polished diamond.

When the word "diamond" is so used, the qualifying word or words shall be of at least equal conspicuousness as the word "diamond".

- (3) To use the words "reproduction", "replica", "diamond-like", or similar terms as descriptive of imitation diamonds.
- (4) To use the term "synthetic diamond" as descriptive of any object or product unless such object or product has in fact been artificially created and is of similar appearance and of essentially the same optical and physical properties and chemical structure as a diamond, or to apply the term "diamond" to any such man-made object or products unless it is immediately preceded in each instance with equal conspicuity by the word "synthetic".
- (5) To use the word "perfect" or any other word, expression or representation of similar import, as descriptive of any diamond which discloses flaws, cracks, carbon spots, clouds, or other blemishes or imperfections of any sort when examined in normal daylight, or its equivalent, by a trained eye under a ten-power corrected diamond eye loupe or other equal magnifier.

The use with respect to a stone which is not perfect of any phase (such as "commercially perfect") containing the word "perfect" or "perfectly" is regarded as misleading and in violation of this subsection, and this subsection shall not be construed as approving of the use of the word "perfect", or any word or representation of like import, as descriptive of any diamond that is of inferior color or make. Nothing is to be construed as inhibiting the use of the word "flawless" as descriptive of a diamond which meets the requirements for "perfect" set forth in this subsection.

- (6) In connection with the offering of any ring or rings or other articles of jewelry having a perfect center stone or stones, and side or supplementary stones which are not of such quality, to use the word "perfect" without clearly disclosing that such description applies only to the center stone or center stones.
- (7) To use the term "blue white" or any other term, expression or representation of similar import as descriptive of any diamond which under normal, north daylight or its equivalent, shows any color or any trace of any color, other than blue or bluish.
- (8) To advertise, offer for sale, or sell any diamond which has been artificially colored or tinted by coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means, without disclosure of such fact to purchasers or prospective purchasers, or without disclosure that such artificial coloring or tinting is not permanent, if such is the fact.
- (9) To use the terms "properly cut", "proper cut", "modern cut", "well made", or expressions of similar import, to describe any diamond that is lopsided or so thick or so thin in depth as materially to detract from the brilliance of the stone.
- (10) To use the unqualified expressions "brilliant", or "brilliant cut", or "full cut" to describe, identify or refer to any diamond except a round diamond which has at least thirty-two (32) facets, plus the table above the girdle and at least twenty-four (24) facets below.

Such terms should not be applied to single or rose-cut diamonds, either with or without qualification. They may be applied to emerald

(rectangular) cut and marquise (pointed oval) cut diamonds meeting the above stated facet requirements when, in immediate conjunction with the term used, disclosure is made of the fact that the diamond is of emerald or marquise form.

(11) To use the terms "clean", "eye clean", "commercially clean", "commercially white", or any other terms, expressions, or representations of similar import in advertising, labeling, representing, or describing any diamond when such terms are used for the purpose, or with the capacity and tendency or effect, of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(12) To misrepresent the weight of any diamond or to deceive purchasers or prospective purchasers as to the weight of any diamond.

The standard unit for designation of the weight of a diamond is the carat, which is equivalent to two hundred milligrams ($1/5$ gram). While advertisements may state the approximate weight or range of weights of a group of products, all weight representations regarding individual products shall state the exact weight of the stone or stones and be accurate to within $1/200$ th of a carat (one-half "point").

(13) To state or otherwise represent the weight of all diamonds contained in a ring or other article of jewelry unless such weight figure is accompanied with equal conspicuity by the words "total weight" or words of similar import, so as to indicate clearly that the weight shown is that of all stones in the article and not that of the center or largest stone.

(14) To use the word "gem" to describe, identify or refer to any diamond which does not possess the requisite beauty, brilliance, value and other qualities necessary for classification as a gem.

Not all diamonds are gems. For example: Small pieces of diamond rough or melee weighing only one or two points are not to be described as "gems". Neither should stones which are grossly imperfect or of decidedly poor color be so classified unless they are of such a size as to be rare and desirable and valuable for that reason.

No imitation diamond can be described as a gem under any circumstances.

(15) In connection with the offering for sale, sale, or distribution of diamonds or articles set with diamonds, to use as part of any advertisement, label, packaging material, or other sales promotion literature, any illustration, picture, diagram or other depiction which either alone or in conjunction with accompanying words or phrases has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the type, kind, grade, color, cut, quality, size, weight, or character of any diamond, or which has the capacity and tendency or effect of misleading the purchasing or consuming public in any other material respect.

(16) To use as part of any advertisement, label, packaging material, or other sales promotion literature, any illustration which exaggerates the size of a diamond inset or enlarges it out of proper proportion to the mounting, without clearly and conspicuously stating either the amount that the diamond has been enlarged in the illustration, or that the diamond in the illustration has been "enlarged to show detail".

(17) To represent, directly or indirectly, through the use of any statement or representation in advertising or through the use of any word or term in a corporate or trade name, or otherwise, that said member is a producer, cutter, or importer of diamonds, or owns or controls a cutting plant, or has connections abroad through which importations of rough or cut stones are secured, or maintains offices abroad, when such is

- not the fact, or in any other manner to misrepresent the character, extent, volume, or type of business being conducted.
- (18) To publish or circulate false or misleading price quotations, price lists, terms or conditions of sale or reports as to production or sales which have the capacity and tendency or effect of misleading purchasers, prospective purchasers, or the consuming public, or to advertise, sell or offer to sell diamonds or articles set with diamonds at prices purporting to be reduced from what are, in fact, fictitious or exaggerated manufacturer's or distributor's suggested retail selling price, or that contains what purport to be bona fide price quotations which are in fact higher than the prices at which such products are regularly and customarily sold in bona fide retail transactions. It is likewise an unfair trade practice to distribute, sell or offer for sale to the consuming public in such manner diamonds or articles set with diamonds bearing such false, fictitious, or exaggerated price tags or labels.
- (19) To offer for sale, sell, advertise, describe, or otherwise represent diamonds or diamond-set merchandise as "close-outs", "discontinued lines", or "special bargains", by use of such terms or by words or representations of similar import, when such is not true in fact; or to offer for sale, sell, advertise, describe or otherwise represent such articles where the capacity and tendency or effect thereof is to lead the purchasing or consuming public to believe the same are being offered for sale or sold at greatly reduced prices, or at so-called "bargain" prices when such is not the fact.
- (20) To advertise a particular style or type of product for sale when purchasers or prospective purchasers responding to such advertisement cannot readily purchase the advertised style or type of product from the industry member and the purpose of the advertisement is to obtain prospects for the sale of a different style or type of product than that advertised.
- (21) To use sale practices or methods which:
- a. Deprive prospective customers of a fair opportunity to purchase any advertised style or type of product; or
 - b. To falsely disparage any advertised style or type of product or, without the knowledge of the customer, to substitute other styles or types of products which the advertiser intends to sell instead of the advertised style or type of product.
- (22) To advertise or offer for sale a grossly inadequate supply of products at reduced or bargain prices without disclosure of the inadequacy of the supply available at such prices when such advertisement or offer has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.
- (23) To describe, identify or refer to a diamond as "certified", or to use respecting it any other word or words of similar meaning or import unless:
- a. The identity of the certifier and the specific matters or qualities certified are clearly disclosed in conjunction therewith; and
 - b. The certifier has examined such diamond, has made such certification and is qualified to certify as to such matters and qualities; and
 - c. There is furnished the purchaser a certificate setting forth clearly and nondeceptively the name of the certifier and the matters and qualities certified.
- (24) To aid, abet, coerce or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in this article. (1957, c. 585, s. 2.)

§ 66-75. **Penalty for violation; each practice a separate offense.**— Any person, firm, corporation or organization engaging in any unfair trade practice, as defined in this article, shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned; or both fined and imprisoned in the discretion of the court; and each and every unfair trade practice engaged in shall be deemed a separate offense. (1957, c. 585, s. 3.)

ARTICLE 17.

Closing-Out Sales.

§ 66-76. **Definitions.**—For the purposes of this article, "closing-out sale" shall mean and include all sales advertised, represented or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning; and "person" shall mean and include individuals, partnerships, voluntary associations and corporations. (1957, c. 1058, s. 1.)

§ 66-77. **License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements.** — (a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, unless he shall have obtained a license to conduct such sale from the clerk of the city or town in which he proposes to conduct such a sale. The applicant for such a license shall make to such clerk an application therefor, in writing and under oath at least seven (7) days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, a complete inventory of the goods, wares or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold.

(b) If such clerk shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the clerk shall issue a license, upon the payment of a fee of twenty-five dollars (\$25.00) therefor, together with a bond, payable to the city or town in the penal sum of five hundred dollars (\$500.00), conditioned upon compliance with this article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application; provided, however, that the license fee provided for herein shall be good for a period of thirty (30) days from its date, and if the applicant shall not complete said sale within said thirty (30) day period then the applicant shall make application to such clerk for a license for a new permit, which shall be good for an additional period of thirty (30) days, and shall pay therefor the sum of fifty dollars (\$50.00); and provided further a second extension period of thirty (30) days may be similarly applied for and granted by the clerk upon payment of an additional fee of fifty dollars (\$50.00) and upon the clerk being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this article and is acting in a bona fide manner. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold

such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

(c) Every city or town to whom application is made shall endorse upon such application the date of its filing, and shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury. (1957, c. 1058, s. 2.)

§ 66-78. Additions to stock in contemplation of sale prohibited.—No person in contemplation of a closing-out sale under a license as provided for in § 66-77 shall order any goods, wares or merchandise for the purpose of selling and disposing of the same at such sale, and any unusual purchase and additions to the stock of such goods, wares or merchandise within sixty (60) days prior to the filing of application for a license to conduct such sale shall be presumptive evidence that such purchases and additions to stock were made in contemplation of such sale. (1957, c. 1058, s. 3.)

§ 66-79. Replenishment of stock prohibited.—No person carrying on or conducting a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, under a license as provided in § 66-77 shall, during the continuance of such sale, add any goods, wares or merchandise to the damaged stock inventoried in his original application for such license, and no goods, wares or merchandise shall be sold as damaged merchandise at or during such sale, excepting the goods, wares or merchandise described and inventoried in such original application. (1957, c. 1058, s. 4.)

§ 66-80. Continuation of sale or business beyond termination date.—No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise beyond the termination date specified for such sale, except as otherwise provided for in subsection (b) of § 66-77; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city or town where the inventory for such sale was filed; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. (1957, c. 1058, s. 5.)

§ 66-81. Advertising or conducting sale contrary to article; penalty.—Any person who shall advertise, hold, conduct or carry on any sale of goods, wares or merchandise under the description of closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, contrary to the provisions of this article, or who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined or imprisoned, or both, in the discretion of the court. (1957, c. 1058, s. 6.)

§ 66-82. Sales excepted; liability for dissemination of false advertisement.—The provisions of this article shall not apply to sheriffs, constables or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, State or federal, selling goods, wares or merchandise in the course of their official duties; provided, however, that no newspaper publisher, radio-broadcast licensee, television-broadcast licensee, or other agency or medium for the dissemination of advertising shall be liable under this article by reason of the dissemination of any false advertisement prohibited by this article, unless he has refused, on the written request of any law enforcement officer or agency of this State, to furnish to such officer or agency

the name and address of the person who caused the dissemination of such advertisement. (1957, c. 1058, s. 7.)

§ 66-83. **Restraining or enjoining illegal act.**—Upon complaint of any person the superior court shall have jurisdiction to restrain and enjoin any act forbidden or declared illegal by any provisions of this article. (1957, c. 1058, s. 8.)

§ 66-84. **Counties within article.**—This article shall apply only to the following counties: Alamance, Ashe, Bertie, Buncombe, Burke, Cabarrus, Catawba, Cleveland, Columbus, Craven, Cumberland, Durham, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Jackson, Lee, McDowell, New Hanover, Northampton, Onslow, Orange, Pitt, Randolph, Richmond, Robeson, Stanly, Surry, Swain, Transylvania, Union, Wake and Wayne. (1957, c. 1058, ss. 10½, 10¾; 1959, cc. 928, 1089; c. 1251, s. 1; c. 1287.)

Editor's Note.—The first 1959 amendment inserted the county of Alamance. The third 1959 amendment, effective Jan. 1, 1960, inserted the county of Halifax. The second and fourth 1959 amendments inserted the counties of Burke, Cabarrus, Catawba, Cleveland, Columbus, Craven, Durham, Forsyth, Gaston, New Hanover, Pitt, Randolph, Richmond, Stanly and Wayne.

ARTICLE 18.

Labeling of Household Cleaners.

§ 66-85. **Labeling cleaners containing volatile substances capable of producing toxic effects; definition.**—It shall be unlawful for any person, firm, or corporation manufacturing household cleaners which contain volatile substances capable of producing toxic effects in or on their users when used for their intended domestic purposes to sell or offer for sale any such cleaner unless such cleaner shall be labeled with the word "caution" or other word of similar import and unless directions shall plainly appear thereon as to the safe and proper use of the contents. Such label shall identify the particular substance contained therein. The phrase "volatile substances capable of producing toxic effect" as used herein shall include, but shall not be limited to, the following: Benzene (benzol), toluene (toluol), coal tar naphtha, carbon tetrachloride, trichlorethylene, tetrachlorethylene (perchlorethylene), tetrachlorethane, methyl alcohol, and aromatic and chlorinated hydrocarbons of comparable volatility and toxicity. (1957, c. 1241, s. 1.)

§ 66-86. **Penalty for selling product in violation of article.**—Any person, firm or corporation selling or offering to sell any product in violation of the terms of this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1957, c. 1241, s. 2.)

§ 66-87. **Injunctions.**—Upon complaint by the State Board of Health, the superior court shall have jurisdiction to enjoin any sale or offer of sale which is in violation of the provisions of this article. (1957, c. 1241, s. 3.)

§ 66-88. **Application of article after enactment of federal legislation.**—If the Congress of the United States shall, at any time hereafter, enact in any form legislation designed to regulate the interstate distribution, labeling and sale of hazardous articles in packages suitable for or intended for household use, the State Board of Health shall, upon so determining, issue a proclamation to such effect and, from and after the date of such proclamation, this article shall be applicable only with respect to intrastate manufacture, distribution, sale and labeling by persons, firms or corporations who do not comply with the federal legislation as to interstate distribution, labeling and sale of the materials or articles described in § 66-85. (1957, c. 1241, s. 3½.)

Chapter 67.

Dogs.

Article 2.

License Taxes on Dogs.

Sec.

67-14.1. Dogs injuring deer or bear on wildlife management area may be killed; impounding unmuzzled dogs running at large.

Article 5.

Protection of Livestock and Poultry from Ranging Dogs.

67-30. Appointment of county dog warden authorized; salary, etc.; dog damage fund.

Sec.

67-31. Powers and duties of dog warden.

67-32. Pound; disposition of impounded dogs.

67-33. Dogs to wear collars; tags; kennel tax.

67-34. Board of appraisers; payment of damages; subrogation of county in action against dog owner.

67-35. Unlawful to allow dog to run at large without collar and tag; penalty.

67-36. Article supplements existing laws.

ARTICLE 1.

Owner's Liability.

§ 67-1. Liability for injury to livestock or fowls.

Editor's Note.—

For note on liability of owner for tres-

pass of dogs while hunting, see 33 N. C. Law Rev. 134.

§ 67-2. Permitting bitch at large.

Cited in *Pegg v. Gray*, 240 N. C. 548, 82 S. E. (2d) 757 (1954).

ARTICLE 2.

License Taxes on Dogs.

§ 67-5. Amount of tax.

Local Modification.—By virtue of Session Laws 1955, c. 781, the reference to

Cherokee in the recompiled volume should be deleted.

§ 67-13. Proceeds of tax to school fund; proviso, payment of damages; reimbursement by owner.—The money arising under the provisions of this article shall be applied to the school funds of the county in which said tax is collected: Provided, it shall be the duty of the county commissioners, upon complaint made to them of injury to person or injury to or destruction of property by any dog, upon satisfactory proof of such injury or destruction, to appoint three freeholders to ascertain the amount of damages done, including necessary treatment, if any, and all reasonable expenses incurred, and upon the coming in of the report of such jury of the damage as aforesaid, the said county commissioners shall order the same paid out of any moneys arising from the tax on dogs as provided for in this article. And in cases where the owner of such dog or dogs is known or can be ascertained, he shall reimburse the county to the amount paid out for such injury or destruction. To enforce collection of this amount the county commissioners are hereby authorized and empowered to sue for the same. Provided, further, that all that portion of this section after the word "collected," in line three, shall not apply to Alamance, Anson, Beaufort, Bladen, Caldwell, Catawba, Chatham, Cleveland, Columbus, Currituck, Davie, Duplin, Durham, Gaston, Gates, Graham, Harnett, Hertford, Lincoln, McDowell, Mecklenburg, Moore, Nash, New Hanover, Orange, Pamlico, Perquimans, Person, Robeson, Rowan, Rutherford, Scotland, Stokes, Transylvania, Union, Wayne and Yadkin counties. (1919, c. 77, s. 7; c. 116, s. 7; C. S., s. 1681; Pub. Loc. 1925, c. 54; Pub.

Loc. 1927, cc. 18, 219, 504; 1929, cc. 31, 79; 1933, cc. 28, 387, 477, 526; 1935, c. 402; 1937, cc. 63, 75, 118, 282, 370; 1939, cc. 101, 153; 1941, cc. 8, 46, 132, 287; 1943, cc. 211, 371, 372; 1945, cc. 75, 107, 136, 465; 1947, c. 853, s. 1; 1953, c. 77; 1953, c. 367, s. 7; 1955, cc. 111, 134; 1957, c. 46.)

Local Modification.—Dare: 1953, c. 1042, repealing 1939, c. 155; Granville: 1955, c. 158, s. 5; Guilford: 1957, c. 203, amending 1951 Session Laws, c. 143.

By virtue of Session Laws 1953, c. 367, s. 6, the reference to Orange County in the recompiled volume should be deleted.

Editor's Note. — The 1953 amendments

inserted "Catawba" and "Orange" in the list of counties.

The 1955 amendments inserted "Mecklenberg" and "Pamlico" in the list of counties.

The 1957 amendment inserted "Person" in the list of counties.

§ 67-14.1. Dogs injuring deer or bear on wildlife management area may be killed; impounding unmuzzled dogs running at large.—(a)

Any dog which trails, runs, injures or kills any deer or bear on any wildlife refuge, sanctuary or management area, now or hereafter so designated and managed by the Wildlife Resources Commission, during the closed season for hunting with dogs on such refuge or management area, is hereby declared to be a public nuisance, and any wildlife protector or other duly authorized agent or employee of the Wildlife Resources Commission may destroy, by humane method, any dog discovered trailing, running, injuring or killing any deer or bear in any such area during the closed season therein for hunting such game with dogs, without incurring liability by reason of his act in conformity with this section.

(b) Any unmuzzled dog running at large upon any wildlife refuge, sanctuary, or management area, when unaccompanied by any person having such dog in charge, shall be seized and impounded by any wildlife protector, or other duly authorized agent or employee of the Wildlife Resources Commission.

(c) The person impounding such dog shall cause a notice to be published at least once a week for two successive weeks in some newspaper published in the county wherein the dog was taken, or if none is published therein, in some newspaper having general circulation in the county. Such notice shall set forth a description of the dog, the place where it is impounded, and that the dog will be destroyed if not claimed and payment made for the advertisement, a catch fee of \$1.00 and the boarding, computed at the rate of fifty cents (50c) per day, while impounded, by a certain date which date shall be not less than 15 days after the publication of the first notice. A similar notice shall be posted at the courthouse door.

(d) The owner of the dog, or his agent, may recover such dog upon payment of the cost of the publication of the notices hereinbefore described together with the catch fee of \$1.00 and the expense, computed at the rate of fifty cents (50c) per day, incurred while impounding and boarding the dog.

(e) If any impounded dog is not recovered by the owner within 15 days after the publication of the first notice of the impounding, the dog may be destroyed in a humane manner by any wildlife protector or other duly authorized agent or employee of the North Carolina Wildlife Resources Commission, and no liability shall attach to any person acting in accordance with this section. (1951, c. 1021, s. 1.)

ARTICLE 5.

Protection of Livestock and Poultry from Ranging Dogs.

§ 67-30. Appointment of county dog warden authorized; salary, etc.; dog damage fund.—The board of county commissioners in each county in the State is hereby authorized, in its discretion, to appoint one or more county dog wardens, and to determine the amount of his salary and travel allowance, both of which shall be paid out of the proceeds of the county dog tax. When the county

dog tax fund is insufficient to pay the salary and travel allowance of the county dog warden so appointed, the board of county commissioners is authorized to appropriate funds from its general fund or from any nontax or surplus funds to supplement the dog tax fund so that the salary and travel allowance of the dog warden may be paid. After the payment of such salary and allowance, the remaining proceeds of the county dog tax shall be placed in a special county dog damage fund and applied from time to time in satisfaction of claims for damage as hereinafter provided in this article; provided further, that the liability of any county for damage claims filed pursuant to this article shall be limited to the balance remaining in the county dog damage fund after the payment of the salary and the travel allowance of the county dog warden; and provided further, that all proceeds from the dog tax available in the several counties for the payment of claims under this article shall be held intact in the county dog damage fund until the end of each fiscal year in the county; no dog damage claim shall be paid until the end of each fiscal year and, in the event all approved claims cannot be paid in full, all such claims shall be paid on an equal proportionate basis. In the event that any surplus remains in the county dog damage fund after all dog damage claims have been paid at the end of a fiscal year, such surplus may no sooner than six months after the close of such fiscal year, at the direction of the board of county commissioners, be paid into the county general fund. (1951, c. 931, s. 1; 1955, c. 1333, s. 1; 1957, cc. 81, 840.)

Local Modification.—Franklin: 1953, c. 1005, Orange: 1953, c. 367, ss. 1-5, 8. the first sentence the words "one or more county dog wardens" for the words "a county dog warden." And the second 1957 amendment added the last sentence.

Editor's Note. — The 1955 amendment inserted the second sentence.

The first 1957 amendment substituted in

§ 67-31. Powers and duties of dog warden.—The powers and duties of the county dog warden shall be as follows:

(a) He shall have the power of arrest and be responsible for the enforcement within his county of all public and public-local laws pertaining to the ownership and control of dogs, and shall cooperate with all other law enforcement officers operating within the county in fulfilling this responsibility.

(b) In those counties having a rabies control officer, the county dog warden shall act as assistant to the rabies control officer, working under the supervision of the county health department, to collect the dog tax. In those counties having no rabies control officer, the county dog warden shall serve as rabies control officer. (1951, c. 931, s. 2.)

Local Modification. — Orange: 1953, c. 367, ss. 1-5, 8.

§ 67-32. Pound; disposition of impounded dogs.—The board of county commissioners in each county in which a county dog warden is appointed under this article shall establish and maintain a dog pound in each county, the same to be under the supervision of the county dog warden, for the purpose of impounding lost and stray dogs for a period to be determined by the board of county commissioners during which time the county dog warden shall make every reasonable effort to locate and give notice to the owners of such dogs, or if such owners cannot be located, to find new owners for such dogs. The dog warden shall keep a permanent bound record of the date on which each dog is impounded, and if at the end of the holding period to be determined by the board of commissioners such dogs remain unclaimed by their owners or by prospective owners, such dogs are to be destroyed in a humane manner, under the direct supervision of the county dog warden. Anyone claiming or redeeming a dog at the pound will be required to pay the actual cost of keeping the dog in the pound, as well as any tax due, before any such dog may be released. (1951, c. 931, s. 3; 1955, c. 1333, s. 2.)

Local Modification. — Orange: 1953, c. 367, ss. 1-5, 8.

Editor's Note. — The 1955 amendment changed the period of impounding from

“not to exceed 15 days” to “a period to be determined by the board of county commissioners.”

§ 67-33. Dogs to wear collars; tags; kennel tax.—Every dog in counties where a dog warden is appointed shall be required at all times to wear a collar with the owner's name and address stamped on or otherwise firmly attached to the collar. Each year at tax listing time all dog owners shall be provided by the taxing authorities with a numbered metal tag for each dog listed, said tag to be attached to the collar as evidence that the dog has been listed for taxation; provided, that any operator of a kennel or owner of a pack of dogs may, in lieu of paying the tax on individual dogs as provided by law, pay a kennel tax computed at the rate of \$1.50 per dog, male or female.

Upon the payment of kennel tax in accordance with this schedule, the owner shall be issued metal tags as hereinbefore provided in a number equal to the number of dogs for which the kennel tax is paid; and any dog wearing any such tag during the tax year to which the tax is issued shall be deemed to be in compliance with the provisions of this article in respect as to tags. (1951, c. 931, s. 4; 1957, c. 594.)

Local Modification.—Buncombe: 1953, c. 1007; Orange: 1953, c. 367, ss. 1-5, 8; Wayne: 1957, c. 594.

Editor's Note.—The 1957 amendment rewrote the proviso to the first paragraph.

§ 67-34. Board of appraisers; payment of damages; subrogation of county in action against dog owner.—The board of county commissioners in each county having a dog warden as provided in this article shall appoint a board of appraisers consisting of three men, one to be chosen from among the sheep, livestock or poultry raisers; one from among the fox hunters, and one from the county at large; whose duties it shall be to determine and assess the amount of damage inflicted by dogs in the respective counties. Such damages so determined shall be paid out of the special county dog damage fund of the respective counties. Provided, the boards of commissioners of the several counties shall have the right to settle and pay any claim or claims presented to such board, without appointing a board of appraisers, for such sum or sums as may be agreed upon by the person aggrieved and said board of commissioners.

In case any person shall have received compensation for damages from any county under the provisions of this article and thereafter such person shall sue the owner of the dog inflicting such damage for recovery of damages by reason thereof, then, in such event, any county having paid any such claims to such claimant arising out of the same depredation shall have the full right of subrogation in any action for damages so instituted. (1951, c. 931, s. 5.)

Local Modification. — Orange: 1953, c. 367, ss. 1-5, 8.

§ 67-35. Unlawful to allow dog to run at large without collar and tag; penalty.—In any county in which a dog warden is appointed pursuant to this article, it shall be unlawful for any person who owns or has custody of a dog to allow such dog to be off the premises of such owner or custodian unless such dog is wearing the collar and metal tag as provided by § 67-33. Violation of this section is a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than thirty (30) days. (1951, c. 931, s. 6.)

Local Modification. — Orange: 1953, c. 367, ss. 1-5, 8.

§ 67-36. Article supplements existing laws.—The provisions of this article are to be construed as supplementing and not repealing existing State laws pertaining to the ownership, taxation, and control of dogs. (1951, c. 931, s. 7.)

Chapter 68.

Fences and Stock Law.

Article 4.

Stock along the Outer Banks.

Sec.

- 68-42. Stock running at large prohibited; certain ponies excepted.
- 68-43. Authority of Director of Conserva-

Sec.

- tion and Development to remove or confine ponies on Ocracoke Island and Shackelford Banks.
- 68-44. Penalty for violation of § 68-42.
- 68-45. Impounding stock.
- 68-46. "Outer banks of this State" defined.

ARTICLE 3.

Stock Law.

§ 68-15. Term "stock" defined.

Cross Reference. — For act making Cherokee County "stock law territory", see note to G. S. 68-23.

§ 68-23. Allowing stock at large in stock-law territory forbidden.

Editor's Note.—

For act declaring Warren County to be "stock law territory," see Session Laws 1955, c. 1310.

For act making Cherokee County "stock law territory", and subject to G. S. 68-15, 68-23 to 68-31 and 68-36 to 68-38, see Session Laws 1957, c. 946.

This section impliedly subjects the owner to civil responsibility as a tort-feasor if he knowingly or negligently permits his live-

stock to roam at large in stock-law territory, and in that way proximately causes injury to the person or property of another. Kelly v. Willis, 238 N. C. 637, 78 S. E. (2d) 711 (1953).

Evidence. — That owner knowingly or negligently allowed his mule to run at large on the highway may be inferred from the fact that the mule repeatedly ran loose thereon. Kelly v. Willis, 238 N. C. 637, 78 S. E. (2d) 711 (1953).

§ 68-24. Impounding stock at large in territory. — Any person may take up any livestock running at large within any township or district wherein the stock law shall be in force and impound the same; and such impounder may demand one dollar for each animal so taken up, and fifty cents for each animal for every day such stock is kept impounded, and may retain the same, with the right to use it under proper care, until all legal charges for impounding said stock and for damages caused by the same are paid, the damages to be ascertained by two disinterested freeholders, to be selected by the owner and the impounder, the freeholders to select an umpire, if they cannot agree, and their decision to be final. (Code, s. 2816; Rev., s. 1679; C. S., s. 1850; 1951, c. 569.)

Editor's Note. — The 1951 amendment "fifty cents" to "one dollar" and from increased the amounts in line four from "twenty-five cents" to "fifty cents."

§ 68-36. Injury to stock-law fences misdemeanor in stock-law territory.

Editor's Note. — For act making Cherokee County "stock law territory", and subject to G. S. 68-36 to 68-38, see Session Laws 1957, c. 946.

§ 68-38. Local: Depredations of domestic fowls in certain counties. Madison, 1953, c. 1253.

Editor's Note.—

The 1953 amendment directed that Madison be inserted in the list of counties to which this section is applicable, it being

the purpose of the amendment to make said section applicable to Madison County. As this was the only change made, the rest of the section is not set out.

§ 68-39. **Eastern North Carolina, territory placed under stock law.**

Cross Reference. -- For provisions with regard to stock running at large along the outer banks, see G. S. 68-42 et seq. Applied in *Kelly v. Willis*, 238 N. C. 637, 78 S. E. (2d) 711 (1953).

ARTICLE 4.

Stock along the Outer Banks.

§ 68-42. **Stock running at large prohibited; certain ponies excepted.**—From and after July 1, 1958, it shall be unlawful for any person, firm or corporation to allow his or its horses, cattle, goats, sheep, or hogs to run free or at large along the outer banks of this State. This article shall not apply to horses known as marsh ponies or banks ponies on Ocracoke Island, Hyde County. This article shall not apply to horses known as marsh ponies or banks ponies on Shackelford Banks between Beaufort Inlet and Barden's Inlet in Carteret County. Saving and excepting those animals known as "banker ponies" on the island of Ocracoke owned by the Boy Scouts and not exceeding thirty-five (35) in number. (1957, c. 1057, s. 1.)

Editor's Note.—The act inserting this article became effective July 1, 1958.

§ 68-43. **Authority of Director of Conservation and Development to remove or confine ponies on Ocracoke Island and Shackelford Banks.**

—Notwithstanding any other provisions of this article, the Director of the Department of Conservation and Development shall have authority to remove or cause to be removed from Ocracoke Island and Shackelford Banks all ponies known as banks ponies or marsh ponies if and when he determines that such action is essential to prevent damage to the island. In the event such a determination is made, the Director, in lieu of removing all ponies, may require that they be restricted to a certain area or corralled so as to prevent damage to the island. In the event such action is taken, the Director is authorized to take such steps and act through his duly designated employees or such other persons as, in his opinion, he deems necessary and he may accept any assistance provided by or through the National Park Service. (1957, c. 1057, s. 1½.)

§ 68-44. **Penalty for violation of § 68-42.**—Any person, firm or corporation violating the provisions of § 68-42 shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days. (1957, c. 1057, s. 2.)

§ 68-45. **Impounding stock.** — The provisions of G. S. 68-24 to 68-30, relative to the impounding of stock running at large shall apply with equal force and effect along the outer banks of this State. (1957, c. 1057, s. 3.)

§ 68-46. **"Outer banks of this State" defined.**—For the purposes of this article, the terms "outer banks of this State", shall be construed to mean all of that part of North Carolina which is separated from the mainland by a body of water, such as an inlet or sound, and which is in part bounded by the Atlantic Ocean. (1957, c. 1057, s. 4.)

Chapter 69.
Fire Protection.

Article 1.

Investigation of Fires and Inspection of Premises.

Sec.

69-3.1. Failure to comply with summons or subpoena.

Article 3A.

Rural Fire Protection Districts.

- 69-25.1. Election to be held upon petition of voters.
- 69-25.2. Duties of county board of commissioners as to conduct of election; cost of holding.
- 69-25.3. Ballots.
- 69-25.4. Tax to be levied and used for furnishing fire protection.
- 69-25.5. Methods of providing fire protection.
- 69-25.6. Municipal corporations empowered to make contracts.
- 69-25.7. Administration of special fund;

Sec.

- fire protection district commission.
- 69-25.8. Authority, rights, privileges and immunities of counties, etc., performing services under article.
- 69-25.9. Procedure when area lies in more than one county.
- 69-25.10. Means of abolishing tax district.
- 69-25.11. Changes in area of district.
- 69-25.12. Privileges and taxes where territory added to district.
- 69-25.13. Privileges and taxes where territory removed from district.
- 69-25.14. Contract with city or town to which all or part of district annexed concerning property of district and furnishing of fire protection.
- 69-25.15. When district or portion thereof annexed by municipality furnishing fire protection.

ARTICLE 1.

Investigation of Fires and Inspection of Premises.

§ 69-2. **Insurance Commissioner to make examination; arrests and prosecution.** — It is the duty of the Insurance Commissioner to examine, or cause examination to be made, into the cause, circumstances, and origin of all fires occurring within the State to which his attention has been called in accordance with the provisions of § 69-1, or by interested parties, by which property is accidentally or unlawfully burned, destroyed, or damaged, whenever in his judgment the evidence is sufficient, and to specially examine and decide whether the fire was the result of carelessness or the act of an incendiary. The Commissioner shall, in person, by deputy or otherwise, fully investigate all circumstances surrounding such fire, and, when in his opinion such proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which an examination is herein required to be made, and shall cause the same to be reduced in writing. If the Commissioner, or any deputy appointed to conduct such investigations, is of the opinion that there is evidence to charge any person or persons with the crime of arson, or other wilful burning, or fraud in connection with the crime of arson or other wilful burning, he may arrest with warrant or cause such person or persons to be arrested, charged with such offense, and prosecuted, and shall furnish to the solicitor of the district all such evidence, together with the names of witnesses and all other information obtained by him, including a copy of all pertinent and material testimony taken in the case. (1899, c. 58, s. 2; 1901, c. 387, s. 2; 1903, c. 719; Rev., s. 4819; C. S., s. 6075; 1955, c. 642, s. 1; 1959, c. 1183.)

Editor's Note.—The 1955 amendment inserted in the last sentence the words "or fraud in connection with the crime of arson or other wilful burning." And immediately following the quoted words, the amendment also substituted the words

"he may arrest with warrant or cause such person or persons to be arrested" for the words "he shall cause such person to be arrested."

the second word of the last sentence, and inserted in lieu thereof the words "the Commissioner, or any deputy appointed to conduct such investigations."

The 1959 amendment struck out "he,"

§ 69-3.1. Failure to comply with summons or subpoena.—The failure of a person to comply with a summons or subpoena of the Commissioner of Insurance or his deputy under G. S. 69-3 shall be brought before a court of record and punished as for contempt in the same manner as if he had failed to appear and testify before said court of record. (1955, c. 642, s. 2.)

§ 69-7. Fire prevention and Fire Prevention Day.—It is the duty of the Insurance Commissioner, the Superintendent of Public Instruction and the State Board of Education to provide a pamphlet containing printed instructions for properly conducting fire drills in all schools and auxiliary school buildings and the principal of every public and private school shall conduct at least one fire drill every month during the regular school session in each building in his charge where children are assembled. The fire drills shall include all children and teachers and the use of various ways of egress to assimilate evacuation of said buildings under various conditions, and such other regulations as prescribed by the Insurance Commissioner, Superintendent of Public Instruction and State Board of Education.

The Insurance Commissioner and Superintendent of Public Instruction shall further provide for the teaching of "Fire Prevention" in the colleges and schools of the State, and to arrange for a textbook adapted to such use. The ninth day of October of every year shall be set aside and designated as "Fire Prevention Day", and the Governor shall issue a proclamation urging the people to a proper observance of the day, and the Insurance Commissioner shall bring the day and its observance to the attention of the officials of all organized fire departments of the State, whose duty it shall be to disseminate the materials and to arrange suitable programs to be followed in its observance. (1915, c. 166, s. 5; C. S., s. 6080; 1925, c. 130; 1947, c. 781; 1957, c. 845.)

Cross Reference. — As to requirement that fire prevention be taught in public schools, see § 115-37.

Editor's Note.—The 1957 amendment rewrote this section.

ARTICLE 3A.

Rural Fire Protection Districts.

§ 69-25.1. Election to be held upon petition of voters.—Upon the petition of fifteen per cent of the resident freeholders living in an area lying outside the corporate limits of any city or town, which area is described in the petition and designated as "..... Fire District", the board of county commissioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property, for the purpose of providing fire protection in said district.

missioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property, for the purpose of providing fire protection in said district.

Upon the petition of fifteen per cent (15%) of the resident freeholders living in an area which has previously been established as a fire protection district and in which there has been authorized by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property within the area, the board of county commissioners shall call an election in said area for the purpose of submitting to the qualified voters therein the question of increasing the allowable special tax for fire protection within said district from ten cents (10¢) on the one hundred dollars (\$100.00)

valuation to fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation on all taxable property within such district. Elections on the question of increasing the allowable tax rate for fire protection shall not be held within the same district at intervals less than two years. (1951, c. 820, s. 1; 1953, c. 453, s. 1; 1959, c. 805, ss. 1, 2.)

Local Modification.—Granville: 1957, c. 790, s. 1; Wake: 1955, c. 169, ss. 1-3.

Editor's Note.—Section 9 of the act inserting this article repealed all laws and clauses of laws, except public-local and private laws, in conflict with its provisions.

The 1953 amendment substituted in line two the words "of fifteen per cent of the

resident freeholders" for the words "by a majority of the qualified voters."

The 1959 amendment substituted the words and figures "fifteen cents (15¢)" for "ten cents (10¢)" near the end of the first paragraph, and added the second paragraph.

§ 69-25.2. Duties of county board of commissioners as to conduct of election; cost of holding.—For the election so called as provided in § 69-25.1, the board of commissioners of the county shall provide one or more polling places in said district, shall provide for a registrar or registrars and judges of election at said voting places, shall provide for the registration of all qualified voters living in said district, shall cause to be prepared the necessary ballots for voting at said election, shall fix the time and places for holding the same, and shall conduct said election in every other respect according to the provisions of the laws governing general elections so far as they may be applicable. The cost of holding the election shall be paid by the county. (1951, c. 820, s. 2.)

§ 69-25.3. Ballots.—At said election those voters who are in favor of levying a tax in said district for fire protection therein shall vote a ballot on which shall be written or printed, "In favor of tax for fire protection in

(Here insert name)

Fire Protection District". Those who are against levying said tax shall vote a ballot on which shall be written or printed the words, "Against tax for fire protection in

(Here insert name)

Whenever an election is called pursuant to this article on the question of increasing the tax limit for fire protection in any area, those voters in favor of such increase therein shall vote a ballot on which shall be printed, "In favor of tax increase for fire protection in Fire Protection District". Those who are against increasing the tax limit for fire protection therein shall vote a ballot on which shall be printed, "Against tax increase for fire protection in Fire Protection District." The failure of the election on the question of an increase in the tax for fire protection shall not be deemed to be the abolishment of the special tax for fire protection already in effect in said district. (1951, c. 820, s. 3; 1959, c. 805, s. 3.)

Editor's Note.—The 1959 amendment added the second paragraph.

§ 69-25.4. Tax to be levied and used for furnishing fire protection.—If a majority of the qualified voters voting at said election vote in favor of levying and collecting a tax in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in said district in such amount as it may deem necessary, not exceeding ten cents (10c) on the one hundred dollars (\$100.00) valuation of property in said district from year to year, and shall keep the same as a separate and special fund, to be used only for furnishing fire protection within said district, as provided in § 69-25.5.

Provided, that if a majority of the qualified voters voting at such elections vote in favor of levying and collecting a tax in such district, or vote in favor of increasing the tax limit in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in such districts in such amount as it may deem necessary, not exceeding fifteen cents (15¢) on

the one hundred dollars (\$100.00) valuation of property in said district from year to year. (1951, c. 820, s. 4; 1959, c. 805, s. 4.)

Local Modification.—Granville: 1957, c. 790, s. 2; Wake: 1955, c. 169, ss. 4-5. **Editor's Note.**—The 1959 amendment added the second paragraph.

§ 69-25.5. Methods of providing fire protection.—Upon the levy of such tax, the board of county commissioners shall, to the extent of the taxes collected hereunder, provide fire protection for the district—

(1) By contracting with any incorporated city or town, with any incorporated nonprofit volunteer or community fire department, or with the Department of Conservation and Development to furnish fire protection or,

(2) By furnishing fire protection itself if the county maintains an organized fire department, or

(3) By establishing a fire department within the district, or

(4) By utilizing any two or more of the above listed methods of furnishing fire protection. (1951, c. 820, s. 5.)

§ 69-25.6. Municipal corporations empowered to make contracts.—Municipal corporations are hereby empowered to make contracts to carry out the purposes of this article. (1951, c. 820, s. 6.)

§ 69-25.7. Administration of special fund; fire protection district commission.—The special fund provided by the tax herein authorized shall be administered to provide fire protection as provided in § 69-25.5 by the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, or by a fire protection district commission of three qualified voters of the area, to be known as **Fire Protection District Commission**
(Here insert name)

said board to be appointed by the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, for a term of two years, said commission to serve at the discretion of and under the supervision of the board of county commissioners or boards of county commissioners if the area lies in more than one county. (1951, c. 820, s. 7; 1953, c. 453, s. 2.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 69-25.8. Authority, rights, privileges and immunities of counties, etc., performing services under article.—Any county, municipal corporation or fire protection district performing any of the services authorized by this article shall be subject to the same authority and immunities as a county would enjoy in the operation of a county fire department within the county, or a municipal corporation would enjoy in the operation of a fire department within its corporate limits.

No liability shall be incurred by any municipal corporation on account of the absence from the city or town of any or all of its fire-fighting equipment or of members of its fire department by reason of performing services authorized by this article.

Members of any county, municipal or fire protection district fire department shall have all of the immunities, privileges and rights, including coverage by workmen's compensation insurance, when performing any of the functions authorized by this article, as members of a county fire department would have in performing their duties in and for a county, or as members of a municipal fire department would have in performing their duties for and within the corporate limits of the municipal corporation. (1951, c. 820, s. 8.)

§ 69-25.9. Procedure when area lies in more than one county.—In the event that an area petitioning for a tax election under this article lies in more

than one county said petition shall be submitted to the board of county commissioners of all the counties in which said area lies and an election shall be called which shall be conducted by the joint boards of county commissioners and the cost of same shall be shared equally by all counties.

Upon passage, the tax herein provided shall be levied and collected by each county on all of the taxable property in its portion of the fire protection district; the tax collected shall be paid into a special fund and used for the purpose of providing fire protection for the district. (1953, c. 453, s. 3.)

§ 69-25.10. Means of abolishing tax district.—Upon a petition of fifteen per cent (15%) of the resident freeholders of any special fire protection district or area, at intervals of not less than two years, the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, shall call an election to abolish the special tax for fire protection for the area, the election to be called and conducted as provided in § 69-25.2; if a majority of the registered voters vote to abolish said tax, the commissioners shall cease levying and collecting same and any unused funds of the district shall be turned over to and used by the county commissioners of the county collecting same as a part of its general fund, and any property or properties of the district or the proceeds thereof shall be distributed, used or disposed of equitably by the board of county commissioners or by the boards of county commissioners. (1953, c. 453, s. 4.)

Local Modification.—Wake: 1955, c. 169, s. 6.

§ 69-25.11. Changes in area of district.—After a fire protection district has been established under the provisions of this article and fire protection commissioners have been appointed, changes in the area may be made as follows:

(a) The area of any fire protection district may be increased by including in the boundaries any adjoining territory upon the application of the owner or owners of the territory to be included, the unanimous recommendation in writing of the fire protection commissioners of said district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district and the approval of the board or boards of county commissioners in the county or counties in which said fire protection district is located.

(b) The area of any fire protection district may be decreased by removing therefrom any territory, upon the application of the owner or owners of the territory to be removed, the unanimous recommendation in writing of the fire protection commissioners of said district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the board or boards of county commissioners of the county or counties in which the district is located.

(c) In the case of adjoining fire districts having in effect the same rate of tax for fire protection, the board of county commissioners, upon petition of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the districts affected, shall have the authority to relocate the boundary lines between such fire districts in accordance with the petition or in such other manner as to the board may seem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of fire districts are altered or relocated under this section, the same shall take effect at the be-

ginning of the next succeeding fiscal year after such action is taken. (1955, c. 1270; 1959, c. 805, s. 5.)

Local Modification. — Orange, as to paragraph (a): 1957, c. 302. **Editor's Note.**—The 1959 amendment added paragraph (c).

§ 69-25.12. Privileges and taxes where territory added to district.—In case any territory is added to any fire protection district, from and after such addition, the taxpayers and other residents of said added territory shall have the same rights and privileges and the taxpayers shall pay taxes at the same rates as if said territory had originally been included in the said fire protection district. (1955, c. 1270.)

§ 69-25.13. Privileges and taxes where territory removed from district.—In case any territory is removed from any fire protection district from and after said removal, the taxpayers and other residents of said removed territory shall cease to be entitled to the rights and privileges vested in them by their inclusion in said fire protection district, and the taxpayers shall no longer be required to pay taxes upon their property within said district. (1955, c. 1270.)

§ 69-25.14. Contract with city or town to which all or part of district annexed concerning property of district and furnishing of fire protection.—Whenever all or any part of the area included within the territorial limits of a fire protection district is annexed to or becomes a part of a city or town, the governing body of such district may contract with the governing body of such city or town to give, grant or convey to such city or town, with or without consideration, in such manner and on such terms and conditions as the governing body of such district shall deem to be in the best interests of the inhabitants of the district, all or any part of its property, including, but without limitation, any fire fighting equipment or facilities, and may provide in such contract for the furnishing of fire protection by the city or town or by the district. (1957, c. 526.)

§ 69-25.15. When district or portion thereof annexed by municipality furnishing fire protection.—When the whole or any portion of a fire protection district has been annexed by a municipality furnishing fire protection to its citizens, then such fire protection district or the portion thereof so annexed shall immediately thereupon cease to be a fire protection district or a portion of a fire protection district; and such district or portion thereof so annexed shall no longer be subject to § 69-25.4 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

Nothing herein shall be deemed to prevent the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a fire protection district not annexed by a municipality, as aforesaid. (1957, c. 1219.)

ARTICLE 4.

Hotels; Safety Provisions.

§ 69-27. Alarms, bells and gongs.

Cited in *Parker v. Duke University*, 230 N. C. 656, 55 S. E. (2d) 189 (1949).

Chapter 71.

Indians.

Sec.

71-6. Lumbee Indians of North Carolina; rights, privileges, immunities, obligations and duties.

§ 71-6. Lumbee Indians of North Carolina; rights, privileges, immunities, obligations and duties.—The Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American Colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after April 20, 1953, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges and immunities enjoyed by them as citizens of the State as now provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law. (1953, c. 874.)

Chapter 72.

Inns, Hotels and Restaurants.

Article 5.

Sanitation of Establishments Providing Food and Lodging.

Sec.

72-48.1. Injunctive relief against continued violation, etc.
72-49. Private homes; temporary food and drink stands operated by church, etc.; boarding houses, private clubs, picnics, camp meetings, etc.

Article 6.

Advertisements by Motor Courts, Tourist Camps, etc.

Sec.

72-50. Rate advertisements to contain additional data.
72-51. Violation a misdemeanor.
72-52. Article declared supplemental.

ARTICLE 5.

Sanitation of Establishments Providing Food and Lodging.

§ 72-46. State Board of Health to regulate sanitary conditions of hotels, cafes, etc.—For the better protection of the public health, the State Board of Health is hereby authorized, empowered and directed to prepare and enforce rules and regulations governing the sanitation of any hotel, cafe, restaurant, tourist home, motel, summer camp, food or drink stand, sandwich manufacturing establishment, and all other establishments where food or drink is prepared, handled, and/or served for pay, or where lodging accommodations are provided. The State Board of Health is also authorized, empowered and directed to

- (1) Require that a permit be obtained from said Board before such places begin operation, said permit to be issued only when the establishment complies with the rules and regulations authorized hereunder, and
- (2) To prepare a system of grading all such places as Grade A, Grade B, and Grade C.

No establishment shall operate which does not receive the permit required by this section and the minimum grade of C in accordance with the rules and regulations of the State Board of Health. The rules and regulations shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of lighting, ventilation, water, lavatory facilities, food

protection facilities, bactericidal treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; health of employees; and such other items and facilities as are necessary in the interest of the public health. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1.)

Editor's Note.—The 1955 amendment substituted "motel" for "tourist camp" and "food or drink stand" for "lunch and drink stand," and made other changes in the

first sentence.

The 1957 amendment rewrote and greatly extended this section.

§ 72-47. Inspections; report and grade card.—The officers, sanitarians or agents of the State Board of Health are hereby empowered and authorized to enter any hotel, cafe, restaurant, tourist home, motel, summer camp, food or drink stand, sandwich manufacturing establishment, and all other establishments where food or drink is prepared, handled and/or served for pay, or where lodging accommodations are provided, for the purpose of making inspections, and it is hereby made the duty of every person responsible for the management or control of such hotel, cafe, restaurant, tourist home, motel, summer camp, food or drink stand, sandwich manufacturing establishment or other establishment to afford free access to every part of such establishment, and to render all aid and assistance necessary to enable the sanitarians or agents of the State Board of Health to make a full, thorough and complete examination thereof, but the privacy of no person shall be violated without his or her consent. It shall be the duty of the sanitarian or agent of the State Board of Health to leave with the management, or person in charge at the time of the inspection, a copy of his inspection and a grade card showing the grade of such place, and it shall be the duty of the management, or person in charge to post said card in a conspicuous place designated by the sanitarian where it may be readily observed by the public. Such grade card shall not be removed by anyone, except an authorized sanitarian or agent of the State Board of Health, or upon his instruction. (1941, c. 309, s. 2; 1955, c. 1030, s. 2.)

Editor's Note.—The 1955 amendment substituted "motel" for "tourist camp" and "food or drink stand" for "lunch and drink stand." The amendment also omitted the

word "report" formerly used after "inspection" the second time it appears in the next to last sentence, and made other changes.

§ 72-48. Violation of article a misdemeanor.—Any owner, manager, agent, or person in charge of a hotel, cafe, restaurant, tourist home, motel, summer camp, food or drink stand, sandwich manufacturing establishment, or any other establishment where food or drink is prepared, handled and/or served for pay, or where lodging accommodations are provided, or any other person who shall willfully obstruct, hinder or interfere with a sanitarian, agent, or officer of the State Board of Health in the proper discharge of his duty, or who shall be found guilty of violating any of the other provisions of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars (\$10.00), nor more than fifty dollars (\$50.00), or imprisoned for not more than thirty days, and each day that he shall fail to comply with this article, or operate a place with a rating of less than grade C shall be a separate offense. (1941, c. 309, s. 3; 1955, c. 1030, s. 3.)

Editor's Note.—The 1955 amendment substituted "motel" for "tourist camp" and

"food or drink stand" for "lunch and drink stand," and made other changes.

§ 72-48.1. Injunctive relief against continued violation, etc.—If any person shall violate or threaten to violate the provisions of this article or any rules and regulations adopted pursuant thereto and such violation, if continued, or such threatened violation, if committed, is or may be dangerous to the

public health, or if any person shall hinder or interfere with the proper performance of duty of a sanitarian, agent or officer of the State Board of Health or of any local board of health and such hindrance or interference is or may be dangerous to the public health, the State Health Director or local health director may institute an action in the superior court of the county in which the violation, threatened violation, hindrance or interference occurred for injunctive relief against such continued violation, threatened violation, hindrance or interference, irrespective of all other remedies at law, and upon the institution of such an action, the procedure shall be in accordance with the provisions of article 37 of chapter 1 of the General Statutes. (1957, c. 1214, s. 2.)

§ 72-49. Private homes; temporary food and drink stands operated by church, etc.; boarding houses, private clubs, picnics, camp meetings, etc.—This article shall not apply to private homes providing food and/or lodging to permanent house guests. The term “permanent house guests” shall mean guests receiving food and/or lodging accommodations for periods of a week or longer and who pay for such accommodations and the visitors of said guests. Provided further that this article shall not apply to food or drink stands operated by church, civic or charitable organizations for a period of one week or less. Provided, food or drink stands operated by church, civic or charitable organizations for a period of one week or less shall meet minimum sanitation requirements but shall not be subject to grading. Provided further, that this article shall not apply to boarding houses having regular boarders, private clubs, picnics, camp meetings, reunions, box suppers, field trials, occasional fund-raising suppers and similar gatherings conducted from time to time by church, civic or charitable organizations. (1955, c. 1030, s. 4; 1957, c. 1214, s. 3.)

Editor’s Note.—The 1957 amendment added the last two provisos.

ARTICLE 6.

Advertisements by Motor Courts, Tourist Camps, etc.

§ 72-50. Rate advertisements to contain additional data.—It shall be unlawful for any person, firm, or corporation, who owns, operates or who has control of the operation of any motor court, tourist court, tourist camp, or guest house to publish or cause to be displayed in writing, or by any other means, any advertisement which includes a statement relating to the rates or charges obtaining at such motor court, tourist court, tourist camp, or guest house, unless such advertisement shall, with equal prominence, contain additional data relating to such room rates, in the following particulars:

(a) Whether the rate advertised is for a single or multiple occupancy of the room;

(b) The number of rooms or units in each price level where such advertisement indicates varying rates; and

(c) The dates or period of time during which such advertised rates are available. (1955, c. 1200, s. 1.)

§ 72-51. Violation a misdemeanor.—Any person, firm, or corporation, violating the provisions of this article shall be guilty of a misdemeanor and shall, upon conviction, be punished as provided by law in the case of misdemeanors. (1955, c. 1200, s. 2.)

§ 72-52. Article declared supplemental.—This article is declared to be supplemental in nature and shall not be construed to repeal any existing law relating to the operation of any motor court, tourist court, tourist camp, or guest house. (1955, c. 1200, s. 3.)

Chapter 74. Mines and Quarries.

ARTICLE 3.

Waterways Obtained.

§ 74-31. Disposition of waste.

Strictly Construed.—This section being in derogation of the common law must be strictly construed. *McKinney v. Deneen*, 231 N. C. 540, 58 S. E. (2d) 107 (1950).

Modification of Stream Pollution Law in Interest of Miners.—While this section authorizes persons engaged in the business of mining kaolin and mica to discharge the water used in washing the products, together with the incidental waste and sediment, into the natural

courses and streams of the State, it does not purport to relieve such persons from liability for any damages which may directly result therefrom. This section would seem to be nothing more than a modification of the prevailing stream pollution law in the interest of miners of kaolin and mica. *McKinney v. Deneen*, 231 N. C. 540, 58 S. E. (2d) 107 (1950); *Phillips v. Hassett Min. Co.*, 244 N. C. 17, 92 S. E. (2d) 429 (1956).

Chapter 75. Monopolies and Trusts.

Sec.

75-5. Particular acts prohibited.

§ 75-4. Contracts to be in writing.

Oral Contract Void and Unenforceable.
—An oral contract which prohibits defendant's right to do business except through plaintiff as its exclusive distributor, limits substantially defendant's right to do business in North Carolina. Hence, under this section, the oral contract is

void and unenforceable. *Radio Electronics Co. v. Radio Corp.*, 244 N. C. 114, 92 S. E. (2d) 664 (1956).

Applied in *Maola Ice Cream Co. v. Maola Ice Cream Co.*, 238 N. C. 317, 77 S. E. (2d) 910 (1953).

§ 75-5. Particular acts prohibited.—(a) As used in this section:

(1) "Person" includes any person, partnership, association or corporation;
(2) "Goods" include goods, wares, merchandise, articles or other things of value.

(b) In addition to the other acts declared unlawful by this chapter, it is unlawful for any person directly or indirectly to do, or to have any contract express or knowingly implied to do, any of the following acts:

(1) To agree or conspire with any other person to put down or keep down the price of any goods produced in this State by the labor of others which goods the person intends, plans or desires to buy.

(2) To sell any goods in this State upon condition that the purchaser thereof shall not deal in the goods of a competitor or rival in the business of the person making such sales.

(3) To willfully destroy or injure, or undertake to destroy or injure, the business of any competitor or business rival in this State with the purpose of attempting to fix the price of any goods when the competition is removed.

(4) While engaged in buying or selling any goods within the State, through himself or together with or through any allied, subsidiary or dependent person, to injure or destroy or undertake to injure or destroy the business of any rival or competitor, by unreasonably raising the price of any goods bought or by unreasonably lowering the price of any goods sold with the purpose of increasing the

profit on the business when such rival or competitor is driven out of business, or his business is injured.

(5) While engaged in dealing in goods within this State, at a place where there is competition, to sell such goods at a price lower than is charged by such person for the same thing at another place, when there is not good and sufficient reason on account of transportation or the expense of doing business for charging less at the one place than at the other, or to give away such goods, with a view to injuring the business of another.

(6) While engaged in buying or selling any goods in this State, to have any agreement or understanding, express or implied, with any other person not to buy or sell such goods within certain territorial limits within the State, with the intention of preventing competition in selling or to fix the price or prevent competition in buying such goods within these limits.

(c) Nothing herein shall be construed to make it illegal for an agent to represent more than one principal, but this provision shall not be deemed to authorize two or more principals to employ a common agent for the purpose of suppressing competition or preventing the lowering of prices.

(d) This section does not make it illegal for a person to sell his business and good will to a competitor, and agree in writing not to enter business in competition with the purchaser in a limited territory if such agreement does not violate the principles of the common law against trusts and does not otherwise violate the provisions of this chapter. (1913, c. 41, s. 5; C. S., s. 2563; 1953, c. 113.)

Editor's Note. — The 1953 amendment, effective July 1, 1953, rewrote this section.

For note on "requirements contracts" as violations of this section, see 29 N. C. Law Rev. 316.

Contract in Violation of Section Unenforceable.—

In accord with original. See *Radio Electronics Co. v. Radio Corp.*, 244 N. C. 114, 92 S. E. (2d) 664 (1956).

Agreement Contravening Section. — A single instrument whereby the owner of lands leased same to an oil company rent free, and the oil company subleased the property back to the owner rent free, upon

agreement that only the petroleum products of the oil company should be sold at the filling station, was held void, since the only consideration was the promise of the oil company to sell its products to the owner and the promise of the owner to handle such products to the exclusion of similar merchandise of competitors, which agreement was in contravention of this section, and this result is not affected by a recital in the writing that the owner signed same as part of consideration for a deed to the property executed by a third person. *Arey v. Lemons*, 232 N. C. 531, 61 S. E. (2d) 596 (1950).

Chapter 75A.

Motorboats.

Sec.	Sec.
75A-1. Declaration of policy.	of interest, abandonment, etc.;
75A-2. Definitions.	change of address; unauthorized numbers.
75A-3. Wildlife Resources Commission to administer chapter; Motorboat Committee; funds for administration.	75A-6. Classification and required lights and equipment; rules and regulations.
75A-4. Identification numbers required.	75A-7. Exemption from numbering requirements.
75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer	75A-8. Boat liveries.
	75A-9. Muffling devices.
	75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.
	75A-11. Duty of operator involved in

Sec.	collision, accident or other casualty.	Sec.	75A-16. Filing and publication of rules and regulations; furnishing copies to owners.
75A-12.	Furnishing information to agency of United States.	75A-17.	Enforcement of chapter.
75A-13.	Water skis, surfboards, etc.	75A-18.	Penalties.
75A-14.	Regattas, races, marine parades, tournaments or exhibitions.	75A-19.	Operation of watercraft by manufacturers, dealers, etc.
75A-15.	Local regulation.		

§ 75A-1. **Declaration of policy.**—It is the policy of this State to promote safety for persons and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity of laws relating thereto. (1959, c. 1064, s. 1.)

Editor's Note.—The act from which this chapter was derived is effective as of Jan. 1, 1960.

§ 75A-2. **Definitions.**—As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- (2) "Motorboat" means any vessel propelled by machinery of more than ten horsepower, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- (4) "Waters of this State" means any public waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State.
- (5) "Person" means an individual, partnership, firm, corporation, association, or other entity.
- (6) "Operate" means to navigate or otherwise use a motorboat or a vessel. (1959, c. 1064, s. 2.)

§ 75A-3. **Wildlife Resources Commission to administer chapter; Motorboat Committee; funds for administration.**—(a) It shall be the duty and responsibility of the North Carolina Wildlife Resources Commission to enforce and administer the provisions of this chapter.

(b) The chairman of the Wildlife Resources Commission shall designate from among the members of the Wildlife Resources Commission three members who shall serve as the Motorboat Committee of the Wildlife Resources Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this chapter.

(c) All expenses required for administration and enforcement of this chapter shall be paid from the funds collected pursuant to the numbering provisions of this chapter, provided however, that the Wildlife Resources Commission is hereby authorized, subject to the approval of the Advisory Budget Commission and the Governor and Council of State, to borrow funds from the Contingency and Emergency Fund in an amount not to exceed one hundred thousand dollars (\$100,000.00), to be used for initiating the provisions of this chapter and

to be repaid within two years from the funds collected pursuant to the numbering provisions of this chapter. All monies collected pursuant to the numbering provisions of this chapter shall be deposited in the State treasury and credited to a special fund known as the Wildlife Resources Fund and accounted for as a separate part thereof. The said monies shall be made available to the Wildlife Resources Commission, subject to the provisions of the Executive Budget Act and the provisions of the Personnel Act of the General Statutes of North Carolina, for the administration and enforcement of this chapter as herein provided and for educational activities relating to boating safety and for no other purpose. All monies collected pursuant to the numbering provisions of this chapter and monies otherwise provided for in this chapter shall be made available to carry out the intent and purposes as set forth herein in accordance with plans approved by the Wildlife Resources Commission and all such funds are hereby appropriated, reserved, set aside and made available until expended for the enforcement and administration of this chapter; provided that the Wildlife Resources Commission is hereby authorized to adopt a plan or formula for the use of said monies for employing and equipping such additional personnel as may be necessary for carrying out the provisions of this chapter and for paying a proportionate share of the salaries, expense, and operational costs of existing personnel according to the time and effort expended by them in carrying out the provisions of this chapter. Such plan or formula may be altered or amended from time to time by the Wildlife Resources Commission as existing conditions may warrant. No funds derived from the sale of hunting licenses or fishing licenses shall be expended or diverted for carrying out the provisions of this chapter. (1959, c. 1064, s. 3.)

§ 75A-4. Identification numbers required.—Every motorboat on the waters of this State shall be numbered. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally-approved numbering system of another state, and unless

- (1) The certificate of number awarded to such motorboat is in full force and effect, and
- (2) The identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat. (1959, c. 1064, s. 4.)

§ 75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers.—(a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner, or his agent, of the motorboat and shall be accompanied by a fee of three dollars (\$3.00). Upon receipt of the application in approved form the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law

or a federally-approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this State in excess of the 90-day reciprocity period provided for in § 75A-7 (1). Such recordation shall be in the manner and pursuant to the procedure required for the award of a number under subsection (a) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a motorboat change, a new application form with fee of one dollar (\$1.00) shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of fifty cents (50¢). Possession of the certificate shall in cases involving prosecution for violation of any provision of this chapter be prima facie evidence that the person whose name appears thereon is the owner of the boat referred to therein.

(d) In the event that an agency of the United States government shall have in force an over-all system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this chapter by the Wildlife Resources Commission shall be in conformity therewith.

(e) The Wildlife Resources Commission may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity with this chapter and with any rules and regulations of the Commission, shall be valid as if awarded directly by the Commission.

(f) All records of the Wildlife Resources Commission made or kept pursuant to this section shall be public records.

(g) Every certificate of number awarded pursuant to this chapter shall continue in full force and effect for a period of one year unless sooner terminated or discontinued in accordance with the provisions of this chapter. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of the same.

(h) Each certificate of number awarded pursuant to this chapter must be renewed each year on or before January 1; otherwise, such certificate shall lapse and be void. Application for renewal shall be submitted on forms approved by the Wildlife Resources Commission and shall be accompanied by a fee of three dollars (\$3.00).

(i) The owner shall furnish the Wildlife Resources Commission notice of the transfer of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this State pursuant to subsections (a) and (b) of this section or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction, or abandonment shall terminate the certificate of number for such motorboat except that, in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number.

(j) Any holder of a certificate of number shall notify the Wildlife Resources Commission within fifteen days if his address no longer conforms to the address appearing on the certificate, and shall, as a part of such notification, furnish the Commission his new address. The Commission may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(k) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this chapter shall be painted, attached, or otherwise displayed on either side of the bow of such motorboat. (1959, c. 1064, s. 5.)

§ 75A-6. **Classification and required lights and equipment; rules and regulations.**—(a) Motorboats subject to the provisions of this chapter shall be divided into four classes as follows:

- (1) Class A. Less than sixteen feet in length.
- (2) Class 1. Sixteen feet or over and less than twenty-six feet in length.
- (3) Class 2. Twenty-six feet or over and less than forty feet in length.
- (4) Class 3. Forty feet or over.

(b) Every motorboat in all weathers from sunset to sunrise shall carry and exhibit the following lights when under way, and during such times no other lights which may be mistaken for those prescribed shall be exhibited:

- (1) Class A shall carry a white light to show all around the horizon. Class 1 shall carry a combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw light from right ahead to two points abaft the beam of their respective sides.
- (2) Every motorboat of Classes 2 and 3 shall carry the following lights:
 - a. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.
 - b. A bright white light aft to show all around the horizon and higher than the white light forward.
 - c. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam of the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(3) Motorboats of Classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft prescribed by this section. Motorboats of Classes 2 and 3 when so propelled, shall carry the colored side lights, suitably screened, but not the white lights prescribed by this section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subsection, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(5) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

(c) Any vessel may carry and exhibit the lights required by the Federal Regulations for Preventing Collisions at Sea, 1948, Federal Act of October 11, 1951, (33 USC 143-147d) as amended, in lieu of the lights required by subsection (b) of this section.

(d) Every motorboat of Classes 1, 2, or 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

(e) Every motorboat of Classes 2 or 3 shall be provided with an efficient bell.

(f) Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, so placed as to be readily accessible: Provided, that every motorboat carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commission for each person on board.

(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Wildlife Resources Commission, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(h) The provisions of subsections (d), (e), and (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to § 75A-14 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Wildlife Resources Commission.

(j) Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Wildlife Resources Commission properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

(k) The Wildlife Resources Commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or, with the navigation rules promulgated by the United States coast guard.

(l) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(m) In the event that any of the regulations of subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this section are in conflict with the equipment regulations of the Federal Motorboat Act of 1958 as amended, the Wildlife Resources Commission is hereby granted the authority to adopt such regulations as are necessary to conform with the Federal Motorboat Act of 1958 as amended. (1959, c. 1064, s. 6.)

§ 75A-7. Exemption from numbering requirements.—A motorboat shall not be required to be numbered under this chapter if it is:

(1) A motorboat which is required to be awarded a number pursuant to federal law or a federally-approved numbering system of another state, and for which a number has been so awarded: Provided, that any such boat shall not have been within this State for a period in excess of 90 consecutive days.

(2) A motorboat from a country other than the United States temporarily using the waters of this State.

(3) A motorboat whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat. (1959, c. 1064, s. 7.)

§ 75A-8. Boat liveries.—It shall be unlawful for the owner of a boat livery to rent a boat equipped with more than ten horsepower to any person

unless the provisions of this chapter have been complied with. It shall be the duty of owners of boat liveryes to equip all motorboats rented as required by this chapter. (1959, c. 1064, s. 8.)

§ 75A-9. **Muffling devices.**—The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in § 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. (1959, c. 1064, s. 9.)

§ 75A-10. **Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.**—(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana. (1959, c. 1064, s. 10.)

§ 75A-11. **Duty of operator involved in collision, accident or other casualty.**—(a) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to render persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of one hundred dollars (\$100.00), shall, within ten days, file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence. (1959, c. 1064, s. 11.)

§ 75A-12. **Furnishing information to agency of United States.**—In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the Wildlife Resources Commission pursuant to § 75A-11 (b) shall be transmitted to said official or agency of the United States. (1959, c. 1064, s. 12.)

§ 75A-13. **Water skis, surfboards, etc.**—(a) No person shall operate a vessel on any waters of this State for towing a person or persons on water skis, or a surfboard, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being towed or unless the skiers wear a life preserver or unless the boat is equipped with a rear view mirror.

(b) No person shall operate a vessel on any water of this State towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under § 75A-14.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with any object or person. (1959, c. 1064, s. 13.)

§ 75A-14. Regattas, races, marine parades, tournaments or exhibitions.—(a) The Wildlife Resources Commission may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions on any waters of this State. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat, or other boat race, marine parade, tournament, or exhibition is proposed to be held, the person in charge thereof, shall, at least fifteen days prior thereto, file an application with the Wildlife Resources Commission for permission to hold such regatta, motorboat, or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat, or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the Wildlife Resources Commission in writing.

(b) The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a State permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States. (1959, c. 1064, s. 14.)

§ 75A-15. Local regulation.—(a) Any subdivision of this State may at any time, but only after public notice, make formal application to the Wildlife Resources Commission for special rules and regulations with reference to the safe and reasonable operation of vessels on any water within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(b) The Wildlife Resources Commission is hereby authorized to make special rules and regulations with reference to the safe and reasonable operation of vessels on any waters within the territorial limits of any subdivision of this State; provided however, that such rules and regulations governing the operation of vessels on State-owned lakes shall be made exclusively by the Department of Conservation and Development. (1959, c. 1064, s. 15.)

§ 75A-16. Filing and publication of rules and regulations; furnishing copies to owners.—A copy of the regulations adopted pursuant to this chapter, and of any amendments thereto, shall be filed in the office of the Wildlife Resources Commission and in the office of the Secretary of State of North Carolina and in the office of the clerks of the superior courts of the counties in which such boats are operated. Rules and regulations shall be published by the Wildlife Resources Commission in a convenient form, and a copy of such rules and regulations shall be furnished each owner who secures a certificate of number pursuant to this chapter. (1959, c. 1064, s. 16.)

§ 75A-17. Enforcement of chapter.—(a) Every wildlife protector and every other law enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this chapter and in the exercise thereof shall have authority to stop any vessel subject to this chapter; and, after having identified himself in his official capacity, shall have authority to board and inspect any vessel subject to this chapter.

(b) In order to secure broader enforcement of the provisions of this chapter, the Wildlife Resources Commission is authorized to enter into an agreement with the Department of Conservation and Development whereby the enforcement personnel of the Commercial Fisheries Division shall assume responsibility for enforcing the provisions of this chapter in the territory and area normally

policed by such enforcement personnel and whereby the Wildlife Resources Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this chapter, when such ratio has been agreed upon by both of the contracting agencies. Such agreement may be modified from time to time as conditions may warrant. (1959, c. 1064, s. 17.)

§ **75A-18. Penalties.**—(a) Any person who violates any provision of §§ 75A-4 to 75A-6, 75A-8, 75A-9, 75A-11, 75A-13 and 75A-14 shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed fifty dollars (\$50.00) for each such violation.

(b) Any person who violates any provision of § 75A-10 shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed five hundred dollars (\$500.00) or imprisonment for not to exceed six months, or both, for each violation. (1959, c. 1064, s. 18.)

§ **75A-19. Operation of watercraft by manufacturers, dealers, etc.**—Notwithstanding any other provisions of this chapter, the Wildlife Resources Commission may promulgate such rules and regulations regarding the operation of watercraft by manufacturers, distributors, dealers, and demonstrators as the Commission may deem necessary and proper. (1959, c. 1064, s. 18½.)

Chapter 76.

Navigation.

ARTICLE 1.

Cape Fear River.

§ 76-1. Board of commissioners of navigation and pilotage.

Constitutionality.—

In accord with original. See *St. George*

v. Hanson, 239 N. C. 259, 78 S. E. (2d) 885 (1954).

§ 76-2. Rules to regulate pilotage service.

Court's Interference with Discretion of Board.—The determination of the qualifications, arrangements and stations of pilots, and as to whether one or more of the eleven pilots actively engaged in service on March 7, 1927, shall be reduced for cause involves judgment on the part of the licensing board, and generally calls for an examination of evidence and the passing upon questions of fact. Where such is the case, a court will not interfere with the board's judgment or discretion, unless it is arbitrarily exercised, and will not attempt by mandamus to compel it to decide in a particular way. *St. George v. Hanson*, 239 N. C. 259, 78 S. E. (2d) 885 (1954).

Mandamus to Reinstate License.—Where

plaintiff sought the reinstatement of his pilot's license under this section, and the parties waived jury trial and agreed that the court might find the facts, it was held that there being no finding or request for finding that plaintiff's license was revoked or his application for reinstatement refused on the ground that there was a sufficient number of pilots for the commerce on the river, or that the license was revoked or reinstatement refused without cause, mandamus will not lie to compel the issuance of license, since in such instance the writ would control the exercise of judgment by the licensing board. *St. George v. Hanson*, 239 N. C. 259, 78 S. E. (2d) 885 (1954).

§ **76-13. When employment compulsory; rates of pilotage.**—(a) All vessels, coastwise or foreign, over sixty (60) gross tons, shall on and after July 1, 1959, take a State-licensed pilot from sea to Southport, and from Southport to sea, and the rates of pilotage shall be the rates given in Column No. 1 below, designated "From Sea to Southport or Vice Versa"; the employment of pilots from Southport to Wilmington and from Wilmington to Southport is optional, but any vessel taking a pilot from Southport to Wilmington, or from Wilmington to Southport, shall employ only a State-licensed pilot, and the rate

of pilotage shall be the rates in Column No. 2 below, designated "From Southport to Wilmington or Vice Versa."

Draft Feet and under	COLUMN No. 1	COLUMN No. 2
	<i>From Sea to South- port or Vice Versa</i>	<i>From Southport to Wilmington or Vice Versa</i>
10	\$ 46.50	\$ 31.00
10½	49.00	32.50
11	51.50	34.00
11½	54.00	35.50
12	56.00	37.00
12½	58.00	39.00
13	60.50	40.50
13½	63.00	42.00
14	65.00	43.50
14½	67.50	45.00
15	70.00	46.50
15½	72.50	48.00
16	74.50	49.50
16½	77.00	51.00
17	79.00	53.00
17½	81.50	54.50
18	83.50	56.00
18½	86.00	57.50
19	88.50	59.00
19½	91.00	60.50
20	93.00	62.00
20½	95.50	63.50
21	98.00	65.00
21½	100.00	67.00
22	102.50	68.00
22½	104.50	70.00
23	107.00	71.50
23½	109.50	73.00
24	111.50	74.50
24½	114.00	76.00
25	116.50	77.50
25½	119.00	79.00
26	121.00	80.50
26½	123.50	82.00
27	125.50	84.00
27½	128.00	85.50
28	130.00	87.00
28½	132.50	88.50
29	135.00	90.00
29½	137.50	91.50
30	139.50	93.00
30½	142.00	94.50
31	144.50	96.00
31½	147.00	97.50
32	149.00	99.00
32½	151.00	101.00
33	153.50	102.50
33½	156.00	104.00
34	158.00	105.50
34½	160.50	107.00
35	163.00	108.50

(b) In addition to the above regular charges on draft, vessels over eleven thousand (11,000) gross tons shall be charged six dollars (\$6.00) per each one thousand (1,000) gross tons or fraction thereof for pilotage from sea to Southport or Southport to sea and four dollars (\$4.00) per each one thousand (1,000) gross tons or fraction thereof for pilotage from Southport to Wilmington or Wilmington to Southport.

(c) The charge for pilotage services in shifting any vessel within the harbor shall be twenty-five dollars (\$25.00).

(d) Detention of pilots on board vessels because of weather conditions preventing pilots being removed shall be charged at the rate of ten dollars (\$10.00) per day plus transportation cost for return trip.

(e) A charge of ten dollars (\$10.00) shall be made for cancellation of vessel's sailing without at least one hour's notice of cancellation to pilot, except cancellation caused by weather conditions.

(f) The charge for pilotage services during adjustment of compasses shall be fifty dollars (\$50.00).

(g) The charge for pilotage services during calibration of radio direction finder shall be fifty dollars (\$50.00).

(h) The charge for pilotage services during adjustment of compasses and calibration of radio direction finder shall be seventy-five dollars (\$75.00).

(i) All vessels calling at either of the Cape Fear River ports which require pilotage will pay full pilotage rates regardless of the reason of call. (1921, c. 79, s. 13; C. S., s. 6943(m); 1927, c. 158, s. 5; 1959, c. 1042.)

Editor's Note.—

The 1959 amendment rewrote this section.

ARTICLE 5.

General Provisions.

§ 76-56. **Harbor master; how appointed where no board of navigation.**—Where no board of navigation exists the governing body of any incorporated town, situated on any navigable watercourse, shall have power to appoint a harbor master for the port, who shall have the same power and authority in their respective ports as the harbor master of Wilmington is by this chapter given for that port, and shall receive like fees and no others.

The board of county commissioners of any county is authorized to appoint a harbor master for any unincorporated community situated on any navigable watercourse in their respective counties. Harbor masters appointed hereunder shall have the same power and authority and shall receive the same fees as set forth in G. S. 76-18. (Rev., s. 4983; C. S., s. 6997; 1953, c. 445.)

Editor's Note. — The 1953 amendment added the second paragraph.

ARTICLE 6.

Morehead City Navigation and Pilotage Commission.

§ 76-61. **Examination and licensing of pilots.**—The board, or a majority of them, may from time to time examine, or cause to be examined, such persons as may offer themselves to be pilots for Old Topsail Inlet and Beaufort Bar, and shall give to such as are approved commissions under their hands and the seal of the board, to act as pilots for Old Topsail Inlet and Beaufort Bar; and the number of pilots so commissioned, shall be left to the discretion of the board. (1947, c. 748; 1953, c. 436, s. 1.)

Editor's Note. — The 1953 amendment number of pilots commissioned at one deleted the former provision limiting the time to three.

§ 76-62. **Appointment and regulation of pilots' apprentices.**—The board is hereby authorized to appoint in its discretion apprentices, and to make and enforce reasonable rules and regulations relating to apprentices. No apprentice shall be required to serve for a longer period than three years in order to obtain a license to pilot vessels of a draught of not exceeding fifteen (15) feet, and one year thereafter for a license to pilot vessels of any draught. No one shall be entered as an apprentice who is under the age of 21 years. (1947. c. 748; 1953. c. 436, s. 2.)

Editor's Note. — The 1953 amendment of two licensed pilots," formerly appearing deleted the words "nor shall the board li- at the end of this section.
cense a pilot except upon written approval

Chapter 77.

Rivers and Creeks.

Article 2.

Obstructions in Streams.

Sec.

77-14. Obstructions in streams and drainage ditches.

ARTICLE 1.

Commissioners for Opening and Clearing Streams.

§ 77-7. Failure of owner of dam to keep gates, etc.

Cited in *Letterman v. Mica Co.*, 249 N.

C. 769, 107 S. E. (2d) 753 (1959).

ARTICLE 2.

Obstructions in Streams.

§ 77-14. **Obstructions in streams and drainage ditches.** — If any person, firm or corporation shall fell any tree or put any stumps, stumps, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine, ditch or other outlet which serves to remove water from any land whatsoever whereby the natural and normal drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall remove such above-described obstruction or substance within seven calendar days and, upon failure to so remove, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court: Provided, however, nothing herein shall prevent the construction of any dam not otherwise prohibited by any valid local or State statute or regulation.

All sheriffs, wildlife protectors, highway patrolmen and township constables, or other persons knowing of such violations, shall report to the board of county commissioners, of the county in which such above-described obstruction of drainage takes place, the names of any persons, firms or corporations violating the provisions of this section, and it shall be the duty of the chairman of the board of county commissioners to report to the county court solicitor, if there is one, and, if not, to the district solicitor, facts and circumstances showing the commission of any offense as defined herein, and it shall be the duty of the solicitor to prosecute such violators. The provisions of this section shall not apply to the counties of Chatham, Forsyth, Franklin, Gaston, Halifax and Lee. (1953. c. 1242; 1957. c. 524; 1959, cc. 160, 1125.)

Editor's Note. — The 1957 amendment graph.
rewrote and greatly extended the first The first 1959 amendment deleted
paragraph and added the second para- "Edgecombe" from the list of counties at

the end of the section, and the second the words "any land whatsoever" for the 1959 amendment substituted in line five words "farm or agricultural lands."

Chapter 78. Securities Law.

§ 78-2. Definitions.

(c) "Sale" or "sell" shall mean every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

"Offer to sell" or "offer for sale" shall mean every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by such subscription or conversion.

(1955, c. 436, s. 1.)

Editor's Note.—

The 1955 amendment rewrote subsection (c). As only this subsection was affected by the amendment the rest of the section

is not set out.

Cited in *State v. Carolina Tel. & Tel. Co.*, 243 N. C. 46, 89 S. E. (2d) 802 (1955).

§ 78-3. Exempted securities.

(e) Securities appearing in any list of securities dealt in on any organized stock exchange having an established meeting place in a city of over five hundred thousand population according to the last preceding United States census and providing facilities for the use of its members in the purchase and sale of securities listed by such exchange and on which exchange actual transactions have accrued during each of the preceding twenty years in the purchase and sale of United States bonds, or other bonds of any of the classes exempted herein from the provisions of this chapter, and which require financial statements to be submitted at the time of listing and annually thereafter; or on any other recognized and responsible stock exchange which has been previously investigated and approved by the Secretary of State and which securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, or represented by subscription rights which have been so listed; or evidences of indebtedness guaranteed by companies any stock of which is so listed, if the company whose securities are guaranteed is a subsidiary of the guaranteeing company and controlled by lease or ownership of stock, such securities to be exempt only so long as such listing shall remain in effect: Provided, however, that the Secretary of State upon 10 days' notice and hearing may at any time withdraw his approval of any such stock exchange; and provided further, that the Secretary of State may at any time withdraw his approval of any security so listed on any stock exchange in a city of five hundred thousand population as above defined, or any other approved stock exchange, and thereafter such security shall not be entitled to the benefit of this exemption, except upon further order of the Secretary of State.

(1955, c. 436, s. 2.)

Editor's Note.—

The 1955 amendment substituted "on" for "or" in the first line of subsection (e).

As only this subsection was affected by the amendment the rest of the section is not set out.

§ 78-4. Transactions exempted from operation of this chapter.

(5) The distribution by a corporation of capital stock, bonds or other securities to its stockholders or other security holders as a stock dividend or other distribution out of earnings or surplus; or the issue of securities by a corporation to security holders or creditors of such corporation in the process of a bona fide reorganization of such corporation made in good faith either in exchange for either or both the securities of such security holders or claims of such creditors, or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the sale or exchange by an issuer of its securities to or with its own security holders (including holders of transferable rights with respect to such securities) if no commission or other remuneration is paid or given for soliciting or effecting the sale or exchange to security holders other than commission or compensation paid or given for an undertaking to purchase any of such securities not purchased by such security holders.

(7) Subscriptions for shares or sales or negotiations for sales of shares of the capital stock in domestic corporations, provided that (1) such shares are not offered to more than twenty-five persons in this State and (2) no expense is incurred, and no commission, compensation or remuneration is paid or given for, or in connection with, the sale or disposition of such securities.

(12) The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public; provided that:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such dealer is acting as agent, the commission collected by such dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by any person or group of persons owning beneficially one-fourth or more of all outstanding securities of the class being distributed; and

(c) Information as to the issuer of such securities is published in a recognized manual of securities, such information to include at least the names of the officers of such issuer, a balance sheet of such issuer as of a date not more than 18 months prior to the date of such sale, and an income account of such issuer for a period of not less than two years next prior to the date of the balance sheet or for the period prior to the date of the latest balance sheet if the issuer has been in existence for less than two years.

If the Secretary of State finds that the sale of certain securities in this State would work or tend to work a fraud on purchases thereof, he may revoke the exemption provided by this subsection (12) with respect to such securities by issuing an order to that effect and sending copies of such order to all registered dealers.

(13) The offer or sale by a domestic corporation of securities issued by such corporation (a) organized for the purpose of promoting community agricultural or industrial development of the area in which its principal office is located and (b) approved by resolution of the county commissioners of the county in which its principal office is located, and if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, and (c) no commissions or other remuneration is paid or given for or in connection with the sale or other disposition of such securities. (1925, c. 190, s. 4; 1927, c. 149, s. 4; 1935, cc. 90, 154; 1955, c. 436, s. 3; 1959, c. 1185.)

Editor's Note.—

The 1955 amendment rewrote the latter part of subsection (5), made changes in subsection (7) and added subsection (12).

The 1959 amendment added subsection (13). As only these subsections were affected by the amendments, the rest of the section is not set out.

§ 78-6. Registration of securities. — No securities except of a class exempt under any of the provisions of § 78-3 or unless sold in any transaction exempt under any of the provisions of § 78-4 shall be offered for sale or sold within this State unless such securities shall have been registered by notification or by qualification as hereinafter defined, except that it shall be permissible for registered dealers and salesmen to offer securities for sale in this State prior to registration of those securities under this article if a registration statement for those securities shall have been filed under the Federal Securities Act of 1933 and a copy of the preliminary prospectus filed under the Federal Act shall have been filed with the Secretary of State. Registration of stock shall be deemed to include the registration of rights to subscribe to such stock if the notice under § 78-7 or the application under § 78-8 for registration of such stock includes a statement that such rights are to be issued. (1925, c. 190, s. 6; 1927, c. 149, s. 6; 1955, c. 436, s. 4.)

Editor's Note.—The 1955 amendment inserted in line three the words “offered for sale or” and added the exception clause at the end of the first sentence.

§ 78-7. Advertisement of securities. — It shall be unlawful hereafter:

(1) To advertise in this State, through or by means of any prospectus, circular, price list, letter, order blank, newspaper, periodical or otherwise, or

(2) To circulate or publish any newspaper, periodical or either written or printed matter in which any advertisement in this section specified shall appear, or

(3) To circulate any prospectus, price list, order blanks, or other matter for the purpose of inducing or securing any subscriptions to or sale of any security or securities not exempted under any of the provisions of § 78-3, and not sold or to be sold in one of the transactions exempted under the provisions of § 78-4 and except as provided in § 78-8, unless and until the requirements of § 78-6 have been fully complied with and such advertising matter has been filed with the Secretary of State, except that the provisions of this section shall not apply to any securities for which a registration statement shall have been filed under the Federal Securities Act of 1933 if a copy of the preliminary prospectus filed under the Federal Act shall have been filed with the Secretary of State. (1925, c. 190, s. 7; 1927, c. 149, s. 7; 1955, c. 436, s. 5.)

Editor's Note.—The 1955 amendment struck out the words “and approved by the Secretary of State” formerly appearing at the end of paragraph (3) and substituted therefor the part of the paragraph beginning with the words “with the Secretary of State” in line seven.

§ 78-8. Registration by notification. — The following classes of securities shall be entitled to registration by notification in the manner provided in this section:

(1) Securities issued by a corporation, partnership, association, company, syndicate or trust owning a property, business or industry which has been in continuous operation not less than three years, and which has shown during a period of not less than two years, nor more than five years, next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges not including the charges upon securities to be retired out of the proceeds of sale, as follows:

(a) In the case of interest bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest bearing obligations of equal rank.

(b) In the case of preferred stock, not less than one and one-half times the annual dividend requirements on such preferred stock and on all other outstanding stock of equal rank.

(c) In the case of common stock not less than five per centum upon all out-

standing common stock of equal rank, together with the amount of common stock then offered for sale reckoned upon the price at which such stock is then offered for sale or sold. The ownership by a corporation, partnership, association, company, syndicate or trust of more than 50 per cent of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of the property, business or industry of such corporation, and shall permit the inclusion of the earnings of such corporation, applicable to the payment of dividends upon the stock so owned in the earnings of the corporation, partnership, association, company, syndicate, or trust issuing the securities sought to be registered by notification.

(2) Any bond or notes secured by a first mortgage upon agricultural lands used and valuable for agricultural purposes (not including oil, gas or mining property or leases), or upon city, town or village real estate situated in any state or territory of the United States or in the District of Columbia or in the Dominion of Canada as follows:

(a) When the mortgage is a first mortgage upon such agricultural lands, used and valuable for agricultural purposes, and when the aggregate face value of such bonds or notes, not including interest notes, or coupons secured thereby, does not exceed 60 per centum of the then fair market value of said lands plus 60 per centum of the insured value of any improvements thereon; or,

(b) When the mortgage is a first mortgage upon city, town or village real estate and when the aggregate face value of such bonds or notes, not including interest notes or coupons, secured by such real estate or leaseholds does not exceed 60 per centum of the then fair market value of said mortgaged real estate or leaseholds, respectively, including any improvements appurtenant thereto, and when said mortgaged property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value, after deducting operating expenses and taxes, at least equal to the annual interest, plus not less than 3 per centum of the principal of said mortgage indebtedness.

(3) Bonds or notes secured by first lien on collateral pledged as security for such bonds or notes with a bank or trust company as trustee, which bank or trust company is incorporated under the laws of and subject to examination and supervision by the United States or by a state of the United States, which collateral shall consist of (a) a principal amount of first mortgage bonds or notes conforming to the requirements of any one or more of the provisions of subsection (2) of this section and/or (b) a principal amount of obligations secured as hereinafter in this subsection provided, and/or (c) a principal amount of obligations of the United States, and/or (d) cash, equal to not less than 100 per cent of the aggregate principal amount of all bonds or notes secured thereby. The portion of such collateral referred to in clause (b) shall consist of obligations secured by a first lien on a principal amount of first mortgage bonds or notes conforming to the requirements of subsection (2) of this section, and/or a principal amount of obligations of the United States and/or cash equal to not less than 100 per cent of the aggregate principal amount of such obligations so secured thereby, and all such pledged securities including cash so securing such obligations shall have been deposited with a bank or trust company as trustee, which bank or trust company is incorporated under the laws of and subject to examination and supervision by the United States or by a state of the United States.

(4) In addition to securities entitled to registration by notification under subsections (1), (2), or (3), the Secretary of State may, in his discretion, accept for registration by notification securities registered under the Federal Securities Act of 1933, except securities issued by a person registered under the Federal Investment Company Act of 1940, if he is of the opinion, after examining a copy of the preliminary prospectus for such securities filed with him and considering other

showing, that such securities are not entitled to registration under either of the foregoing subsections (1), (2) and (3) but would not work or tend to work a fraud on the purchasers thereof and that registration by notification should be permitted so as to make dealers in North Carolina eligible for participation in issues qualified in other jurisdictions for wide distribution.

Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof in the office of the Secretary of State of a statement with respect to such securities containing the following:

- (a) Name of issuer.
- (b) A brief description of the security including amount of the issue.
- (c) Amount of securities to be offered in the State.
- (d) A brief statement of the facts which show that the security falls within one of the classes in this section defined.
- (e) The price at which the securities are to be offered for sale.

In the case of securities falling within the classes defined by subsections (1) and (4), if the circular to be used for the public offering is not filed with the statement, then a copy of such circular shall be filed in the office of the Secretary of State within two days thereafter, or within such further time as the Secretary of State shall allow (in the case of securities registered under the Federal Securities Act of 1933, the circular filed in the office of the Secretary of State shall be the final prospectus under the Federal Act).

In the case of securities falling within the classes defined by subsections (2) and (3) the circular to be used for the public offering shall be filed with the statement.

The filing of such statement in the office of the Secretary of State and the payment of the fee hereinafter provided shall constitute the registration of such security. Upon such registration, such securities equal to the amount so registered by notification may be sold in this State by any registered dealer subject, however, to the further order of the Secretary of State as hereinafter provided.

If, at any time, in the opinion of the Secretary of State, the information contained in the statement or circular filed is misleading, incorrect, inadequate, or incomplete, or the sale or offering for sale of the security may work or tend to work a fraud or, in the opinion of the Secretary of State, be contrary to good business practices, the Secretary of State may require from the person filing such statement such further information as may, in his judgment, be necessary to establish the classification of such security as claimed in said statement, or to enable the Secretary of State to ascertain whether the sale of such security would be fraudulent, or would result in fraud, and the Secretary of State may also suspend the right to sell such security pending further investigation by entering an order specifying the grounds for such action, and by notifying personally by mail, telephone or telegraph the person filing such statement and every registered dealer who shall have notified the Secretary of State of an intention to sell such security. The refusal to furnish information required by the Secretary of State, within a reasonable time to be fixed by the Secretary of State, may be a proper ground for the entry of such order of suspension. Upon the entry of any such order of suspension no further sales of such security shall be made until the further order of the Secretary of State, unless the person to be affected by such order shall file with the Secretary of State a bond in a penalty to be fixed by him in some solvent surety company licensed in the State of North Carolina, to pay all such damages as might be sustained by any purchaser of such security, which bond shall be made payable to the State of North Carolina and sued upon by any person damaged by such sale.

In the event of the entry of such order of suspension the Secretary of State shall upon request give a prompt hearing to the parties interested. If no hearing

is requested within a period of twenty (20) days from the entry of such order, or if upon such hearing the Secretary of State shall determine that any such security does not fall within a class entitled to registration under this section, or that the sale thereof would be fraudulent or would result in fraud or the continued sale of the same, is in his opinion contrary to good business practices, he shall enter a final order prohibiting sales of such security, with his findings with respect thereto: Provided, that if the finding with respect to such security is that it is not entitled to registration under this section, the applicant may apply for registration by qualification by complying with the requirements of § 78-9. Appeals from such final order may be taken as hereinafter provided. If, however, upon such hearing, the Secretary of State shall find that the security is entitled to registration under this section, and that its sale will neither be fraudulent nor result in fraud, or that the continued sale thereof is not contrary to good business practices, he shall forthwith enter an order revoking such order of suspension and such security shall be restored to its status as a security registered under this section, as of the date of such order of suspension.

At the time of filing the statement, as hereinbefore prescribed in this section, the applicant shall pay to the Secretary of State a filing fee of ten dollars and a fee of one-twentieth of one per cent of the aggregate offering price of the securities to be sold in this State for which the applicant is seeking registration, but in no case shall such latter fee be less than twenty-five dollars, and not exceeding two hundred dollars. In the case of stock having no par value, the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock. (1927, c. 149, s. 8; 1955, c. 436, s. 6.)

Editor's Note.—The 1955 amendment inserted subsection (4). In the sixth paragraph from the end of the section the amendment changed the word "class" to "classes," inserted the reference to subsection (4) and added the words in parentheses at the end of the paragraph. The amendment changed the fourth paragraph from the end of the section by de-

leting the words "by giving notice in the manner hereinafter provided in § 78-19" which formerly appeared after the word "dealer" in the second sentence. The amendment also changed the first sentence of the last paragraph by substituting "offering price" for "par value" and "two hundred dollars" for "one hundred and fifty dollars."

§ 78-9. Registration by qualification.

At the time of filing the information, as hereinbefore prescribed in this section, the applicant shall pay to the Secretary of State a filing fee of twenty-five dollars and, upon the entry of an order for the registration of the securities, shall pay to the Secretary of State a fee of one-tenth of one per cent of the aggregate offering price of the securities to be sold in this State, for which the applicant is seeking registration, but in no case shall such latter fee be less than twenty-five dollars, and not exceeding two hundred and fifty dollars. The Secretary of State may fix maximum and minimum amounts permitted to be registered under this section, but no application for an additional registration of securities previously registered shall require an additional filing fee. In case of stock having no par value the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock. (1927, c. 149, s. 9; 1955, c. 436, s. 7.)

Editor's Note. — The 1955 amendment substituted "offering price" for "par value" in the first sentence of the last paragraph, and inserted the second sentence therein.

As only this paragraph was affected by the amendment the rest of the section is not set out.

§ 78-17. Certain information and records open to inspection by public.—All information received by the Secretary of State shall be kept open to public inspection at all reasonable hours, and the Secretary of State shall supply to the public upon request copies of any papers on record with the Secretary of State at charges equaling the cost of typing same; and the Secretary of State shall

have power and authority to place in a separate file, not open to the public except on his special order, any information which he deems in justice to the person filing the same should not be made public. An exemplification of the record under the hand of the Secretary of State, or of his deputy, shall be good and sufficient evidence of any record made or entered by the Secretary of State. A certificate under the hand of the Secretary of State or his deputy or assistant and the seal of the Department of State showing that the securities in question have not been recorded in the register of qualified securities, shall constitute prima facie evidence that such securities have not been qualified for sale pursuant to the provisions of this chapter, and shall be admissible in evidence in any proceeding, either civil or criminal, instituted under any of the laws or statutes of this State. (1925, c. 190, s. 17; 1927, c. 149, s. 17; 1955, c. 436, s. 8.)

Editor's Note.—

The 1955 amendment substituted "Secretary" for "Department" in the first line of the last sentence.

§ 78-19. Dealers and salesmen; registration.—No dealer or salesman shall carry on business in the State of North Carolina as such dealer or salesman, or sell securities, including any securities exempted under the provisions of § 78-3, unless he has been registered as dealer or salesman in the office of the Secretary of State pursuant to the provisions of this section. Every applicant for registration shall file in the office of the Secretary of State, pursuant to the provisions of this section, an application in writing, duly signed and sworn to, in such form as the Secretary of State may prescribe, giving particulars concerning the business reputation of the applicant. Every applicant for registration as a dealer, or for the renewal of such registration, shall be required to be registered as a dealer with the Securities and Exchange Commission, as a prerequisite for registration in this State, except a person dealing exclusively in securities exempt for registration under subsection (a) of § 78-3 of the General Statutes. A dealer not either registered with the Securities and Exchange Commission or supervised and examined by an agency of the government of the United States, or of the State of North Carolina, shall file annually within one hundred twenty days after the end of the fiscal year of such dealer, with the Secretary of State a financial statement of condition duly certified by an independent certified public accountant. Dealers not supervised as herein provided may be examined at any time by the Secretary of State, or his representative, upon evidence satisfactory to the Secretary of State of the insolvency or imminent danger of insolvency of such dealer. The Secretary of State, in his discretion, may require that the applicant shall have been a bona fide resident of the State of North Carolina for a term not to exceed two years prior to the filing of the application. The names and addresses of all persons approved for registration as dealers or salesmen shall be recorded in a register of dealers and salesmen kept in the office of the Secretary of State, which shall be open to public inspection. Every registration under this section shall expire on the thirty-first day of March in each year, but the same may be renewed. The fee for such registration and for each annual renewal thereof shall be fifty dollars in the case of dealers, and ten dollars in the case of salesmen. Registration may be refused or a registration granted may be canceled by the Secretary of State if, after reasonable notice and a hearing, the Secretary of State determines that such applicant or dealer or salesman so registered

- (1) Has violated any provision of this chapter or any regulation made hereunder; or
- (2) Has made a material false statement in the application for registration; or
- (3) Has been guilty of a fraudulent act in connection with any sale of securities in the State of North Carolina, or has been or is engaged in making fictitious or pretended sales or purchases of any such

- securities or has been engaged in any practice or transaction or course of business relating to the purchase or sale of securities which is fraudulent or in violation of law; or
- (4) Has demonstrated his unworthiness to transact the business of dealer or salesman; or
 - (5) Has ceased to be qualified for registration under the terms of this section; or
 - (6) Shall be insolvent or in imminent danger of insolvency, or shall have failed to meet such dealer's financial obligations in the ordinary course of business.

It shall be sufficient cause for refusal or cancellation of registration in the case of a partnership, corporation or unincorporated association or trust estate, if any member of the partnership, or any officer or director of the corporation, association or trust estate has been guilty of any act or omission which would be cause for refusing or cancelling the registration of an individual dealer or salesman. The word "dealer" as used in this section shall include every person other than a salesman, who in the State of North Carolina engages, either for all or part of his time, directly or through an agent, in the business of offering for sale, selling or otherwise dealing in securities, including securities exempted under the provisions of § 78-3, or of purchasing or otherwise acquiring such securities from another person with the purpose of reselling them or of offering them for sale to the public for a commission or at a profit, or who deals in futures on market quotations of prices or values of any securities, or accepts margins on prices or values of said securities. The word "salesman," as used in this section shall include every person employed, appointed or authorized by another person to sell securities in any manner in the State of North Carolina. No person shall be registered as a salesman except upon the application of the person on whose behalf such salesman is to act. It shall be unlawful for any person required to register under the provisions of this section to sell any security to any person in the State of North Carolina without having registered, or after such registration has expired or been canceled and not renewed.

Provided, however, that employees of a company, or of a company directly controlling such company, or the general agent of a domestic corporation, securities of which are exempted under the provisions of § 78-3, may sell or solicit or negotiate for the sale or purchase of any such securities of such company in the territory served by such company or in which it operates without being considered as salesmen or dealers within the meaning of this chapter and without being required to register under its provision.

The partners of a partnership and the executive officers of a corporation or other association registered as a dealer may act as salesmen during such time as such partnership, corporation, or association is so registered without further registration as salesmen. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with reference to such change. (1925, c. 190, s. 19; 1927, c. 149, s. 19; 1955, c. 436, s. 9; 1959, c. 1122.)

Editor's Note.—The 1955 amendment struck out the former last paragraph of this section.

first paragraph the third, fourth and fifth sentences. It also inserted subdivisions (5) and (6).

The 1959 amendment inserted in the

§ 78-23. Violation of chapter; punishment.

(g) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State after being notified by the Secretary of State to stop the sale of such security pending the investigation provided for in § 78-8, or pending the filing of the bond which may be required under § 78-11,

shall be deemed guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars (\$1,000), or both. (1955, c. 436, s. 10.)

Editor's Note.—The 1955 amendment substituted in subsection (g) "Secretary of State" for "Commissioner." As the rest of the section was not affected by the amendment, only subsection (g) is set out.

§ 78-24. Foreign corporations to name process officer within State.
—In all cases of application by a foreign corporation, partnership, association or trust company for registration of securities by qualification or as a dealer in securities, such corporation, partnership, association or trust company shall name a process officer within the State of North Carolina, approved by the Secretary of State upon whom service of any process of any court in this State shall be of the same effect as if served upon said corporation, partnership, association or trust company. (1927, c. 149, s. 24; 1955, c. 436, s. 10.)

Editor's Note.—The 1955 amendment substituted "Secretary of State" for "Commissioner."

Chapter 79.

Strays.

§ 79-3. When and how strays sold.

Cited in *State v. Booker*, 250 N. C. 272, 108 S. E. (2d) 426 (1959).

§ 79-4. Failure to comply with stray law misdemeanor.

Cited in *State v. Booker*, 250 N. C. 272, 108 S. E. (2d) 426 (1959).

Chapter 80.

Trademarks, Brands, etc.

ARTICLE 1.

Trademarks.

§ 80-10. Remedies; damages; destruction of counterfeits.

Applied in *Maola Ice Cream Co. v. Maola Ice Cream Co.*, 238 N. C. 317, 77 S. E. (2d) 910 (1953).

§ 80-11. Concurrent action for penalty.

Applied in *Maola Ice Cream Co. v. Maola Ice Cream Co.*, 238 N. C. 317, 77 S. E. (2d) 910 (1953).

ARTICLE 7.

Recording of Cattle Brands and Marks with Commissioner of Agriculture.

§ 80-47. Stock growers limited to single mark or brand; registration not required; law compulsory upon registration.

Cited in *Gibbs v. Armstrong*, 233 N. C. 279, 63 S. E. (2d) 551 (1951).

Chapter 81.

Weights and Measures.

Article 6.

Surveyors.

Sec.
81-59 to 81-66. [Repealed.]

Article 8.

**Storage, Handling and Distribution
of Liquid Fertilizers.**

81-73. Purpose.
81-74. Definitions.

Sec.

81-75. Method of sale.
81-76. Method of delivery.
81-77. Registration.
81-78. Approval of storage and handling
equipment.
81-79. Administrative authority.
81-80. Unlawful acts and omissions.
81-81. Authority of Board of Agriculture.
81-82. Penalty.

ARTICLE 1.

Uniform Weights and Measures.

§ 81-14.7. **Approval of heating units, etc., for curing tobacco.**—All heating units and/or curing assemblies offered for sale or sold in this State, intended for use in curing the so-called flue cured tobacco, shall bear a label or seal of approval, authorized by the board of Agriculture, and be accompanied with a statement, including drawings and instructions, signed by the manufacturer thereof, specifying how said heating unit shall be installed, operated, and/or used, so as to reduce to a minimum the fire hazard involved.

In order to obtain from the Board of Agriculture a label or seal of approval herein referred to, the manufacturer of the heating unit and/or curing assembly hereinafter referred to as a "curer", shall first, and at his own expense, submit, set up and demonstrate a representative curer, so as to prove to the State Superintendent of Weights and Measures, his deputy or inspector, that said curer will, when installed and operated in accordance with drawings and instructions furnished by said manufacturer, in accordance with the rules and regulations adopted by the Board of Agriculture, reduce to a minimum the fire hazard involved; and second, shall obtain from the office of the State Superintendent of Weights and Measures the label or seal of approval to be known as the "approval tag", and attach same to each curer which he (the manufacturer) offers for sale, sells, or installs either by himself or through his agent.

The Board of Agriculture is hereby authorized and empowered to make such rules and regulations as may be necessary to make effective the provisions of this section, and to make a charge for the approval tag not in excess of fifty cents (\$.50) per curer. The said charge shall include the cost of issuing the tag of approval, and the cost of ascertaining by on-the-farm inspection whether or not the curers are being installed in accordance with the manufacturer's drawings and instructions, and/or the rules and regulations as adopted by the Board of Agriculture. In making and formulating its rules and regulations, the Board of Agriculture will observe certain standards, such as the nature and type and technical construction of a tobacco curer referred to in this section; the type of fuel to be used, distance of flame from combustible materials; safety cut-off valves; method of installation; thermal or heating problems; inspection of curers, both before and after use and any and all changes and standards that should be promulgated and made to reduce fire hazards and lower insurance costs and to protect the tobacco crops of farmers. The enumeration of certain standards as herein given shall not limit the authority of the Board of Agriculture to make rules and regulations involving other standards suggested by scientific information as the same relates to curers and related problems. The monies thus collected shall be deposited with the State Treasurer of North Carolina in a special fund and expended for the purposes as set forth in this section, and the Director

of the Budget shall allocate out of such monies an amount for the current fiscal year equal to the amount collected during the preceding fiscal year. (1947, c. 787; 1953, c. 727.)

Editor's Note. — The 1953 amendment deleted the former second sentence relating to expense of obtaining label or seal of approval and added the second and third paragraphs.

§ 81-14.9. **Establishment of standard loaves of bread; "loaf" defined.**—When loaves of bread are offered for sale or sold in this State, each loaf shall be of one of the following weights and lengths and no other, to-wit: 1 pound, 11½ inches maximum length, 5 inches maximum width at bottom; 1½ pounds, 13½ inches maximum length, 5 inches maximum width at bottom; 2 pounds, 15 inches maximum length, 5 inches maximum width at bottom; 2½ pounds, 16½ inches maximum length, 5 inches maximum width at bottom. The term "loaf" as used in this section shall be construed to mean a loaf which is baked in a pan of rectangular shape, either with straight up or flared side, either with or without cover, and shall be known hereafter as the standard loaf. (1949, c. 1005; 1957, c. 374.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, substituted "13½" for "15" in line four and "16½" for "15" in line six. The effective date was originally July 1, 1957, but was changed to January 1, 1958, by Session Laws 1957, c. 1069.

ARTICLE 6.

Surveyors.

§§ 81-59 to 81-66: Repealed by Session Laws 1959, c. 1158.

Editor's Note.—The act repealing this article is not applicable to Washington and Tyrrell counties.

ARTICLE 8.

Storage, Handling and Distribution of Liquid Fertilizers.

§ 81-73. **Purpose.**—The purpose of this article shall be to provide for the safe handling, storage, distribution and application of liquid fertilizer, and for the protection of the producer, distributor, and consumer as to the quality and quantity of same. (1953, c. 1198; 1955, c. 520.)

Editor's Note. — The act inserting this article became effective July 1, 1953. The 1955 amendment rewrote this article as set forth herein.

§ 81-74. **Definitions.**—The term "liquid fertilizer" as used herein shall be construed as being a nonsolid commercial fertilizer as commercial fertilizer is defined in § 106-50.3 (g), article 2, chapter 106 of the General Statutes known as the North Carolina Fertilizer Law.

The term "retailer" shall be construed as being any person, firm, or corporation who sells or delivers liquid fertilizer to the consumer.

The term "wholesaler" shall be construed as being any person, firm, or corporation who sells to any other person, firm, or corporation for the purpose of resale, and who also may sell to a consumer.

The term "distributor" shall be construed as being any person, firm, or corporation who offers for sale or sells, handles, stores, or distributes liquid fertilizers.

The term "consumer" shall be construed as being any person, firm or corporation who benefits, or expects to benefit, from the results of the application of liquid fertilizers to soil owned, leased, or rented by said person, firm, or corporation, however, a consumer may apply a neighbor's liquid fertilizer to the soil owned,

leased, or rented by said neighbor, if and when such an act does not involve the sale of any liquid fertilizer.

The term "sale" shall be construed as meaning the transfer of custody.

The term "safe" shall be construed to mean that the handling, storing, and distribution of liquid fertilizer conforms to the minimum standards included in the rules and regulations adopted by the Board of Agriculture.

The term "handling" shall be construed as including any and all operations involved in the transferring of liquid fertilizers.

The term "storage" shall be construed as being the confinement of liquid fertilizers.

The term "distribution" shall be construed as one or more acts involved in transporting the product from one premise to another.

The term "application" shall be construed as being the act of applying liquid fertilizer to the soil of a consumer.

The term "quantity" shall be construed to mean volume, or amount, expressed in U. S. Standard avoirdupois pounds.

The term "quality" shall be construed to mean grade as defined in chapter 106, article 2, § 106-50.3 (h) of the General Statutes. (1953, c. 1198; 1955, c. 520; 1959, c. 1253, s. 1.)

Editor's Note.—The 1959 amendment deleted the former fifth paragraph defining "contractor."

§ 81-75. Method of sale.—When liquid fertilizer is offered for sale or sold in this State, the method of transfer of custody shall be by weight expressed in pounds, and shall be invoiced in such a manner as to show the name of the seller, the name of the purchaser, the date of sale, the quality or grade, and the net weight; provided, however, that liquid fertilizer may be measured in gallons of two hundred and thirty-one (231) cubic inches and its equivalent expressed in pounds, with a formula for converting from gallons to pounds shown on the invoice. (1953, c. 1198; 1955, c. 520.)

§ 81-76. Method of delivery.—Each and every delivery of liquid fertilizer to any person, firm, or corporation in this State, regardless of name of product or trade name, shall be accompanied with a copy of the invoice or tag showing the name of the seller or distributor, the name of the purchaser or receiver, date of delivery, the quality or grade, and the net quantity delivered expressed in pounds. (1953, c. 1198; 1955, c. 520.)

§ 81-77. Registration.—Any person, firm or corporation before engaging in the business of handling, storing or distributing liquid fertilizer in this State shall register with the North Carolina Department of Agriculture and shall re-register on or before July 1 of each year thereafter so long as he shall engage in said business. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner of Agriculture. (1953, c. 1198; 1955, c. 520; 1959, c. 1253, s. 2.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 81-78. Approval of storage and handling equipment.—Before any wholesale or retail liquid fertilizer distributing plant shall be built in this State, a general layout of such plant shall be submitted in duplicate and approved by the Commissioner of Agriculture. In order that such a layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, distribution and/or application adopted by the Board of Agriculture. All storage tanks, transfer or transport containers, applicator containers, and attached equipment shall conform to the minimum standards adopted

by the Board of Agriculture. It shall be the duty of the contractor referred to in this article to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any and all equipment which he may use in the application of liquid fertilizer. It shall be the duty of the Commissioner of Agriculture to inspect and ascertain whether or not the provisions of this section are complied with. (1953, c. 1198; 1955, c. 520.)

§ 81-79. **Administrative authority.**—The provisions of this article shall be administered by the Commissioner of Agriculture. It shall be the duty of the Commissioner of Agriculture, his agent or representative, to inspect, test, try and ascertain whether or not the provisions of this article have been or are being complied with. The Commissioner of Agriculture, his agent, or representative, shall, for the purpose above-mentioned and in the general performance of his duty, have the right to enter or go upon, without formal warrant, any place, building or premises where liquid fertilizers are being handled, stored, applied, offered for sale or sold. Any handling, storing, weighing or measuring device, which is found to be inconsistent with the purposes of this article, or which does not conform to the rules and regulations adopted by the Board of Agriculture, shall be condemned and so tagged. When a device, as hereinabove described, is condemned, the owner shall either make same to conform to the minimum standards, and the rules and regulations, adopted by the Board of Agriculture, or obtain a release from the Department of Agriculture. In either event, the person or persons who perfect such conformance or who obtain release may remove said condemnation tag, fill in the required information, and mail same to the North Carolina Department of Agriculture, Raleigh, North Carolina. Completion of this procedure shall constitute a legal removal of condemnation tag. (1953, c. 1198; 1955, c. 520.)

§ 81-80. **Unlawful acts and omissions.**—It shall be unlawful for any person, firm, or corporation to violate any provision of this article or any rule or regulation made by the Board of Agriculture as provided for by this article. It shall be unlawful for any person, firm, or corporation to offer for sale, sell, or deliver into this State any handling, storing, weighing or measuring device or equipment which does not conform to the minimum standard, rules and regulations adopted by the Board of Agriculture. It shall be unlawful for any person, firm, or corporation to issue a sales ticket or invoice bearing a false statement as to the quality or quantity of product sold. It shall be unlawful for any person, firm, or corporation to impersonate or to act in capacity of a contractor without being registered and having a contractor's certificate. (1953, c. 1198; 1955, c. 520.)

§ 81-81. **Authority of Board of Agriculture.**—The Board of Agriculture is hereby authorized, empowered and instructed, after a public hearing, to make such rules and regulations as may be necessary in order to carry out the purpose of this article, and no municipality or other political subdivision of this State shall have the authority to adopt rules and regulations other than those adopted by the Board of Agriculture. (1953, c. 1198; 1955, c. 520.)

§ 81-82. **Penalty.**—Any person, who by himself, his servant, or agent, or as a servant or agent of any other person, firm, or corporation, violates any provision of this article or any rule or regulation promulgated in accordance with the provisions of this article, or who misrepresents the quantity or quality of any product offered for sale, sold or delivered, or who illegally removes a condemnation tag from a condemned device, or who dispenses anhydrous ammonia or other pressurized liquid fertilizer into an unauthorized tank or container, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than fifty dollars (\$50.00) and not more

than five hundred dollars (\$500.00), or by imprisonment for not more than twelve months, or by both such fine and imprisonment. A second conviction by any court of competent jurisdiction shall be punished by a fine of not less than one hundred dollars (\$100.00), or not more than one thousand dollars (\$1000.00), or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. (1953, c. 1198; 1955, c. 520.)

Chapter 82.

Wrecks.

§ 82-1. Number and boundaries of wreck districts.

Dare.—The county of Dare shall constitute one wreck district, which shall extend from the Currituck County line to the Hyde County line. (1959, c. 941.)

Editor's Note.—The 1959 amendment rewrote the paragraph relating to Dare County. As only this paragraph was affected by the amendment the rest of the section is not set out.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

August 1, 1959

I, Malcolm B. Seawell, Attorney General of North Carolina, do hereby certify that the foregoing 1959 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

MALCOLM B. SEAWELL,
Attorney General of North Carolina



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