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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through
the Legislative Session of 1963

PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA

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 2C
1965 REPLACEMENT VOLUME

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Scope of Volume

Statutes:

Full text of Chapters 63 through 96 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1963 heretofore contained in 1960 Replacement Volume 2B and 1958 Replacement Volume 2C of the General Statutes and the 1963 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

- North Carolina Reports volumes 1-260 (p. 132).
- Federal Reporter volumes 1-300.
- Federal Reporter 2nd Series volumes 1-316.
- Federal Supplement volumes 1-216.
- United States Reports volumes 1-372.
- Supreme Court Reporter volumes 1-83 (p. 1559).
- North Carolina Law Review volumes 1-41 (p. 662).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R.	Potter's Revisal (1821, 1827)
R. S.	Revised Statutes (1837)
R. C.	Revised Code (1854)
C. C. P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C. S.	Consolidated Statutes (1919, 1924)

Preface

Volume 2 of the General Statutes of North Carolina of 1943 was replaced in 1950 by recompiled volumes 2A, 2B and 2C, containing Chapters 28 through 105 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1949 Session. In 1958 a replacement volume 2C was published in which the statutes and annotations appearing in the recompiled volume 2C and in the 1957 Cumulative Supplement thereto were combined. In 1960 a replacement volume 2B was published in which the statutes and annotations appearing in the recompiled volume 2B and in the 1959 Cumulative Supplement thereto were combined. Replacement volumes 2B and 2C have now been replaced by replacement volumes 2B, 2C and 2D, which combine the statutes and annotations appearing in the previous volumes 2B and 2C and in the 1963 Cumulative Supplement thereto.

Volume 2A contains Chapters 28 through 52. Volume 2B contains Chapters 53 through 62. Volume 2C contains Chapters 63 through 96. Volume 2D contains Chapters 97 through 105.

In replacement volume 2C the form and the designations of subsections, subdivisions and lesser divisions of sections have in many instances been changed, so as to follow in every case the uniform system of numbering, lettering and indentation adopted by the General Statutes Commission. For example, subsections in the replacement volume are designated by lower case letters in parentheses, thus: (a). Subdivisions of both sections and subsections are designated by Arabic numerals in parentheses, thus: (1). Lesser divisions likewise follow a uniform plan. Attention is called to the fact that it has not, of course been possible, except in replacement volumes 2B, 2D, 3B, 3C and 3D, to make corresponding changes in any references that may appear in other volumes to sections contained in volume 2C.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5.1 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

This replacement volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

THOMAS WADE BRUTON,
Attorney General.

January 15, 1965.

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ARTICLE 1.

Municipal Airports.

§ 63-1. **Definition.**—Airport or landing field for the purposes of this article is defined as any plot of land or water formally set aside and designated as a place where aircraft may land or take off. (1929, c. 87, s. 1.)

Cross Reference.—For other provisions Cited in *Goswick v. Durham*, 211 N. C. as to municipal airports, see §§ 63-48 to 687, 191 S. E. 728 (1937). 63-58.

§ 63-2. **Cities and towns authorized to establish airports.**—The governing body of any city or town in this State is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, either within or without the limits of such cities and towns and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such city or town. (1929, c. 87, s. 2.)

Cross References. — See §§ 63-48 to 63-58. As to power of eminent domain, see §§ 63-5 and 63-6. As to airport zoning regulations, see § 63-31 et seq. Cited in *Turner v. Reidsville*, 224 N. C. 42, 29 S. E. (2d) 211 (1944).

§ 63-3. **Counties authorized to establish airports.**—The governing body of any county in this State is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within or without the limits of such counties, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such county. (1929, c. 87, s. 3.)

§ 63-4. **Joint airports established by cities and towns and counties.**—The governing bodies of any city, town and county in this State are hereby authorized to jointly acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within or without the limits of such cities, towns and counties, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be jointly owned or controlled by such city, town and county. (1929, c. 87, s. 4.)

The legislature has power to create a municipal authority to construct, maintain and operate an airport, and county and cities located therein may lawfully join in the construction, maintenance and operation of an airport if each of them is benefited by it *Greensboro-High Point Airport Authority v. Johnson*, 226 N. C. 1, 36 S. E. (2d) 803 (1946).

Section Not Repealed or Modified by Supplementary Acts. — This section, per-

mitting municipalities to act jointly in the creation of an airport authority, is not repealed or modified or its authority in any way affected by the supplementary public-local and private acts under which the purpose and policy of this section are carried out in the creation of a single airport authority to serve three municipalities. *Greensboro-High Point Airport Authority v. Johnson*, 226 N. C. 1, 36 S. E. (2d) 803 (1946).

§ 63-5. **Airport declared public purpose; eminent domain.**—Any lands acquired, owned, controlled, or occupied by such cities, towns, and/or counties, for the purposes enumerated in §§ 63-2, 63-3 and 63-4, shall and are hereby declared to be acquired, owned, controlled and occupied for a public purpose, and such cities, towns and/or counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public purpose. (1929, c. 87, s. 5.)

Operation of Airport Is Proprietary and Nongovernmental Function. — The opera-

tion and maintenance of a municipal airport and its facilities is a proprietary or

nongovernmental function or undertaking in tort for negligence in the operation of the city for a public purpose, and for thereof. *Jewell Ridge Coal Corp. v. Charlotte*, 204 F. Supp. 256 (1962).
 which the municipality may be held liable

§ 63-6. Acquisition of sites; appropriation of moneys.—Private property needed by a city, town and/or county for an airport or landing field may be acquired by gift or devise or shall be acquired by purchase if the city, town and/or county is or are able to agree with the owners on the terms thereof, and otherwise by condemnation, in the manner provided by law under which the city, town and/or county is or are authorized to acquire real property for public purposes, other than street purposes, or if there be no such law, in the manner provided for and subject to the provisions of the condemnation law. The purchase price, or award for property acquired for an airport or landing field may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of the sale of bonds of the city, town and/or county, as the governing body and/or bodies of such city, town and/or county shall determine. (1929, c. 87, s. 6.)

Cross References. — As to proceedings for eminent domain, see § 40-11 et seq. As to zoning regulations and acquisition of air rights, see §§ 63-31, 63-32 and 63-36. **Cited in** *Matson v. United States*, 171 F. Supp. 283 (1959).

§ 63-7. Airports already established declared public charge; regulations and fees for use of.—The governing body or bodies of a city, town and/or county which has or have established an airport or landing field, and acquired, leased, or set apart real property for such purpose, may construct, improve, equip, maintain, and operate the same. The expenses of such construction, improvement, maintainance, and operation shall be a city, town and/or county charge as the case may be. The governing body or bodies of a city, town and/or county may adopt regulations and establish fees or charges for the use of such airport or landing field. (1929, c. 87, s. 7.)

§ 63-8. Appropriations.—The governing body or bodies of a city, town and/or county to which this article is applicable, having power to appropriate, individually or jointly, money therein, are hereby authorized to annually appropriate and cause to be raised by taxation in such city, town and/or county or to use from the net proceeds derived from the operation, by such city, town or county, of any public utility a sum sufficient to carry out the provisions of this article in such proportion and upon such pro-rata basis as may be determined upon by a joint board to be appointed by and from the governing body or bodies of the city, town and/or the county or individually as the case may be. Provided, nothing herein shall be construed to permit the governing bodies of any county, city or town to issue bonds under the provisions of this article without a vote of the people. (1929, c. 87, s. 8.)

§ 63-9. Partial invalidity.—If any part or parts of this article shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this article. The General Assembly expressly declares that it would have passed the remaining parts of this article, if it had known that such part or parts thereof would be declared unconstitutional. (1929, c. 87, s. 9.)

ARTICLE 2.

State Regulation.

§ 63-10. Definition of terms.—In this article "aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane while at rest on water and while being operated on or immediately above water shall be governed by the rules regarding water navi-

gation; while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft.

“Airman” and “aeronaut” includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight.

“Passenger” includes any person riding in an aircraft but having no part in its operation. (1929, c. 190, s. 1.)

§ 63-11. Sovereignty in space.—Sovereignty in space above the lands and waters of this State is declared to rest in the State, except where granted to and assumed by the United States. (1929, c. 190, s. 2.)

Stated in *United States v. Causby*, 328 U. S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946). **Cited in** *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

§ 63-12. Ownership of space.—The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in § 63-13. (1929, c. 190, s. 3.)

Flight of Planes over Property as Taking.—Holding that flights by planes at low levels over plaintiff’s land deprived plaintiffs of use and enjoyment of their property and constituted “taking” entitling them to compensation was not inconsis-

ent with this section. *United States v. Causby*, 328 U. S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946), discussed in 25 N. C. Law Rev. 64.

Cited in *Wall v. Trogdon*, 249 N. C. 747, 107 S. E. (2d) 757 (1959).

§ 63-13. Lawfulness of flight.—Flight in aircraft over the lands and waters of this State is lawful, unless at such a 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 lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable as provided in § 63-14. (1929, c. 190, s. 4; 1947, c. 1001, s. 1.)

Editor’s Note. — See 8 N. C. Law Rev. 281.

The 1947 amendment inserted in the first sentence the words “injurious to the health and happiness, or.”

Section 63-14, referred to at the end of this section, has been repealed.

An aircraft can lawfully fly over the land and water of this State, unless done in violation of the provision 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 altitude 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).

Stated in *United States v. Causby*, 328 U. S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946).

Cited in *Barrier v. Troutman*, 231 N. C. 47, 55 S. E. (2d) 923 (1949).

§ 63-14: Repealed by Session Laws 1947, c. 1069, s. 3.

§ 63-15. Collision of aircraft.—The liability of the owners of one aircraft to the owner of another aircraft, or to aeronauts or passengers on either

aircraft, for damages caused by collision on land or in the air shall be determined by the rules of law applicable to torts on land. (1929, c. 190, s. 6.)

This section appears merely to declare the common law. Jewell Ridge Coal Corp. v. Charlotte, 204 F. Supp. 256 (1962).

Liability of a carrier of passengers by aircraft must be based on negligence. Such carrier is not an insurer of the safety of its passengers. Jackson v. Stancil, 253 N. C. 291, 116 S. E. (2d) 817 (1960).

Res Ipsa Loquitur Inapplicable. — In a case involving an airplane crash the doctrine of res ipsa loquitur does not apply. Jackson v. Stancil, 253 N. C. 291, 116 S. E. (2d) 817 (1960).

§ 63-16. **Jurisdiction over crimes and torts.**—All crimes, torts, and other wrongs committed by or against an aeronaut or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft shall be determined by the laws of this State. (1929, c. 190, s. 7.)

Cross References.—See § 63-24. As to criminal jurisdiction generally, see §§ 7-63 and 7-64.

Jurisdiction Where Crash Occurs in Another State.—A court of this State has jurisdiction of an action between residents

to recover for negligent injury and death in an airplane crash occurring in another state while the plane was on a trip under contract made in this State. Jackson v. Stancil, 253 N. C. 291, 116 S. E. 817 (1960).

§ 63-17. **Jurisdiction over contracts.**—All contractual and other legal relations entered into by aeronauts or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath. (1929, c. 190, s. 8.)

§ 63-18. **Dangerous flying a misdemeanor.**—Any aeronaut or passenger who, while in flight over a thickly inhabited area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall except while in landing or taking off, fly at such a low level as to disturb the public peace or the rights of private persons in the enjoyment of their homes, or injure the health, or endanger the persons or property on the surface beneath, or drop any object except loose water or loose sand ballast, shall be guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than one year, or both. (1929, c. 190, s. 9; 1947, c. 1001, s. 2.)

Editor's Note. — The 1947 amendment struck out "endanger the persons" formerly appearing near the middle of the section and inserted in lieu thereof "disturb the public peace or the rights of private

persons in the enjoyment of their homes, or injure the health, or endanger the persons or property."

Cited in Barrier v. Troutman, 231 N. C. 47, 55 S. E. (2d) 923 (1949).

§ 63-19: Repealed by Session Laws 1943, c. 543.

§ 63-20. **Qualifications of operator; federal license.**—The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that a person engaging within this State in operating aircraft, in any form of aerial navigation for which a license to operate aircraft issued by the United States government would then be required if such aerial navigation were interstate, should have the qualifications necessary for obtaining and holding such a license, it shall be unlawful for any person to engage in operating aircraft within the State, in any such form of aerial navigation, unless he have such federal license. (1929, c. 190, s. 11.)

§ 63-21. **Possession and exhibition of license certificate.**—The certificate of the license, herein required, shall be kept in the personal possession of the licensee when he is operating aircraft within this State and must be presented

for inspection upon the demand of any passenger, any peace officer of this State, or any official, manager or person in charge of any airport or landing field in this State upon which he shall land. (1929, c. 190, s. 12.)

§ 63-22. Aircraft; construction, design and airworthiness; federal registration.—The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that aircraft to be operated within this State should conform, with respect to design, construction and airworthiness, to standards then prescribed by the United States government with respect to aerial navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to operate an aircraft within this State unless it is registered pursuant to the lawful rules and regulations of the United States government then in force, if the circumstances of such aerial navigation are of a character that such registration would be required in the case of interstate aerial navigation. (1929, c. 190, s. 13.)

§ 63-23. Penalties.—A person who violates any provision of §§ 63-20, 63-21 or 63-22 of this article shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars (\$100.00), or by imprisonment for not more than ninety days, or both; provided, however, that acts or omissions made unlawful by §§ 63-20, 63-21 or 63-22 of this article shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States. (1929, c. 190, s. 14.)

§ 63-24. Jurisdiction of State over crimes and torts retained.—Provided that this article shall not be construed as a waiver of jurisdiction of the courts of the State of North Carolina over any crime or tort committed within the State of North Carolina, and provided, further, that the General Assembly of North Carolina may at any time amend, regulate or control any of the powers which may be assumed by the United States Department of Commerce under this article. (1929, c. 190, s. 15.)

Jurisdiction Where Crash Occurs in Another State.—See same catchline under § 63-16.

ARTICLE 3.

Stealing, Tampering with, or Operating Aircraft While Intoxicated.

§ 63-25. Taking of aircraft made crime of larceny.—Any person who, under circumstances not constituting larceny shall, without the consent of the owner, take, use or operate or cause to be taken, used or operated, an airplane or other aircraft or its equipment, for his own profit, purpose or pleasure, steals the same, is guilty of larceny and is punishable accordingly. (1929, c. 90, s. 1.)

Cross References.—As to larceny generally, see § 14-70 et seq. As to punishment, see § 14-2.

§ 63-26. Tampering with aircraft made crime.—Any person who shall, without the consent of the owner, go upon or enter, tamper with or in any way damage or injure any airplane or other aircraft shall be guilty of a misdemeanor and shall be punishable by fine of not more than one hundred dollars (\$100.00) or imprisonment of not more than sixty days, or both, in the discretion of the court and it shall not be necessary to conviction hereunder to show willful or malicious intent. (1929, c. 90, s. 2.)

§ 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 imprison-

ment 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 "or on water" near the middle of the section.

§ 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 "or on water" near the middle of the section.

ARTICLE 4.

Model Airport Zoning Act.

§ 63-29. Definitions.—As used in this article, unless the context otherwise requires:

- (1) "Airport" means any area of land or water designed for the landing and taking off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.
- (2) "Airport hazard" means any overhead power line, not constructed, operated and maintained according to standard engineering practices in general use, which interferes with radio communication between a publicly owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off.
- (3) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.
- (4) "Political subdivision" means any municipality, city, town, county, or any municipal corporation, authority or commission created by the General Assembly of North Carolina for the purpose of owning, operating or regulating any airport or airports.
- (5) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.
- (6) "Tree" means any object of natural growth. (1941, c. 250, s. 1; 1945, c. 300.)

Cross Reference.—See note under § 63-31.

Editor's Note.—Prior to the 1945 amendment subdivision (4) read as follows:

"'Political subdivision' means any municipality, city, county, or town."

For comment on this article, see 19 N. C. Law Rev. 548.

§ 63-30. Airport hazards not in public interest.—It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare. (1941, c. 250, s. 2.)

Cited in *Barrier v. Troutman*, 231 N. C. 47, 55 S. E. (2d) 923 (1949).

§ 63-31. Adoption of airport zoning regulations.—(a) Every political subdivision may adopt, administer, and enforce, under the police power and in

the manner and upon the conditions hereinafter prescribed, airport zoning regulations, which regulations shall divide the area surrounding any airport within the jurisdiction of said political subdivision into zones, and, within such zones, specify the land uses permitted, and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulations, the political subdivision shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing existing obstructions, and the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

(b) In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this article, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this article.

(c) Any two or more political subdivisions may agree, by ordinance duly adopted, to create a joint board and delegate to said board the powers herein conferred to promulgate, administer and enforce airport zoning regulations to protect the aerial approaches of any airport located within the corporate limits of any one or more of said political subdivisions. Such joint board shall have as members two representatives appointed by the chief executive officer of each political subdivision participating in the creation of said board and a chairman elected by a majority of the members so appointed.

(d) The jurisdiction of each political subdivision is hereby extended to the promulgating, adopting, administering and enforcement of airport zoning regulations to protect the approaches of any airport or landing field which is owned by said political subdivision, although the area affected by the zoning regulations may be located outside the corporate limits of said political subdivision. In case of conflict with any airport zoning or other regulations promulgated by any political subdivision, the regulations adopted pursuant to this section shall prevail.

(e) All airport zoning regulations adopted under this article shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in § 63-32, subsection (a). (1941, c. 250, s. 3; 1945, cc. 300, 635.)

Editor's Note. — Session Laws 1945, c. 300 purported to amend only subdivision (4) of § 63-29 and then proceeded to set out the amended subdivision and an additional subdivision, which has been inserted above in place of former subdivision (4), now subsection (d), of this section. The amendatory act made no reference to this section and only by reading it in conjunction with the amended act can it be surmised that an amendment of subsection (d) of this section was intended. Therefore,

there is some doubt as to whether the subdivision has been amended. The act inserted in the first sentence of subsection (d) the words "adopting" and "or landing field." It also substituted in said sentence the words "although the area affected by the zoning regulations may be located" for the words "but located."

Session Laws 1945, c. 635, struck out the former last subsection of the section.

Cited in *Matson v. United States*, 171 F. Supp. 283 (1959).

§ 63-32. Permits, new structures, etc., and variances.—(a) Permits.—Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this article, a system may be established by any political subdivision for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes

therein or substantial repairs thereof. In any event, before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than eighty per cent torn down, destroyed, deteriorated, or decayed: (i) no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and (ii) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the nonconforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for ten days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

(b) Variances.—Any person desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this article, may apply to the board of appeals, as provided in § 63-33, subsection (c), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this article.

(c) Obstruction Marking and Lighting.—In granting any permit or variance under this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this article and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon. (1941, c. 250, s. 4.)

§ 63-33. Procedure.—(a) Adoption of Zoning Regulations.—No airport zoning regulations shall be adopted, amended, or changed under this article except by action of the legislative body of the political subdivision in question, or the joint board provided for in § 63-31, subsection (c), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport is located.

(b) Administration of Zoning Regulations—Administrative Agency.—The legislative body of any political subdivision adopting airport zoning regulations under this article may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform such duty, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under § 63-32, subsection (a), but such agency shall not have or exercise any of the powers delegated to the board of appeals.

(c) Administration of Airport Zoning Regulations—Board of Appeals.—Airport zoning regulations adopted under this article shall provide for a board of appeals to have and exercise the following powers:

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this article or of any ordinance adopted pursuant thereto;
- (2) To hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance;
- (3) To hear and decide specific variances under § 63-32, subsection (b).

Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of appeals. Otherwise, the board of appeals shall consist of five members, each to be appointed for a term of three years and to be removable for cause by the appointing authority upon written charges and after public hearing.

The board shall adopt rules in accordance with the provisions of any ordinance adopted under this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Appeals to the board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administration agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. (1941, c. 250, s. 5.)

Local Modification. — City of Wilson:
1961, c. 635; 1963, c. 151.

§ 63-34. **Judicial review.**—(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specify-

ing the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

(b) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(d) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from. (1941, c. 250, s. 6.)

§ 63-35. **Enforcement and remedies.**—Each violation of this article or of any regulations, order, or ruling promulgated or made pursuant to this article, shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than thirty days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision within which the property is located may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this article, or of airport zoning regulations adopted under this article, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this article and of the regulations adopted and orders and rulings made pursuant thereto. (1941, c. 250, s. 7.)

§ 63-36. **Acquisition of air rights.**—In any case in which:

- (1) It is desired to remove, lower, or otherwise terminate a nonconforming use; or
- (2) The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this article; or
- (3) It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations,

the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, in the manner provided by the law under which municipalities are authorized to acquire real property for public purposes, such an air right, easement, or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purposes of this article.

If any political subdivision, or if any board of administrative agency appointed or selected by a political subdivision, shall adopt, administer or enforce any airport zoning regulations which results in the taking of, or in any other injury or

damage to any existing structure, such political subdivision shall be liable therefor in damages to the owner or owners of any such property and the liability of the political subdivision shall include any expense which the owners of such property are required to incur in complying with any such zoning regulations. (1941, c. 250, s. 8.)

§ 63-37. **Short title.**—This article shall be known and may be cited as the “Model Airport Zoning Act.” (1941, c. 250, s. 10.)

ARTICLE 5.

Aeronautics Commission; Federal Regulations.

§§ 63-38 to 63-44: Repealed by Session Laws 1949, c. 865, s. 1.

§ 63-45. **Enforcement of article.**—It shall be the duty of every State, county and municipal officer charged with the enforcement of State and municipal laws to enforce and assist in the enforcement of this article. (1945, c. 198, s. 8.)

§ 63-46: Repealed by Session Laws 1949, c. 865, s. 2.

§ 63-47. **Enforcement of regulations of Civil Aeronautics Administration.**—In the general public interest and safety, the safety of persons receiving instructions concerning or operating, using or traveling in aircraft, and of persons and property on the ground, and in the interest of aeronautical progress, the public officers of the State, counties and cities shall enforce the rules and regulations of the Civil Aeronautics Administration. (1945, c. 198, s. 10.)

ARTICLE 6.

Public Airports and Related Facilities.

§ 63-48. **Definitions; singular and plural.**—(a) Definitions.—For the purpose of this article the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

- (1) “Aeronautics” means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.
- (2) “Aeronautics instructor” means any individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his facilities an “air school” or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this State, or any institution of higher learning duly accredited and approved for carrying on collegiate work, while engaged in his duties as such instructor.
- (3) “Aircraft” means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.
- (4) “Air instruction” means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club.
- (5) “Airman” means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while underway and (excepting individuals employed outside the United States, any individual employed by a

manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

- (6) "Air navigation" means the operation or navigation of aircraft in the air space over this State, or upon any airport or restricted landing area within this State.
- (7) "Air navigation facility" means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area, and any combination of any or all of such facilities.
- (8) "Airport" means any area of land or water, except a restricted landing area, which is designed for the landing and take off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.
- (9) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.
- (10) "Airport protection privileges" means easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.
- (11) "Air school" means any person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give such instruction. It does not include any public school or university of this State, or any institution of higher learning duly accredited and approved for carrying on collegiate work.
- (12) "Civil aircraft" means any aircraft other than a public aircraft.
- (13) "Flying club" means any person other than an individual which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.
- (14) "Municipality" means any county, city, or town of this State, and any other political subdivision, public corporation, authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.
- (15) "Navigable air space" means air space above the minimum altitudes

of flight prescribed by the laws of this State, or by regulations of the Commission consistent therewith.

- (16) "Operation of aircraft" or "operation aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this State.
- (17) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.
- (18) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes.
- (19) "Restricted area" mean any area of land, water, or both, which is used or is made available for the landing and take off of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the Commission.
- (20) "State" or "this State" means the State of North Carolina.
- (21) "State airway" means a route in the navigable air space over and above the lands or water of this State designated by the Commission as a route suitable for air navigation.

(b) Singular and Plural.—The singular shall include the plural, and the plural the singular. (1945, c. 490, s. 1; 1949, c. 865, s. 3.)

Editor's Note. — For discussion of the 1945 statute enacting this and the following sections, see 23 N. C. Law Rev. 327. The 1949 act repealed a provision referring to the North Carolina Aeronautics Commission.

§ 63-49. Municipalities may acquire airports. — (a) Every municipality is hereby authorized, through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this State; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install, and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the State without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and co-ordinated in design and operation with those established and operated by the federal government.

(b) All property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power

to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. The fact that the property needed has been acquired by any agency or corporation authorized to institute condemnation proceedings under power of eminent domain shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred when such right is exercised on the approach zone or on the airport site. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage. Provided that municipalities building airports after the ratification of this article shall not acquire by condemnation any property of any corporation engaged in the operation of a railroad or railroad bridge in this State if such property is used in the business of such corporation.

(c) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of this article, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards, or airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, land for the removal of airport hazards and the right of easement for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress or egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this State.

(d) It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted, or permit to grow higher any tree or trees or other vegetation which shall encroach upon any airport protection privileges acquired pursuant to the provisions of this section. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in this section provided, may go upon the land of others and remove any such encroachment without being liable for damages in so doing. (1945, c. 490, s. 2; c. 810.)

Cross Reference. — For other provisions as to municipal airports, see §§ 63-1 to 63-9.

Editor's Note. — Session Laws 1945, c. 810 added the proviso at the end of subsection (b).

§ 63-50. Airports a public purpose.—The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental and municipal functions exercised for a public purpose and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this article,

shall and are hereby declared to be acquired and used for public, governmental and municipal purposes and as matter of public necessity. (1945, c. 490, s. 3.)

Editor's Note. — For brief comment on this section, see 28 N. C. Law Rev. 332.

A municipality is liable for torts committed by it in the operation and maintenance of a municipal airport, since such activity is a proprietary or corporate function of the municipality, and this section,

declaring such activity to be a public, governmental and municipal function exercised for a public purpose, does not purport to exempt it from tort liability. *Rhodes v. Asheville*, 230 N. C. 134, 52 S. E. (2d) 371 (1949).

§ 63-51. Prior acquisition of airport property validated.—Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities or of airport protection privileges heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. (1945, c. 490, s. 4.)

§ 63-52. Airport property and income exempt from taxation.—No municipality shall be required to pay any tax to the State of North Carolina or any other municipality on account of property, either real or personal, now owned or hereafter acquired for aeronautical purposes. (1945, c. 490, s. 5.)

§ 63-53. Specific powers of municipalities operating airports.—In addition to the general powers in this article conferred, and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes is hereby authorized:

- (1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation and regulation shall be a responsibility of the municipality.
- (2) To adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control whether within or without the territorial limits of the municipality; to appoint airport guards or police with full police powers; to fix by ordinance, penalties for the violation of said ordinances and enforce said penalties in the same manner in which penalties prescribed by other ordinances of the municipality are enforced. It may also adopt ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Such ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar ordinances. They must conform to and be consistent with the laws of this State and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.
- (3) To lease such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, to any municipal or State government or to the national government, or to any department of either thereof, for operation; to lease to private parties, to any municipal or State government or to the na-

tional government, or any department of either thereof, for operation or use consistent with the purpose of this article, space, area, improvements, or equipment on such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal government, or to the United States or to any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities; provided that in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

- (4) To sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes in accordance with the laws of this State or the provisions of the charter of the municipality governing the sale or leasing of similar municipally owned property.
- (5) To determine the charge or rental for the use of any properties under its control and the charges for any services or accommodations and the terms and conditions under which such properties may be used, provided that in all cases the public is not deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.
- (6) To exercise all powers necessarily incidental to the exercise of the general and special powers herein created. (1945, c. 490, s. 6.)

Local Modification. — City of Laurinburg, as to subdivision (4): 1957, c. 1210; town of Maxton, as to subdivision (4): 1957, c. 1210.

Where a night watchman at a municipal airport kills a person on the property in the nighttime, the question of whether he was acting in his capacity as servant or

agent of the airport, or in his capacity as a police officer, is a question of fact to be determined by the jury on an issue raised by proper pleadings. *Rhodes v. Asheville*, 230 N. C. 134, 52 S. E. (2d) 371 (1949).

Cited in *Jackson v. Stancil*, 253 N. C. 291, 116 S. E. (2d) 817 (1960).

§ 63-54. **Federal aid.**—(a) A municipality is authorized to accept, receive, and receipt for federal moneys and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditures of federal moneys upon such airports and other air navigation facilities.

(b) The governing body of any municipality is authorized, if necessary, to comply with any federal law or regulation of any agency thereof to designate the North Carolina Aeronautics Commission as its agents to accept, receive, and receipt for federal moneys in its behalf for airport purposes. Such moneys as are paid over by the United States government and shall be paid over to said municipality under such terms and conditions as may be imposed by the United States government in making such grant.

(c) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities made by the municipality shall be made pursuant to the laws of this State governing the making of like contracts, provided, however, that where such acquisition, construction, improvement, enlargement, maintenance, equipment or opera-

tion is financed wholly or partly with federal moneys the municipality may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States and any rules or regulations made thereunder notwithstanding any other State law to the contrary. (1945, c. 490, s. 7.)

Editor's Note. — The Commission repealed §§ 63-38 to 63-44 and 63-46. See Session Laws 1949, c. 865, referred to in subsection (b) has been abolished.

§ 63-55. **Airports on public waters and reclaimed land.**—(a) The powers herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over, and upon any public waters of this State within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public water, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

(b) All the other powers herein granted municipalities with reference to airports on land or granted to them with reference to such airports in, over, and upon public waters, submerged land under public waters, and artificial or reclaimed land. (1945, c. 490, s. 8.)

§ 63-56. **Joint operation of airports.**—(a) All powers, rights and authority granted to any municipality in this article may be exercised and enjoyed by two or more municipalities either within or without the territorial limits of either or any of said municipalities and within or without this State, or by any municipality acting jointly with any other municipality therein either within or without this State, provided the laws of such other state permit such joint action.

(b) Any two or more municipalities may enter into agreements with each other, duly authorized by ordinance or resolution, as may be appropriate, for joint action pursuant to the provisions of this section. Concurrent action by the governing bodies of the municipalities involved shall constitute joint action.

(c) Each such agreement shall specify its term; the proportionate interest which each municipality shall have in the property, facilities and privileges involved, and the proportion of preliminary costs, costs of acquisition, establishment, construction, enlargement, improvement and equipment, and of expenses of maintenance, operation and regulation to be borne by each, and make such other provisions as may be necessary to carry out the provisions of this section. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities and privileges jointly owned if said property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(d) Municipalities acting jointly as herein authorized may create a board from the inhabitants of such municipalities for the purpose of acquiring property for establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. Such board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms and as to compensation, if any, as may be provided for in the agreement.

(e) Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

(f) Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by this article, except as herein provided, subject, however, to such limitations as may be contained in the agreement between such municipalities. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the municipalities involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, or otherwise, except by authority of the appointed governing bodies, but the board may lease space, area or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto.

(g) Each municipality is authorized and empowered to enact such ordinances as are provided for by this article, and to fix by such ordinances penalties for the violation thereof, which ordinances shall have the same force and effect within the municipality which enacted them, and on any property controlled by it, either separately or jointly with another municipality, or adjacent thereto, whether within or without the territorial limits of it, or either or any of them, as ordinances of the municipality involved, and may be enforced in such municipality in like manner as are its other ordinances.

(h) Condemnation proceedings may be instituted in the names of two or more municipalities jointly, and the property acquired by such joint condemnation proceedings shall be held by the municipalities as tenants in common, each municipality being entitled to a pro rata interest in said property as the value of its contribution to the acquisition of said property bears to the total cost of acquiring said property, and in the event one municipality desires to acquire property for expansion of or addition to the facilities, and the other or others do not elect to join in the acquisition of such property, such municipality may institute condemnation proceedings in its name individually, and all property now owned or hereafter acquired by a municipal corporation for additions to or expansions of aeronautical facilities operated jointly shall be and remain the sole property of the municipal corporation acquiring same.

(i) For the purpose of providing funds for necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement, and into which shall be paid the revenues obtained from the ownership, control and operation of the airports and other air navigation facilities jointly controlled.

(j) All disbursements from such fund shall be made by order of the board, subject, however, to such limitations as shall be contained in the agreement between such municipalities.

(k) Specific performance of the provisions of any joint agreement entered into as provided for in this section may be enforced as against any party thereto by the other party or parties thereto.

(l) In the event any property is now held (or may hereafter be acquired) by two or more municipalities for aeronautical purposes, and such municipalities do not agree upon the terms of an agreement, as heretofore provided, and shall not agree to create a board as heretofore provided, then and in that event a board of not less than five nor more than seven members shall be created from the inhabitants of such municipalities, each municipality being entitled to appoint as nearly as possible the proportionate number of representatives on said board as

the value of its contribution shall bear to the entire amount of money or property so held by such municipalities for aeronautical purposes. In determining the value of the contribution of any municipality, the value of any funds or property used for the development of said property or the building of facilities on said property shall be taken into consideration.

(m) The said board shall have all powers given by this article to boards created by agreements between municipalities, provided, however, that any funds appropriated by a municipality and turned over to the board for aeronautical purposes shall only be used for these purposes designated by the municipality furnishing such funds.

(n) The actions of such board shall be determined by a majority vote of the members thereof, and a majority of the members shall constitute a quorum for any meeting of the board, and such boards so created shall have full control of all revenues received by reason of the airport or other aeronautical facilities, and shall have power to expend all sums so received for such aeronautical purposes as the board deems proper, and pay over any surplus to municipalities in proportion to their respective interests.

(o) In the event the aeronautical facilities or any part thereof shall cease to be used for aeronautical purposes, such of the facilities as are jointly owned by two or more municipalities shall be sold, and each municipality shall receive its pro rata proportion of the sums realized from the sale of facilities jointly owned.

(p) In the event aeronautical facilities are now owned or hereafter acquired by two or more municipalities, and are operated under a board as hereinabove provided, and one or more of such municipalities deem it advisable to expand or enlarge the facilities or invest more money in such facilities, all of the municipalities then having representation on the board shall be entitled, if they so desire, to contribute their pro rata part of such additional investment and maintain their pro rata representation on said board, provided, however, that if one or more of the municipalities involved shall fail to contribute its or their proportionate part of such additional investment, the representation of such municipality on such board shall be readjusted, to the end that the representation of each municipality on said board shall represent as nearly as possible its pro rata contribution to the entire investment.

Provided further that where one municipality at the time of the passage of this article shall have invested more than one half of the total investment in a jointly owned airport, then, and in that event the minority owner or owners shall be allowed five years from the date of the passage of this article in which to pay over to the majority owner a sum sufficient to equalize the amount of ownership of the present minority owner or owners with the total ownership of the majority owner. Provided further that this article shall not be construed to amend or impair in any respect contracts or agreements in effect at the time of the adoption of this article. (1945, c. 490, s. 9.)

§ 63-57. **Powers specifically granted to counties.**—(a) The purposes of this article are specifically declared to be county purposes as well as generally public, governmental and municipal.

(b) The powers herein granted to all municipalities are specifically declared to be granted to counties in this State, any other statute to the contrary notwithstanding. (1945, c. 490, s. 10.)

Operation of Airport Is Proprietary Function. — In operating and maintaining an airport a county engages in a proprietary or corporate function, in the exercise of which it is subject to tort liability. *Rhodes v. Asheville*, 230 N. C. 134, 52 S. E. (2d) 371 (1949).

§ 63-58. **Municipal jurisdiction exclusive.**—Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this article, shall, subject to

federal and State laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it, and no other municipality in which such airport or air navigation facility is located shall have any police jurisdiction of the same. (1945, c. 490, s. 11.)

Cited in Rhodes v. Asheville, 230 N. C. 134, 52 S. E. (2d) 371 (1949).

Chapter 64.

Aliens.

<p>Sec. 64-1. Rights as to real property. 64-2. Contracts validated. 64-3. Nonresident aliens; right to take real or personal property; reciprocity.</p>	<p>Sec. 64-4. Burden of establishing reciprocal rights. 64-5. Nonresident aliens; absence of reciprocity; escheat.</p>
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§ 64-1. **Rights as to real property.**—It is lawful for aliens to take both by purchase and descent, or other operation of law, any lands, tenements or hereditaments, and to hold and convey the same as fully as citizens of this State can or may do, any law or usage to the contrary notwithstanding. (1870-1, c. 255; Code, s. 7; Rev., s. 182; C. S., s. 192; 1935, c. 243; 1939, c. 19.)

Cross Reference.—As to Intestate Succession Act, see § 29-1 et seq. vertently repealed by the 1935 act. See 13 N. C. Law Rev. 355. The 1939 act restored the section.

Editor's Note. — This section was inad-

§ 64-2. **Contracts validated.**—All contracts to purchase or sell real estate by or with aliens, heretofore made, shall be deemed and taken as valid to all intents and purposes. (1870-1, c. 255, s. 2; Code, s. 8; Rev., s. 183; C. S., s. 193.)

§ 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 1.

Care of Rural Cemeteries.

- Sec.
65-1. County commissioners to provide list of public and abandoned cemeteries.
65-2. Appropriations by county commissioners.
65-3. County commissioners to have control of abandoned cemeteries; trustees.

Article 2.

Care of Confederate Cemetery.

- 65-4. State Prison Department to furnish labor.

Article 3.

Cemeteries for Inmates of County Homes.

- 65-5. County commissioners may establish new cemeteries.
65-6. Removal and reinterment of bodies.

Article 4.

Trust Funds for the Care of Cemeteries.

- 65-7. Money deposited with clerk of superior court.
65-8. Separate record of accounts to be kept.
65-9. Funds to be kept perpetually.
65-10. Investment of funds.
65-11. Clerk's bond and fees; substitution of bank or trust company as trustee.
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Article 5.

Removal of Graves.

- 65-13. Removal to enlarge or erect churches, etc., or to establish hydro-electric reservoirs, or to perform governmental functions.
65-14. Conveyance by church; removal of graves.
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65-15. Removal after abandonment of cemetery.

Article 6.

Cemetery Associations.

- 65-16. Land holdings.
65-17. Change of name of association or corporation.

Sec.

- 65-17.1. Quorum at stockholders' meeting of certain nonprofit cemetery corporations; calling meeting; amendment of charter.

Article 7.

Cemeteries Operated for Private Gain.

- 65-18. Cemeteries to which article applies.
65-19. Words and phrases defined.
65-20. Reports by cemeteries to Burial Association Commissioner.
65-21. Information as to perpetual care fund to be reported.
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65-23.2. Appointment of new trustee of perpetual care fund; trust agreement.
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65-24. Amount set aside in perpetual care fund; use of income.
65-25. Sale of lots under "certificate plan;" certificate indemnity fund.
65-26. License and provision for perpetual care requisite for establishment of cemetery.
65-27. Deposits in perpetual care fund when fund amounts to \$100,000.00.
65-28. Amount of deposits for perpetual care fund in certain instances.
65-29. Agreements as to retention of perpetual care fund where cemetery property sold to municipality.
65-30. Burial Association Commissioner to administer article; examinations.
65-31. Violation of article a misdemeanor.
65-32. Licenses for persons selling grave space; revocation.
65-33. Certain powers delegated to cemetery manager.
65-34. Prosecution of violations; revocation and restoration of license; article part of contracts.
65-35. Effect of certain other laws.
65-36. Funds for expenses of supervision.

Article 8.

Municipal Cemeteries.

Sec.

65-37. Authority to take possession of and continue the use of certain lands as cemetery.

65-38. Racial restrictions as to use of cemeteries for burial of dead.

Sec.

65-39. Subdivision into burial plots; sale of lots and use of proceeds.

65-40. Appropriations for improvement and maintenance; application of existing laws.

ARTICLE 1.

Care of Rural Cemeteries.

§ 65-1. **County commissioners to provide list of public and abandoned cemeteries.**—It shall be the duty of the boards of county commissioners of the various counties in the State to prepare and keep on record in the office of the register of deeds a list of all public cemeteries in the counties outside the limits of incorporated towns and cities, and not established and maintained for the use of an incorporated town or city, together with the names and addresses of the persons in possession and control of the same. To such list shall be added a list of the public cemeteries in the rural districts of such counties which have been abandoned, and it shall be the duty of the boards of county commissioners to furnish to the division of publications in the office of the Secretary of State copies of the lists of such public and abandoned cemeteries, to the end that it may furnish to the boards, for the use of the persons in control of such cemeteries, suitable literature, suggesting methods of taking care of such places. (1917, c. 101, s. 1; C. S., s. 5019; 1939, c. 316.)

§ 65-2. **Appropriations by county commissioners.**—To encourage the persons in possession and control of the public cemeteries referred to in § 65-1 to take proper care of and to beautify such cemeteries, to mark distinctly their boundary line with evergreen hedges or rows of suitable trees, and otherwise to lay out the grounds in an orderly manner, the board of county commissioners of any county, upon being notified that two thirds of the expense necessary for so marking and beautifying any cemetery has been raised by the local governing body of the institution which owns the cemetery, and is actually in hand, is hereby required to appropriate from the general fund of the county one third of the expense necessary to pay for such work, the amount appropriated by the board of commissioners in no case to exceed fifteen dollars for each cemetery. (1917, c. 101, s. 2; C. S., s. 5020.)

§ 65-3. **County commissioners to have control of abandoned cemeteries; trustees.**—The county commissioners of the various counties are required to take possession and control of all abandoned public cemeteries in their respective counties, to see that the boundaries and lines are clearly laid out, defined, and marked, and to take proper steps to preserve them from encroachment, and they are hereby authorized to appropriate from the general fund of the county whatever sums may be necessary from time to time for the above purposes.

The board of county commissioners of the various counties may appoint a board of trustees not to exceed five in number and to serve at the will of the board, and may impose upon such trustees the duties required of the board of commissioners by this article; and such trustees may accept gifts and donations for the purpose of upkeep and beautification of such cemeteries. (1917, c. 101, s. 3; C. S., s. 5021; 1947, c. 236.)

Editor's Note. — The 1947 amendment for cemetery purposes in Avery County, added the second paragraph. see Session Laws 1955, c. 1013.

As to condemnation of adjoining lands

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.)

Editor's Note. — The 1957 amendment "State Highway and Public Works Commission." substituted "State Prison Department" for "State Highway and Public Works Commission."

ARTICLE 3.

Cemeteries for Inmates of County Homes.

§ 65-5. **County commissioners may establish new cemeteries.**—The boards of county commissioners of the various counties in the State are authorized and empowered to locate and establish new graveyards or cemeteries upon the lands of their respective counties for the burial of the inmates of the county homes. (1917, c. 151, s. 1; C. S., s. 5022.)

§ 65-6. **Removal and reinterment of bodies.** — Whenever the county commissioners have established new graveyards or cemeteries, they are authorized and empowered to remove to such graveyards or cemeteries all bodies of deceased inmates of the county homes. (1917, c. 151, s. 2; C. S., s. 5023.)

ARTICLE 4.

Trust Funds for the Care of Cemeteries.

§ 65-7. **Money deposited with clerk of superior court.**—For the maintenance and preservation of graves, burial plats, graveyards and cemeteries which may be neglected, any person, firm, or corporation may, by will or otherwise place in the hands of the clerk of the superior court of any county in the State where such grave or lot is located any sum of money not less than one hundred dollars nor more than two thousand dollars, the income from which is to be used for keeping in good condition any grave, burial plat, graveyard, or cemetery in the county in which the money is placed, with specific instructions as to the use of the fund. (1917, c. 155, s. 1; C. S., s. 5024.)

Local Modification.—Washington: 1957, c. 1126.

§ 65-8. **Separate record of accounts to be kept.**—It shall be the duty of the clerk of the superior court to keep a separate record for keeping account of the money deposited as above provided, to keep a perpetual account of the same therein, and to record therein the specific instructions about the use of the income on such money. He shall see that the income is spent according to such specific instructions, and shall make report of the same from year to year in the same manner as if it were guardian funds. (1917, c. 155, s. 1; C. S., s. 5025.)

§ 65-9. **Funds to be kept perpetually.**—All money placed in the office of the superior court clerk in accordance with this article shall be held perpetually, and no one shall have authority to withdraw or change the direction of the income on same. (1917, c. 155, s. 2; C. S., s. 5026.)

§ 65-10. **Investment of funds.**—Such money shall be invested in the same manner as is provided by law for the investment of other trust funds by the clerk of the superior court. (1917, c. 155, s. 3; C. S., s. 5027; 1943, c. 97, s. 1.)

Cross Reference. — As to investment of funds in hands of clerks of court by color of their office, see §§ 2-54 to 2-60. **Editor's Note.**—The 1943 amendment re-wrote this section.

§ 65-11. Clerk's bond and fees; substitution of bank or trust company as trustee.—The official bond of the clerk of the superior court shall be liable for all such sums as shall be paid over to him on account of the provisions of this article. The clerk shall receive for his services and responsibilities a commission of ten per cent on the net income each year of such money; and the fees or commissions so received by him under this article shall not be taken into consideration as a part of his salary.

In lieu of the provisions of the first paragraph of this section, the clerk of the superior court may, with the consent and approval of the sheriff and register of deeds, appoint any bank or trust company authorized to do business in this State as trustee for the funds authorized to be paid into his office by virtue of this article; provided, that no bank or trust company shall be appointed as such trustee unless such bank or trust company is authorized and licensed to act as fiduciary under the laws of this State.

Before any clerk shall turn over such funds to the trustee so appointed, he shall require that the trustee so named qualify before him as such trustee in the same way and manner and to the same extent as guardians are by law required to so qualify. After such trustee has qualified as herein provided, all such funds coming into his hands may be invested by it only in the securities set out in § 2-55 and the income therefrom invested for the purposes and in the manner heretofore set out in this article. All trustees appointed under the provisions of this article shall render and file in the office of the clerk of the superior court all reports that are now required by law of guardians. (1917, c. 155, ss. 3, 4; C. S., s. 5028; 1939, c. 18; 1943, c. 97, s. 2.)

Editor's Note. — The 1939 amendment The 1943 amendment rewrote the first sentence of the first paragraph. sentence of the first paragraph.

§ 65-12. Funds exempt from taxation.—All money referred to in the preceding sections of this article shall be exempt from all State, county, township, town, and city taxes. (1917, c. 155, s. 4; C. S., s. 5029.)

ARTICLE 5.

Removal of Graves.

§ 65-13. Removal to enlarge or erect churches, etc., or to establish hydro-electric reservoirs, or to perform governmental functions. — In those cases where any church authorities desire to enlarge a church building and/or erect a new church and/or parish house and/or parsonage and where it becomes necessary or expedient to remove certain graves in order to secure the necessary room for such enlargement, it shall be lawful for such church authorities after thirty days' notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plat in the church cemetery, or in another cemetery, due care being taken to protect tombstones and replace them properly so as to leave the graves in as good condition as before removal. When any lands are owned by any hydro-electric power or lighting company for use as a reservoir, on which lands there are graves, it shall be lawful for said company, after thirty (30) days' notice to the surviving husband or wife, or next of kin of the deceased, or the person in control of such graves, if any are known, and if not known, then after publishing a notice for four (4) weeks in a newspaper, published in the county and in a daily State paper, to open any such graves, and to take therefrom any dead body, or part thereof buried therein, and anything interred therewith, and to remove and reinter the same in some other cemetery or suitable place in the same county to be selected by the next of kin, or the welfare officer of the county or the clerk of the superior court in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reintering said remains. Due care shall also be taken to remove, protect and

replace all tombstones or other markers, so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the county, if one, or his representatives; but if no welfare officer, then under the supervision and direction of the clerk of the court, or his representatives. All the expense connected with said work, including the actual expense of one of the "next of kin" in attending to same, shall be borne by the company doing, or causing same to be done.

If any municipality or other political subdivision of the State, or any school, university or college in this State shall find it necessary in order to perform its governmental or educational function and the duties prescribed by law or under authority of the governing body thereof, to remove graves from property owned by or in the custody and control of such municipality or other political subdivision, or of a school, university or college in the State, or from property owned by individuals or corporations, whether known or unknown, such graves may be moved by such municipality or political subdivision, or by such school, university or college, after thirty days' notice to the relatives of the deceased persons, if any are known, and if none are known, then after publication of a notice of such intended removal once a week for four (4) weeks in some newspaper having a general circulation in the county in which such property lies; and such graves when removed shall be removed to a suitable place in another cemetery, due care being taken to protect the tombstones and to place them properly so as to leave the graves in as good condition as before removal. All expense of the removal and acquisition of another burial site shall be borne by the municipality or political subdivision of the State, or by the school, university or college moving the said graves. (1919, c. 245; C. S., s. 5030; 1927, c. 23, s. 1; 1937, c. 3; 1947, c. 168; 1961, c. 457; 1963, c. 915, s. 1.)

Local Modification.—Orange (last paragraph): 1963, c. 915, s. 1½.

Cross References.—As to condemnation of burial grounds, see § 40-10; as to removal of or interference with monuments and tombstones, see § 14-148; as to interference with graveyards, see §§ 14-144, 14-149; as to disturbance of graves, see § 14-150; as to burial grounds on watersheds, see § 130-163.

Editor's Note.—The 1937 amendment inserted "and/or erect a new church and/or parish house and/or parsonage" in the first sentence. The 1947 amendment added the second paragraph.

The 1961 amendment changed the second paragraph so as to make the section applicable to the State and its agencies.

§ 65-14. Conveyance by church; removal of graves. — Where any church has conveyed, or is about to convey real estate on which there are graves, and where it becomes necessary and expedient to remove said graves, it shall be lawful for such church authorities after thirty days' notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plot in some other cemetery, due care being taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal. (Ex. Sess. 1920, c. 46; C. S., s. 5030(a).)

Local Modification. — Burke: 1959, c. 1217.

§ 65-14.1. Churches may remove graves under their custody to regular cemeteries.—Where any church has assumed the care and custody of

The 1963 amendment deleted references to the State and its agencies in the second paragraph and made the paragraph applicable to schools, universities and colleges.

The building of a new vestry room of a church to be used with the one as presently located in relation to the use of the choir, etc., comes within the purview of the statute permitting the removal of the bodies buried in the churchyard by the proper authorities of the church, when necessary or expedient to do so, in carrying out the arrangement. *Mayo v. Bragaw*, 191 N. C. 427, 132 S. E. 1 (1926).

any grave or graves not located in a regular cemetery or burying ground, said church is authorized to remove said grave or graves and reinter the remains in some cemetery or other suitable place in the same county to be selected by the next of kin of the deceased resident in that county or the welfare officer of the county or the clerk of the superior court of the county in the order named. Due care shall be taken to do said work of removal in a proper, decent and seemly manner, and if necessary, to furnish suitable coffins or boxes for reintering said remains and due care shall be taken to remove, protect and replace all tombstones or other markers so as to leave the grave in as good condition as it was before removal. The work of removal shall be done under the supervision of the superintendent of welfare of the county, if one, and if not, under the supervision of the clerk of the superior court of the county. All the expenses of removal are to be borne by the church causing the grave to be removed. The church shall give the grave or graves at the location to which they are removed the same care, custody and attention which it was obligated to give said grave or graves at the original location. (1947, c. 576.)

§ 65-15. **Removal after abandonment of cemetery.** — When any person, firm, or corporation, owns any land on which is situated any cemetery or burying ground, and where it becomes necessary and expedient in the opinion of the governing body of the county or town in which any such graves are situated to remove said graves, it shall be lawful for such person, firm or corporation, after thirty days' notice to the relatives of the deceased persons buried therein, if any are known, and if none are known, then after thirty days' notice printed in some newspaper published in said county where said property lies, and if no newspaper is published in said county, then by posting notice at the courthouse door of said county, to remove said graves to a suitable plot in some other cemetery, due care being taken to protect tombstones and replace them properly so as to leave the graves in as good condition as before removal: Provided, that all of said work shall be done under the supervision of the county health officer and the board of county commissioners: Provided, further, that the conveyance of the land without reservation of the burying ground shall itself be evidence of the abandonment of the same sufficient for the purposes of this section. (1927, c. 175, s. 1.)

Action for Removal of Grave in Violation of Section. — See King v Smith, 236 N. C. 170, 72 S. E. (2d) 425 (1952).

ARTICLE 6.

Cemetery Associations.

§ 65-16. **Land holdings.**—All cemetery associations or corporations created by any local, private or special act or resolution before January tenth, one thousand nine hundred and seventeen are authorized and fully empowered to hold amounts of land in excess of the limitation provided in the local, private or special act or resolution incorporating or chartering such cemetery association or corporation. (1923, c. 76, s. 1; C. S., s. 5030(b).)

§ 65-17. **Change of name of association or corporation.**—Any corporation or association chartered or incorporated by any special act of the legislature, as set forth in § 65-16, is authorized and fully empowered to change the name of such association or corporation by a majority vote of its directors, and upon such change in name it shall be the duty of the officers of the board of directors of such corporation or association to file with the clerk of the superior court a copy of resolution changing the name, which resolution must show the act of the legislature creating or incorporating the same and the reasons for the change thereof. (1923, c. 76, s. 2; C. S., s. 5030(c).)

§ 65-17.1. **Quorum at stockholders' meeting of certain nonprofit cemetery corporations; calling meeting; amendment of charter.**—Not-

withstanding 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.)

Editor's Note.—This section refers to § and which is cited in the historical references 55-31 as it stood prior to the 1955 revision, ences to present §§ 55-99 and 55-100.

ARTICLE 7.

Cemeteries Operated for Private Gain.

§ 65-18. **Cemeteries to which article applies.**—This article shall apply only to public cemeteries which are privately owned and operated for private gain or profit or which may hereafter be established for such purpose, and which may advertise or offer perpetual care of grave space in connection therewith. (1943, c. 644, s. 1.)

Editor's Note.—Session Laws 1953, c. 561, s. 2, made this article applicable to Durham County except as provided in section 3, which modifies § 65-26. **Applied in Blue Ridge Memorial Park, Inc. v. Union Nat. Bank, Inc.,** 237 N. C. 547, 75 S. E. (2d) 617 (1953).

§ 65-19. **Words and phrases defined.**—(a) Burial Commissioner, etc.—The words "Burial Commissioner," "Burial Association Commissioner," or "Commissioner" used herein shall be deemed to refer to the Burial Association Commissioner of North Carolina.

(b) Cemetery, etc.—When consistent with the context of this article and not obviously used in a different sense, the term "cemetery," "public cemetery," or "owner or owners" of such cemetery, as used in this article, includes only such corporations, associations, partnerships, or individuals, as are engaged in the operation for private gain or profit of a public cemetery for the interment of the dead of the human race or the sale of grave space or interment rights therein, and who advertise or offer perpetual care of grave space in connection therewith.

(c) Sale or Conveyance.—The words "sale" or "conveyance," as used herein, unless obviously used in some other sense, shall be deemed to refer to and authorize any form of contract by means of which cemetery transfers or agrees to transfer to purchaser title to or exclusive right of interment in a grave space or family burial plot. (1943, c. 644, s. 2.)

§ 65-20. **Reports by cemeteries to Burial Association Commissioner.**—Every such public cemetery shall, on or before July first, one thousand nine hundred and forty-three, and on or before February first, one thousand nine hundred and forty-four, and on February first of each year thereafter, file or cause to be filed with the Burial Association Commissioner of North Carolina, in his office in Raleigh, on forms to be supplied by said Commissioner, a report giving the name of the cemetery, name of all owners thereof, name of managing or directing head, including name of sales manager or agency handling sales, if any, and stating whether or not such cemetery offers, directly or indirectly, or advertises perpetual care of burial lots or spaces sold to the public, together with copy of all

forms of agreements offered to prospective purchasers, and shall, with said first report, file a plat of such cemetery, showing, as of date of ratification of this article, number and location of all lots actually surveyed and permanently staked, together with such other information as may be required under § 65-25, and as may be required by the Burial Association Commissioner of North Carolina.

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 *Park Corp., 242 N. C. 20, 86 S. E. (2d) 893 (1955).*
added the second paragraph.

Cited in *Mills v. Carolina Cemetery*

§ 65-21. Information as to perpetual care fund to be reported.—If such cemetery shall report that it advertises or claims to provide the perpetual care of lots or grave spaces included in its property, such report shall state the amount of its perpetual care fund as of date of above required report, manner of computing same, how and by whom controlled, description of securities in which fund is invested, and copies of all agreements entered into by the cemetery relating thereto. (1943, c. 644, s. 4.)

§ 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:

- (1) Any securities which guardians, appointed under provisions of chapter 33 of the General Statutes, are permitted by law to invest funds for their wards.
- (2) 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 (33⅓%) 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.
- (3) 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 "Uni-

form 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 subdivision (2) 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 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.**—If such cemetery shall offer for sale and sell its said lots or grave spaces under plan or agreement evidenced by certificate (hereinafter referred to as "certificate plan"), which may involve the transfer of family burial plot or grave spaces, or exclusive right of interment therein, to families, individuals, or their representatives, conditioned upon the continuance or cessation of human life or upon limited pay plan or plans where death of certificate holder prior to payment of all sums due to be paid thereunder may terminate his or her liability for further payment, such cemetery shall set aside and reserve unencumbered and shall keep unencumbered lots or grave spaces suitable for burial in sufficient number to enable the cemetery to comply with the terms of each certificate issued, and shall set aside and deposit with the trustee of its perpetual care fund an additional one dollar per grave space sold, same to be known as "certificate indemnity fund" and continue the making of such deposit until from such sales the total deposits to credit of said fund shall amount to five thousand dollars, same to be held and invested separate and apart from the perpetual care fund of such cemetery, as a fund to indemnify lot and grave space purchasers against loss by reason of the cemetery's failure to reserve, unencumbered, the identical grave space(s) selected by purchaser, if selection has been made, and if not, a sufficient number of grave spaces suitable for burial to enable the cemetery to comply with the terms of its certificate, such fund to be calculated, become due, be deposited and invested, and the cemetery to become liable therefor, only in like manner as for such cemetery's perpetual care fund, and shall be maintained and kept separate so long as there is outstanding any liability of cemetery to reserve grave space under a certificate issued on the above plan, but income therefrom shall be paid to cemetery for such use as income from its perpetual care fund may be used. When such liability no longer exists, said fund shall become a part of the perpetual care fund of such cemetery. Any certificate holder sustaining any loss due to failure of the cemetery to comply with all of the provisions of this section shall have a right of action therefor against said cemetery and upon obtaining a final judgment, such certificate holder shall be entitled to an order directing said trustee to pay the amount of said judgment. 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: Provided, purchaser is not in default in the payment of any premium or installment becoming due under such certificate or contract, such amount to become due to and be deposited in said fund as such payments are received by the cemetery: Provided, the total amount which said cemetery shall be required to pay into said fund annually shall be only such sum as may be equal to total amount of perpetual care deposit to become due under certificate or contract, divided by the number of years accorded purchaser thereunder to qualify to receive conveyance agreed by cemetery to be made under such certificate or contract, or, if sale has been made under certificate providing for payment of premiums for life, division shall be by life expectancy of certificate holder, computed under American Men Table of Mortality: Provided, further, if purchaser shall pay off or otherwise discharge his or her obligations, as evidenced by certificate or contract, in advance of due date, the deposit of perpetual care shall be ratably increased. Perpetual care earned or deposited under contracts which are in default at time report to Burial Association Commissioner is required to be made hereunder, shall be deducted and shall not be considered in arriving at

above total. The income only resulting from the investment of such fund may be used in the sole discretion of the cemetery for the purpose of defraying expense of developing and maintaining the cemetery. Detailed report of amount due to be deposited in such fund, showing the amount actually deposited therein, listed securities in which same is invested, and giving such other details as shall be required by the Burial Association Commissioner, shall be made to said Commissioner annually on the first day of February in each and every year, and more frequently if said Commissioner, in his discretion, so requires. Upon compliance with the terms of this article, including the provisions contained in this section, such cemetery shall be licensed by Burial Association Commissioner and may issue its contracts of sale of grave space or interment rights therein on the certificate plan and on any other plan not prohibited by law. A cemetery complying with all provisions of this article, excepting only those provisions authorizing the cemetery to operate under the certificate plan, shall be entitled to be licensed hereunder, but any cemetery failing to qualify to so operate shall not be entitled to issue or enter into a contract under such plan. (1943, c. 644, s. 8; 1957, c. 529, s. 2.)

Editor's Note. — The 1957 amendment substituted "five dollars" for "four dollars" in the first part of the fourth sentence.

§ 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" near the beginning of the section.

§ 65-29. Agreements as to retention of perpetual care fund where cemetery property sold to municipality.—In event of the voluntary purchase by any city or town of a cemetery providing perpetual care of lots under this article, it shall be lawful for the cemetery to provide in its agreement with purchasers that in event of the voluntary purchase by such municipality of such cemetery property, such cemetery may retain for its own any amount accumulated in such perpetual care fund on sale of lots made subsequent to the ratification of this article: Provided, such municipality purchasing and accepting a conveyance of said cemetery property shall, as part consideration for making by such cemetery of said conveyance, assume in writing all obligations of such cemetery in connection with the maintenance thereof. (1943, c. 644, s. 12.)

Applied in *Blue Ridge Memorial Park, Inc. v. Union Nat. Bank, Inc.*, 237 N. C. 547, 75 S. E. (2d) 617 (1953).

§ 65-30. Burial Association Commissioner to administer article; examinations.—This article, shall be administered by the Burial Association Commissioner of North Carolina, who shall make periodic examination of affairs of such cemeteries to ascertain whether they are in fact complying with the terms hereof. Examinations shall be made not less frequently than once a year and more frequently if by him deemed necessary. Such examination shall extend back into the business of the cemeteries as far as the Burial Association Commissioner shall deem it necessary in order to show a true picture of the cemetery's financial condition. (1943, c. 644, s. 13; 1945, c. 351, s. 1.)

Editor's Note. — The 1945 amendment added the last sentence.

§ 65-31. Violation of article a misdemeanor. — Any such cemetery owner or manager who fails to comply with any of the provisions of this article shall be guilty of a misdemeanor and upon conviction therefor shall be fined two hundred dollars, or imprisoned for not exceeding thirty days. (1943, c. 644, s. 14.)

§ 65-32. Licenses for persons selling grave space; revocation. — All persons offering to sell grave space under any plan herein authorized shall be licensed by said Commissioner without payment of any license fee, and such license, for good cause shown, may, in the discretion of the Commissioner, be revoked. (1943, c. 644, s. 15.)

§ 65-33. Certain powers delegated to cemetery manager.—The superintendent, manager, and assistant superintendent of such cemetery shall have all the powers of a deputy sheriff of the county in which such cemetery is located to enforce the law, maintain order, abate nuisances, and prevent vandalism in such cemetery. (1943, c. 644, s. 16.)

§ 65-34. Prosecution of violations; revocation and restoration of license; article part of contracts.—It shall be the duty of the Burial Commissioner to prosecute or cause to be prosecuted all violations of this article, and upon the conviction of the owner or manager of a public cemetery of such violation, and upon failure of such owner or manager to correct such violation within thirty days thereafter, then, in addition to such other penalties as may result from such conviction, the Burial Commissioner may, in his discretion, revoke the license of such cemetery. Said Commissioner may, in his discretion, upon application by such cemetery, thereafter restore to it its license if such cemetery corrects the violation of this article, on account of which its owner or manager was convicted, as well as any other violations thereof known to the Commissioner. This article shall be written into and become a part, where applicable, of all contracts and certificates issued hereunder. (1943, c. 644, s. 17.)

§ 65-35. **Effect of certain other laws.**—This article shall not be subject to any other laws respecting insurance companies of any class, nor shall same be subject to the laws affecting the sale of securities or laws affecting mutual burial or assessment insurance associations, excepting only as this article, or amendments hereof, shall expressly provide. (1943, c. 644, s. 18.)

§ 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 1945 amendment repealed the former section, which exempted certain counties and cemeteries from the application of the article, and inserted in lieu thereof the present section.

The former section was codified from Session Laws 1943, c. 644, s. 19.

The 1955 amendment increased the amount of the assessment.

ARTICLE 8.

Municipal Cemeteries.

§ 65-37. **Authority to take possession of and continue the use of certain lands as cemetery.**—In any case where property not under the control or in the possession of any church or religious organization in any town or municipality has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for said property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and said property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the municipality in which any such cemetery property is located is hereby authorized and empowered in its discretion to appropriate and take possession of all such land within its corporate limits which has heretofore been used for cemetery purposes and such adjoining land not held or owned by known claimants of title, and to cause the same to be surveyed and lines established and to designate and appropriate the said property as a cemetery, or burial ground. (1947, c. 821, s. 1.)

§ 65-38. **Racial restrictions as to use of cemeteries for burial of dead.**—In the event said property has been heretofore used exclusively for the burial of members of the negro race, then said cemetery or burial ground so established shall remain and be established as a burial ground for the negro race. In the event said property has been heretofore used exclusively for the burial of members of the white race, then said cemetery or burial ground so established shall remain and be established as a burial ground for the white race. (1947, c. 821, s. 2.)

§ 65-39. **Subdivision into burial plots; sale of lots and use of proceeds.**—Said town or municipality shall have power and authority in such cases

to cause the same to be subdivided and to lay off and allot for family burial plots any property heretofore appropriated or used for burial purposes for or by different families without any charge therefor, and to cause the remainder of said property to be subdivided and laid off into lots; and shall have the power and authority to sell to any person or persons for burial purposes, any of said lots so subdivided and surveyed, except those heretofore appropriated as referred to in this section of this article, and use the proceeds of such sale for the improvement and upkeep of said cemetery property. (1947, c. 821, s. 3.)

§ 65-40. Appropriations for improvement and maintenance; application of existing laws.—In the event any town or municipality appropriates or takes possession of land used for cemetery purposes as set forth and described herein, it is further authorized and empowered to appropriate and use such funds as may be necessary and proper for the improvement and maintenance of said cemetery; and all statutes and ordinances heretofore enacted and passed relative to cemeteries in said town or municipality, are hereby made applicable to said cemetery property. (1947, c. 821, s. 4.)

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ARTICLE 1.

Regulation and Inspection.

§ 66-1. **County commissioners to appoint inspectors.**—The board of county commissioners may appoint for their county or any township thereof inspectors for any article of commerce the inspection of which is not otherwise provided for by law, who shall hold office for the term of five years after their employment. (Rev., ss. 4637, 4669; C. S., s. 5068.)

§ 66-2. **Vacancies in office of inspectors; assistants; principal liable.**—Whenever there shall be a vacancy in the office of inspector while the county commissioners are not in session, any three justices may appoint some other fit person until the next succeeding meeting of the board; or if any inspector shall be rendered incapable of performing his duty by sickness or other accident, he may, with the consent of three justices, appoint some other person as assistant during his sickness or other disability, which consent shall be certified under their hands and lodged with the clerk of the board of commissioners, and such assistant shall take the same oaths as inspectors; and the inspector shall be liable to the same fines and penalties for the assistant's misbehavior as for his own. (1784, c. 206, s. 3; 1793, c. 386; 1799, c. 539, s. 2; 1811, c. 807, s. 6; c. 812; R. C., c. 60, s. 9; Code, s. 2989; Rev., s. 4638; C. S., s. 5069.)

§ 66-3. **Bond of inspector; fees.**—The said inspector shall enter into bond in the sum of five hundred dollars, payable to the State of North Carolina, conditioned for the faithful performance of the duties of his office, which bond the board shall take; and he shall be entitled to such fees as may be prescribed by the board. (1848, c. 43, s. 3; R. C., c. 60, s. 76; Code, s. 3053; Rev., s. 4671; C. S., s. 5071.)

§ 66-4. **Falsely acting as inspector.**—If any person, who is not a legal or sworn inspector of lumber or other articles, presume to act as such, he shall forfeit and pay one hundred dollars, and be guilty of a misdemeanor. (1824, c. 1254, s. 3; R. C., c. 60, s. 69; Code, s. 3046; Rev., s. 3580; C. S., s. 5072.)

§ 66-5. **Penalty for sale without inspection.**—If any person shall sell any article of forage or provision, of which inspection is required in accordance with this article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars. (1850, c. 74, s. 2; R. C., c. 60, s. 77; Code, s. 3054; Rev., s. 4672; C. S., s. 5073.)

§ 66-6. **Penalty on master receiving without inspection.**—No master or commander of any vessel shall take on board any cask or barrel or other com-

modity, liable to inspection as aforesaid, without its being inspected and branded as required, under the penalty of two hundred dollars for each offense. (1784, c. 206, s. 6; R. C., c. 60, s. 59; Code, ss. 3036, 3037; Rev., ss. 4657, 4658; C. S., s. 5074.)

Local Modification. — Town of New Bern: C. S., § 5074.

§ 66-7. Who to pay inspectors' fees; penalty for extortion.—The fees of inspectors shall be paid by the purchaser or exporter of the articles inspected, and if any inspector shall receive any greater fees than are by law allowed, he shall forfeit and pay ten dollars for every offense to any person suing for the same. (1824, c. 1254, ss. 1, 2; R. C., c. 60, s. 79; Code, s. 3055; Rev., s. 4673; C. S., s. 5075.)

§ 66-8. Firewood in towns.—All firewood sold in incorporated towns shall be sold by the cord and not otherwise; and each cord shall contain eight feet in length, four feet in height and four feet in breadth; and shall be corded by the seller, under the penalty of two dollars for each offense, to the use of the informer. (1784, c. 211; R. C., c. 60, s. 72; 1880, c. 401; Code, s. 3049; Rev., s. 4667; C. S., s. 5081.)

§ 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 buying brass or copper, or any other metal, or any rubber, or leather and rubber belts and belting, as junk, shall keep a register and shall keep therein a true and accurate record of each purchase, showing the description of the article purchased, the name from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon said metal, rubber, or leather and rubber belts and belting. The said register and the metal and rubber, and leather and rubber belts and belting purchased shall be at all times open to the inspection of the public. A failure to comply with these requirements or the making of a false entry concerning such metals, rubber, or leather, or rubber belts, or belting shall constitute a 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 descrip-

tion 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. — Anson, Caldwell, Davidson, Randolph, Robeson: C. S., § 5090; Beaufort, Bertie, Harnett, Martin, Onslow, Perquimans and Washington: 1953, c. 1154; Stanly: 1939, c. 154.

Editor's Note. — The 1957 amendment added the second paragraph to this section.

§ 66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor.—Every person, firm, or corporation buying railroad brasses or any composition metal specially used in the operation of trains, or brasses, composition metals, or copper of the kind or quality used by manufacturing or power plants, shall keep a register and shall insert therein a true and accurate record of each purchase, showing the name of the person from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon such metal. The register shall be at all times open to the inspection of the public. Any person or dealer buying or selling metals without complying with this section shall be guilty of a misdemeanor; and any person making a false entry in such register shall be guilty of a misdemeanor. Every person, firm, or corporation who shall buy or receive any such metals from persons under twenty-one years old, or who shall buy or receive any such metals after the same have been broken up and the marks or brands obliterated, shall be guilty of a misdemeanor; and every person buying, receiving or selling, or offering for sale metals broken into small pieces, or so broken as to obliterate the marks or brands, shall be prima facie presumed to have received such metals knowing the same to have been stolen. (1907, c. 464; 1909, c. 855, s. 1; C. S., s. 5091.)

ARTICLE 2.

Manufacture and Sale of Matches.

§ 66-12. Requirements for matches permitted to be sold.—No person, association, or corporation shall manufacture, store, offer for sale, sell or otherwise dispose of or distribute white phosphorous, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches;" nor manufacture, store, sell, offer for sale, or otherwise dispose of, or distribute, white phosphorous, double-dipped, strike-anywhere matches or any other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, nonignitable as an abrasive surface; nor manufacture, store, sell, or offer for sale, or otherwise dispose of or distribute matches which when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of two hundred degrees F., will ignite in eight hours; nor manufacture, store, offer for sale, sell or otherwise dispose of, or distribute, blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type. (1915, c. 109, s. 12, I; C. S., s. 5113.)

§ 66-13. Packages to be marked.—No person, association, or corporation shall offer for sale, sell or otherwise dispose of, or distribute, any matches, unless the package or container in which such matches are packed bears, plainly marked on the outside thereof, the name of the manufacturer and the brand or trademark under which the matches are sold, disposed of, or distributed. (1915, c. 109, s. 12, II; C. S., s. 5114.)

§ 66-14. Storage and packing regulated.—No more than one case of each brand of matches of any type or manufacture shall be opened at any one

time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes or paper-wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; all matches when stored in warehouses must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove, or other like heating apparatus; nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor. All matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or package: Provided, however, that when more than three hundred matches are packed in any one box or package the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more matches shall have placed over the matches a center-holding or protecting strip, made of chip board, not less than one and one-quarter inches wide: said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it. (1915, c. 109, s. 12, II; C. S., s. 5115.)

§ 66-15. **Shipping containers regulated.**—All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case shall not exceed the following number:

Number of Boxes	Nominal Number of Matches per Box
½ gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross over 50 and under	100
25 gross under	50

No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight, including its contents, of seventy-five pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-Anywhere Matches" or "Strike-on-the-Box Matches." (1915, c. 109, s. 12, III; C. S., s. 5116.)

§ 66-16. **Violation of article a misdemeanor.**—Any person, association, or corporation violating any of the provisions of this article shall be fined for the first offense not less than five dollars nor more than twenty-five dollars, and for each subsequent violation not less than twenty-five dollars. (1915, c. 109, s. 12, IV; C. S., s. 5117.)

ARTICLE 3.

Candy and Similar Products.

§ 66-17. **Sale, etc., of candy or other food not complying with health and pure food laws.**—It shall be unlawful for any person, firm or corporation, or agent of any person, firm or corporation, to consign, sell, possess or use any candy or other product within this State that does not comply with all

federal and State health and pure food laws in force and effect in North Carolina. (1939, c. 323, s. 1.)

Editor's Note. — For comment on this article, see 17 N. C. Law Rev. 384.

§ 66-18. **Manufacturer to pay tax upon products consigned to person, etc., other than licensed wholesale or retail merchant.**—Any manufacturer of candy or similar products, or the agent of such manufacturer, who consigns any such products to any person, firm or corporation other than a licensed wholesale or retail merchant in the State of North Carolina shall be liable for and pay to the State of North Carolina a tax of three per cent (3%) upon the gross retail sales price of merchandise so consigned and/or sold: Provided such manufacturers shall be entitled to a refund or credit for taxes paid on such consigned goods as are returned by the consignee to said manufacturers. (1939, c. 323, s. 2.)

§ 66-19. **Regulations as to possession and sale.**—It shall be unlawful for any person, firm or corporation other than a licensed wholesale or retail merchant in the State of North Carolina to consign, possess or use any article upon which the tax provided for in § 66-18 preceding is payable, or for any consignee to sell such product, unless the manufacturer thereof is registered with the Commissioner of Revenue of the State of North Carolina for payment of said tax. (1939, c. 323, s. 3.)

§ 66-20. **Commissioner of Revenue may require reports.**—The Commissioner of Revenue shall have authority to require a report, at such times as he may require, from every person, firm or corporation manufacturing candy or similar products, or from the agent of any such manufacturer, of the names and addresses of all consignors, other than licensed merchants, to whom consignment of such merchandise is made. (1939, c. 323, s. 4.)

Editor's Note.—The word "consignors" in the original volume of the General Statutes, was probably intended to read "consigneers." which also appears in the original act and

§ 66-21. **Violators deprived of legal redress.**—The consignor shall not have the right to sue in any court of law in this State for the collection of monies resulting from the sale of merchandise sold in violation of this article. (1939, c. 323, s. 5.)

§ 66-22. **Violations made misdemeanor.**—Any person convicted for the violation of this article shall be guilty of a misdemeanor and subject to a fine of not exceeding one hundred dollars (\$100.00) or imprisonment for not exceeding thirty days or both fine and imprisonment in the discretion of the court. (1939, c. 323, s. 6.)

ARTICLE 4.

Electrical Materials, Devices, Appliances and Equipment.

§ 66-23. **Sale of electrical goods regulated.**—Every person, firm or corporation before selling, offering for sale or exposing for sale, at retail to the general public or disposing of by gift as premiums or in any similar manner any electrical material, devices, appliances or equipment shall first determine if such electrical materials, devices, appliances and equipment comply with the provision of this article. (1933, c. 555, s. 1.)

§ 66-24. **Identification marks required.**—All electrical materials, devices, appliances and equipment offered for sale, exposed for sale at retail to the general public, or disposed of by gift as premiums or in any similar manner shall have the maker's name, trademark, or other identification symbol placed thereon,

together with such other markings giving voltage, current, wattage, or other appropriate ratings as may be necessary to determine the character of the material, device, appliance or equipment and the use for which it is intended; and it shall be unlawful for any person, firm or corporation to remove, alter, change or deface the maker's name, trademark or other identification symbol. (1933, c. 555, s. 2.)

§ 66-25. **Acceptable listings as to safety of goods.**—The electrical inspector shall accept, without further examination or test, the listings of Underwriters' Laboratories, Inc., as evidence of safety of such materials, etc., so long as the listing continues in effect to his knowledge and, so long as information and experience have not demonstrated, in his judgment, that any specific listed materials, etc., are not safe.

The electrical inspector may accept as evidence of safety of such materials, etc., where not of types for which such Underwriters' Laboratories listings are in effect, such evidence by way of records of tests and examinations by bodies he deems properly qualified, as he deems necessary to assure him of the safety of such materials, etc. But such acceptance cannot be made to apply to other than the stock of materials, etc., for which such evidence has been specifically secured. One body whose evidence of safety shall be accepted by the electrical inspector for specific stocks is the Insurance Commission of the State of North Carolina, if the stock in question has been submitted to the examinations and tests required by that Commission, and that Commission has certified that in its judgment the stock conforms to the State law, to the requirements of this article, and to any additional requirements deemed necessary for safety in the judgment of that Commission.

The electrical inspector may decline to accept any evidence of safety other than that provided by Underwriters' Laboratories listings, for specific materials, etc., of types for which such listings are available.

The electrical inspector, in accepting listings of Underwriters' Laboratories, shall keep in file as far as practicable, copies of all Underwriters' Laboratories listings in effect, and copies of the recorded standards, requirements, tests and examinations of Underwriters' Laboratories for such materials, etc., or shall when necessary refer to the files of such information maintained by the Insurance Commission of North Carolina. The words "electrical inspector" when used in this article shall be construed to refer to any duly licensed and employed electrical inspector of the State or any governmental agency thereof. (1933, c. 555, s. 3.)

§ 66-26. **Legal responsibility of proper installations unaffected.**—This article shall not be construed to relieve from or to lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical materials, devices, appliances or equipment for damages to persons or property caused by any defect therein, nor shall the electrical inspector be held as assuming any such liability by reason of the approval of any material, device, appliance or equipment authorized herein. (1933, c. 555, s. 4.)

§ 66-27. **Violation made misdemeanor.**—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than fifty (\$50.00) dollars or imprisonment for not more than thirty days. (1933, c. 555, s. 5.)

ARTICLE 5.

Sale of Phonograph Records or Electrical Transcriptions.

§ 66-28. **Prohibition of rights to further restrict or to collect royalties on commercial use.**—When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce

for use within this State, all asserted common-law rights to further restrict or to collect royalties on the commercial use made of such recorded performances by any person is hereby abrogated and expressly repealed. When such article or chattel has been sold in commerce, any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself, and the right to further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is hereby forbidden and abrogated.

Nothing in this section shall be deemed to deny the rights granted any person by the United States Copyright Laws. The sole intendment of this enactment is to abolish any common-law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions of the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof. (1939, c. 113.)

ARTICLE 6.

Sale of Nursery Stock.

§ 66-29. **Agreements for spraying, pruning, etc.**—Every person, firm or corporation, who shall sell, barter or exchange any nursery stock in the State of North Carolina, who shall promise or agree, either in the written contract of sale, orally or otherwise, that such person, firm or corporation, selling, exchanging or bartering such nursery stock, will spray, prune or otherwise look after or service such nursery stock for any period of time after the said sale is made, shall before engaging in such business in the State of North Carolina post with the Commissioner of Agriculture a good and sufficient bond in the sum of one thousand dollars (\$1,000.00) payable to the State of North Carolina, and conditioned that such person, firm or corporation, shall well and truly comply with the contract of sale containing such promise and agreements either written or oral.

This regulation shall apply to any agent or employee of any person, firm or corporation engaging in such business in the State of North Carolina, but one bond given by the principal shall be sufficient for all agents representing such principal. (1939, c. 189.)

ARTICLE 7.

Tagging Secondhand Watches.

§ 66-30. **Definitions.**—The following terms as used in this article are hereby defined as follows:

- (1) "Consumer" means an individual, firm, partnership, association or corporation, who buys for their own use or for the use of another, but not for resale.
- (2) "Person" means a person, firm, partnership or corporation, but shall not include a receiver, trustee in bankruptcy, trustee under a mortgage, deed of trust or contract securing any indebtedness, and executor or administrator while acting as such, or any person acting under an order of court or as a licensed pawnbroker.
- (3) "Secondhand watch" means a watch as a whole, or any part thereof, which has previously been sold to a consumer, or a watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, or a watch any part of which has been replaced by parts from another make or model watch. (1941, c. 244, s. 1.)

§ 66-31. **Tags required; "sell" defined.**—Any person, or agent or employee thereof, who sells a secondhand watch, as herein defined, shall affix and keep affixed to the same a tag with the words "secondhand" legibly written or

printed thereon in the English language. For the purpose of this section, "sell" includes an offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange and to sell or exchange. (1941, c. 244, s. 2.)

§ 66-32. **Invoices delivered to purchasers; duplicate invoices open to inspection.**—Any person, or agent or employee thereof who sells a second-hand watch, shall deliver to the purchaser a written invoice or bill of sale, setting forth the name and address of the seller, the name and address of the purchaser, the date of the sale, and a full description of the secondhand watch so sold, with the serial numbers, if any, or other distinguishing numbers or identification marks on its case and movements. A duplicate of such invoice or bill of sale shall be kept on file by the vendor for at least one year from the date of such sale, and such duplicate shall be open to inspection during all business hours by any peace officer or by any person authorized by any such peace officer to make an investigation regarding same. (1941, c. 244, s. 3.)

§ 66-33. **Advertisements.**—Any person advertising in any manner secondhand watches for sale shall state in such advertising that the watches so advertised are secondhand watches. (1941, c. 244, s. 4.)

§ 66-34. **Violation of article made misdemeanor.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty (30) days, or both. (1941, c. 244, s. 5.)

ARTICLE 8.

Public Warehouses.

§ 66-35. **Who may become public warehousemen.**—Any person or any corporation organized under the laws of this State whose charter authorizes it to engage in the business of a warehouseman, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares, and other merchandise as hereinafter prescribed upon giving the bond hereinafter required. (1901, c. 678; Rev., s. 3029; 1919, c. 212; C. S., s. 5118.)

Cited in *Champion Shoe Machinery Co. v. Sellers*, 197 N. C. 30, 147 S. E. 674 (1929).

§ 66-36. **Bond required.**—Every person or every corporation organized under § 66-35, to become a public warehouseman, except such as shall have a capital stock of not less than five thousand dollars, shall give bond in a reliable bonding or surety company, or an individual bond with sufficient sureties, payable to the State of North Carolina, in an amount not less than ten thousand dollars, to be approved, filed with and recorded by the clerk of the superior court of the county in which the warehouse is located, for the faithful performance of the duties of a public warehouseman; but if such person or corporation has a capital stock of not less than five thousand dollars, then it shall not be required to give the bond mentioned in this section. (1901, c. 678, s. 2; 1905, c. 540; Rev., s. 3030; 1908, c. 56; 1919, c. 212; C. S., s. 5119.)

§ 66-37. **Person injured may sue on bond.**—Whenever such warehouseman fails to perform any duty or violates any of the provisions of this article, any person injured by such failure or violation may bring an action in his name and to his own use in any court of competent jurisdiction on the bond of said warehouseman. (1901, c. 678, s. 3; Rev., s. 3031; C. S., s. 5120.)

Warehousemen are liable under the general law for their negligence causing damage to articles stored with them. *Motley Co. v. Warehouse Co.*, 122 N. C. 347,

30 S. E. 3 (1898); *Motley v. Southern Finishing, etc., Co.*, 124 N. C. 232, 32 S. E. 555 (1899).

Care Required of Bailee.—Where it was known to bailor at time of storage that the bailee knew nothing about tobacco, and had no experience in handling it, the bailee will not be held liable for injury resulting from want of skill and experience; but will be bound to use such ordinary care as a prudent man would exercise to guard against moisture in the structure of the warehouse and the location of the tobacco. *Motley v. Southern Finishing Co.*, 126 N. C. 339, 35 S. E. 601 (1900).

Provision against Liability.—A provision in a charter of a warehouse corporation to the effect that such corporation shall not be liable for loss or damages not provided

for in its warehouse receipt or contract, attempts to confer exclusive privileges and is therefore unconstitutional and void. *Motley Co. v. Warehouse Co.*, 122 N. C. 347, 30 S. E. 3 (1898).

The measure of damages for property damaged while in the care of a storage or warehouse company is the difference between the market value of the property in its damaged condition and what it would have sold for, if undamaged, on the day of its return to the owner. *Motley Co. v. Warehouse Co.*, 122 N. C. 347, 30 S. E. 3 (1898).

Carrier's Liability as Warehouseman.—See *Poythress v. Durham & Southern R. Co.*, 148 N. C. 391, 62 S. E. 515 (1908); *Bank v. Southern R. Co.*, 153 N. C. 346, 69 S. E. 261 (1910).

§ 66-38. When insurance required; storage receipts.—Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall give to each person depositing property with it for storage a receipt therefor. (1901, c. 678, s. 4; 1905, c. 540, s. 2; Rev., s. 3032; C. S., s. 5121.)

Cross Reference.—As to warehouse receipts, see § 27-1 et seq.

§ 66-39. Books of account kept; open to inspection.—Every such warehouseman shall keep a book in which shall be entered an account of all its transactions relating to warehousing, storing, and insuring cotton, goods, wares, and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entry relates. (1901, c. 678, s. 7; Rev., s. 3035; C. S., s. 5122.)

§ 66-40. Unlawful disposition of property stored.—If any person unlawfully sells, pledges, lends, or in any other way disposes of or permits or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse, without the authority of the party who deposited the same, he shall be punished by a fine not to exceed two thousand dollars and by imprisonment in the State's prison for not more than three years; but no officer, manager, or agent of such public warehouse shall be liable to the penalties provided in this section unless, with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending, or other disposition of any goods, wares, merchandise, article, or thing so deposited. (1901, c. 678, s. 11; Rev., s. 3831; C. S., s. 5123.)

Cross Reference.—As to warehouse receipts, see § 27-1 et seq.

ARTICLE 9.

Collection of Accounts.

§ 66-41. Permit from Commissioner of Insurance.—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 Commissioner of Insurance, 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; 1943, c. 170; 1959, c. 1194, s. 1.)

Editor's Note. — The 1959 amendment substituted "each" for "the main" following "displayed in" near the end of the section.

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 Commissioner of Insurance 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; 1943, c. 170; 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 Commissioner of Insurance 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 Commissioner of Insurance 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. (1943, c. 170; 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.)

§ 66-43. Hearing granted applicant if application declined; appeal.—If, for any reason, upon the application made and upon the consideration of

the data submitted with the application or items, the Commissioner shall be of the opinion that a permit should not be issued to the applicant, he shall decline the same, giving notice of his action to the applicant. Following notice, the applicant shall have ten days within which to submit additional information in support of his application, and if, upon further hearing upon the application and additional information, the Commissioner shall again decline to issue the permit, the applicant shall have the right to appeal to the superior court and his appeal shall stand for hearing in the superior court of the county of Wake, and the evidence, data and information submitted to the Commissioner shall constitute the record in the superior court, and the same shall be heard by the judge of the superior court to determine whether or not the Commissioner had evidence sufficient to justify his action. (1931, c. 217, s. 3.)

§ 66-44. Application fee; issuance of permit; contents and duration.—Upon the filing of the application and information hereinbefore required, the Commissioner may require the applicant to pay a fee of \$50.00, and no permit may be issued until this fee is paid. The Commissioner may issue a permit if he finds it proper, and in that case no part of the \$50.00 shall be returned. If the application is denied, the Commissioner shall retain \$5.00 of the application fee and return the remainder to the applicant. The \$5.00 so retained upon applications not granted, and the full fee of \$50.00 upon applications granted, shall be used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.

Each permit shall state the name of the applicant, his place of business, and the nature and kind of business he is engaged in. The Commissioner shall assign to the permit a serial number for each year beginning with July first, one thousand nine hundred and thirty-one. Each permit shall be for a period of one year, beginning with July first and ending with June thirtieth of the following year. (1931, c. 217, s. 4.)

§ 66-45. Revocation of permit.—If the Commissioner shall have issued any permit to any person, firm, or corporation as herein provided, and shall have information that the holder of the permit is not conducting his business in a business-like way, he shall notify the holder of the permit of a date for a hearing, which notice shall name a time and place for the hearing, and at which hearing any and all evidence as to the conduct of the business may be heard by the Commissioner. If, upon the hearing of the evidence, the Commissioner shall be of the opinion that the applicant is not entitled to the permit, the Commissioner shall cancel said permit, after which time it shall be unlawful for the person, firm or corporation whose permit is canceled to engage in the business covered by the permit. If the permit be canceled upon hearing, either the holder of the permit or the complaining party shall have the right to appeal as hereinbefore provided in case the application is denied, and the record of the hearing before the Commissioner shall be the record in the superior court upon which the judge shall determine whether or not the Commissioner had sufficient evidence upon which to base his action. (1931, c. 217, s. 5.)

Editor's Note. — Though "business-like way," as used in this section, is an exceedingly indefinite standard of conduct, the statute is probably valid, in view of the right of appeal to the courts. 9 N. C. Law Rev. 390.

§ 66-46. Rules and regulations; schedule of fees.—The Commissioner shall have the right to make any rules or regulations necessary to enforce the provisions of this article and may approve schedules of fees and methods of collecting the same, or make any other rule or regulation necessary to secure the proper conduct of the business referred to in this article. (1931, c. 217, s. 6.)

§ 66-47. Violation of article a misdemeanor.—Any person, firm or corporation who shall engage in the business referred to in this article without

first receiving a permit, or who shall fail to secure a renewal of his permit upon the expiration of the license year, or shall engage in the business herein referred to after the permit has been canceled as herein provided, or who shall fail or refuse to furnish the information required of the Commissioner, or who shall fail to observe the rules and regulations made by the Commissioner pursuant to this article, shall, upon conviction, be guilty of a misdemeanor punishable in the discretion of the court. (1931, c. 217, s. 7.)

Cited in *Divine v. Wautauga Hospital*,
137 F. Supp. 628 (1956).

§ 66-48. **Disposition of fees.**—All fees collected hereunder shall be credited to the account of the Commissioner of Insurance for the specific purpose of providing the personnel, equipment and supplies necessary to enforce this article, but the Director of the Budget shall have the right to budget the revenues received in accordance with the requirements of the Commissioner for the purposes herein required, and at the end of the fiscal year, if any sum whatever shall remain to the credit of the Commissioner, derived from the sources herein referred to, the same shall revert to the general treasury of the State to be appropriated as other funds. (1931, c. 217, s. 8; 1943, c. 170.)

§ 66-49. **Attorneys at law and local county agencies excepted.**—Nothing in this article shall be construed to apply to legally licensed attorneys at law engaged in the practice of the profession of law unless, however, such attorneys shall engage in the business herein referred to under a trade name, or as a corporation, nor shall this article apply or be construed to apply to any person, firm or corporation whose business of collecting accounts is limited to the collection of such accounts against debtors having residence in the county of the residence of such person or firm, or the principal office of such corporations so engaged in such business. (1931, c. 217, s. 9.)

ARTICLE 9A.

Private Detectives.

§ 66-49.1. **License required.**—No private person, firm or corporation shall engage in the detective business within this State without having first obtained a license as provided in this article. (1961, c. 782.)

All old licenses were probably voided by the 1961 legislation. *United States v. Leggett*, 312 F. (2d) 566 (1962).

§ 66-49.2. **Definitions.**—As used in this article unless the context otherwise requires, the term:

- (1) "Bureau" means the State Bureau of Investigation.
- (2) "Detective business" means:

a. Engaging in the business of or accepting employment to obtain or furnish information with reference to:

1. Crimes or wrongs done or threatened against the United States of America or any state or territory thereof;
2. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person;
3. The location, disposition or recovery of lost or stolen property;
4. The cause or responsibility for fires, libels, losses, accidents, damage or injury to persons or property; or

5. The securing of evidence to be used before any court, board, officer or investigating committee;
 - b. Engaging in business as or accepting employment as a private patrol or guard service for consideration on a private contractual basis and not as an employee.
- “Detective business” shall not include:
- c. Insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment of claims against an insurance company;
 - d. Persons employed exclusively and regularly by only one employer in connection with the affairs of such employer only and where there exists an employer-employees relationship;
 - e. An officer or employee of the United States or of this State or any political subdivision thereof, while such officer or employee is engaged in the performance of his official duties;
 - f. A person engaged in the business of obtaining and furnishing information as to the financial rating of persons; or
 - g. An attorney at law licensed to practice in North Carolina, or his agent.
- (3) “Director” means the Director of the State Bureau of Investigation.
 - (4) “Person” includes individuals, firms, associations, companies, partnerships and corporations. (1961, c. 782.)

§ 66-49.3. **Application for license; investigation; examination; issuance; grounds for refusal.**—(a) Any person, firm, or corporation desiring to carry on a detective business in this State shall make application in writing to the Director of the State Bureau of Investigation for a license therefor.

(b) The application shall include:

- (1) The full name and business address of the applicant;
- (2) The name under which the applicant intends to do business;
- (3) A statement as to the general nature of the business in which the applicant intends to engage;
- (4) If an applicant is a person other than an individual, the full name and address of each of its partners, officers and directors and its business manager, if any;
- (5) The names of not less than three unrelated and disinterested persons, as references of whom inquiry can be made as to the character, standing and reputation of the person, firm or corporation making the application. At least one of such persons must be a judge or a solicitor of a court of record in the county of applicant’s last known residence and one such person must be a municipal chief of police or county sheriff in the county of the applicant’s last known residence; and
- (6) Such other information, evidence, statements or documents as may be required by the Director.

(c) Upon receipt of an application the Director shall cause an investigation to be made in the course of which the applicant shall be required to show that he meets all the following requirements and qualifications hereby made prerequisite to the obtaining of a license:

- (1) That he is at least 21 years of age;
- (2) That he is a citizen of the United States;
- (3) That he is of good moral character and temperate habits;
- (4) That he has had at least two years’ experience in private investigative work or as an insurance adjuster or, in lieu thereof, at least one year’s experience as a member of the Federal Bureau of Investigation, the State Bureau of Investigation, any municipal police department in this State or any county sheriff’s department in this State;

or comply with such other qualifications as the Director may by regulation fix.

(d) Following investigation, the Director may require an applicant to demonstrate his qualifications by a written or oral examination or a combination of both.

(e) Upon a finding that: The application is in proper form; the investigation has shown the applicant to possess all the necessary qualifications and requirements; and the applicant has successfully completed any examination required, the Director shall issue to the applicant a license upon a showing by the applicant that he has paid the license tax provided for in G. S. 105-42, unless following a hearing the Director shall have found that the applicant has:

- (1) Committed some act which if committed by a licensee would be grounds for the suspension or revocation of a license under this article;
- (2) Committed an act constituting dishonesty or fraud;
- (3) A bad moral character, intemperate habits or a bad reputation for truth, honesty and integrity;
- (4) Been convicted of a felony or some other crime involving moral turpitude or involving the illegal use, carrying or possession of a dangerous weapon;
- (5) Been refused a license under this article or has had a license revoked;
- (6) Been an officer, director, partner or manager of any person who has been refused a license under this article or whose license has been revoked; or
- (7) Knowingly made any false statement in his application. (1961, c. 782; 1963, c. 1154, s. 1.)

Editor's Note. — The 1963 amendment deleted "including at least one judge or solicitor of a court of record in this State or at least one municipal chief of police or county sheriff in this State; and" at the

end of the present first sentence of subdivision (5) of subsection (b) and added the present second sentence to such subdivision.

§ 66-49.4. Form of license; term; renewal; posting; not assignable; trainee permits.—(a) The license when issued shall be in such form as may be determined by the Director and shall state:

- (1) The name of the licensee;
- (2) The name under which the licensee is to operate;
- (3) The number and date of the license.

(b) The license shall be issued for a term of one year and shall be renewable on June 30 next following the issuance thereof, upon a showing that the licensee has paid the license tax provided for in G. S. 105-42 unless the license shall have been previously revoked in accordance with the provisions of this article. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this article is not assignable.

(c) A trainee permit may be issued to an applicant in the discretion of the Director. Such application shall state:

- (1) That the applicant is employed by a private detective licensed under this article;
- (2) The name and address of the applicant's employer;
- (3) The name and address of the applicant; and
- (4) A statement signed by the applicant and his employer that the trainee-applicant will work with and under the direct supervision of a private detective licensed under this article at all times.

Trainee permits issued under this section shall expire one (1) year from the date of issuance. (1961, c. 782; 1963, c. 1154, s. 2.)

Editor's Note. — The 1963 amendment designated the first two paragraphs of this section as subsections (a) and (b), respectively, and added subsection (c).

§ 66-49.5. Bond required; form and approval; actions on bond; cancellation.—No license shall be issued under this article unless the appli-

cant files with the Director a surety bond executed by a surety company authorized to do business in this State in a sum of not less than five thousand dollars (\$5,000.00), conditioned upon the faithful and honest conduct of his business by such applicant. The bond shall be taken in the name of the people of the State of North Carolina and every person injured by willful, malicious or wrongful act of the principal thereof may bring an action on the bond in his or her name to recover damages suffered by reason of such willful, malicious or wrongful act; provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days notice to the Director; provided, however, that such cancellation shall not affect any liability on the bond which accrued prior thereto. The bond shall be approved by the Director as to form, execution and sufficiency of the sureties thereon. Failure to maintain the bond required by this section shall work an automatic forfeiture of the license provided for by this article. (1961, c. 782.)

§ 66-49.6. Suspension or revocation of licenses; appeal.—(a) The Director may, after hearing, suspend or permanently revoke a license issued under this article if he determines that the licensee or any officer, director, partner, manager or employee thereof has:

- (1) Made any false statement or given any false information in connection with an application for a license or renewal or reinstatement of a license;
 - (2) Violated any provision of this article;
 - (3) Violated any regulation promulgated by the Director pursuant to the authority contained in this article;
 - (4) Been convicted of a felony or any crime involving moral turpitude or any other crime involving the illegal use, carrying or possession of a dangerous weapon;
 - (5) Committed any act in the course of the licensee's business constituting dishonesty or fraud;
 - (6) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer or employee of the United States or of this State or any political subdivision thereof;
 - (7) Engaged in or permitted any employee to engage in the detective business when not lawfully in possession of a valid license issued under the provisions of this article;
 - (8) Willfully failed or refused to render to a client service or a report as agreed between the parties and for which compensation has already been paid or tendered in accordance with the agreement of the parties;
 - (9) Committed an unlawful breaking or entering, assault, battery or kidnapping;
 - (10) Knowingly violated or advised, encouraged or assisted the violation of any court order or injunction in the course of business as a licensee;
 - (11) Committed any other act which is a ground for denial of an application for license under this article;
 - (12) Undertaking to give legal advice or counsel or to in anywise represent that he is representing any attorney or is appearing or will appear in any legal proceedings or to issue, deliver or utter any simulation of process of any nature which might lead a person or persons to believe that such simulation, written, printed or typed, may be a summons, warrant, writ or court process or any pleading in any court proceeding.
- (b) Pending the hearing provided for in subsection (a) of this section the

Director may suspend a license issued under this article when he has good reason to believe that grounds for revocation of license exist.

(c) The revocation of a license as provided in subsection (a) shall be in writing, signed by the Director, stating the grounds upon which revocation order is based, and the aggrieved person shall have the right to appeal from such an order within twenty (20) days after a copy thereof has been served upon him to the superior court of the county where licensee resided at time of revocation as here-in provided. Trial on such appeal shall be de novo; provided, however, that if the parties so agree, such trial may be confined to a review of the record made at the hearing by the Director. An appeal shall lie to the Supreme Court from the judgment of the superior court, as provided in all other civil cases. (1961, c. 782; 1963, c. 1154, s. 3.)

Editor's Note. — The 1963 amendment added subsection (c).

§ 66-49.7. **Miscellaneous regulations.** — (a) Any licensee or officer, director, partner or manager of a licensee may divulge to any law enforcement officer or solicitor or his representative any information he may require as to any criminal offense but he shall not divulge to any other person, except as he be required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(c) No licensee shall conduct a detective business under a fictitious name other than the name under which a license was obtained under the provisions of this article.

(d) Every advertisement by a licensee soliciting or advertising for business shall contain his name and address as they appear in the records of the Bureau and in which name the license was issued.

(e) Every licensee shall file in writing with the Bureau the address of each of his branch offices, if any, within ten days after the establishment, closing or changing of the location of any branch office. (1961, c. 782.)

§ 66-49.8. **Penal provision.**—Any person who violates any provision of this article shall be guilty of a misdemeanor and shall upon conviction be fined or imprisoned or both in the discretion of the court. (1961, c. 782.)

ARTICLE 9B.

Motor Clubs and Associations.

§ 66-49.9. **Definitions.**—As used in this article, unless the context otherwise requires, the term:

- (1) "Motor club" means any person, firm, association or corporation, whether or not residing, domiciled or chartered in this State, which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use or maintenance of a motor vehicle by rendering three (3) or more of such services as towing service, emergency road service, legal service, bail or cash appearance bond service, map service, touring service, personal travel and accident insurance service, or automobile theft reward service.
- (2) "Commissioner" means the Commissioner of Insurance of North Carolina; and "Department" means the Department of Insurance of North Carolina.
- (3) "Licensee" means a motor club to whom a license has been issued under this article.

- (4) "Towing service" shall mean furnishing means to move a motor vehicle from one place to another under power other than its own.
- (5) "Emergency road service" shall mean roadside adjustment of a motor vehicle so that such vehicle may be operated under its own power, provided the cost of rendering such service does not exceed twenty-five dollars (\$25.00).
- (6) "Legal service" shall mean providing for reimbursement of members or subscribers for attorneys' fees not to exceed three hundred dollars (\$300.00) in the event criminal proceedings are instituted against such members or subscribers as a result of the operation of a motor vehicle.
- (7) "Bail or cash appearance bond service" shall mean the furnishing of cash or surety bond for its members or subscribers accused of a violation of the motor vehicle law, or of any law of this State by reason of an automobile accident to secure their release and subsequent appearance in court.
- (8) "Map service" shall mean the furnishing of road maps to its members or subscribers without cost.
- (9) "Touring service" shall mean the furnishing of touring information to its members or subscribers without cost.
- (10) "Personal travel and accident insurance service" means making available to its members or subscribers a personal travel and accident insurance policy issued by a duly licensed insurance company in this State.
- (11) "Automobile theft reward service" means a reward payable to any person, law enforcement agency or officer for information leading to the recovery of a member's or subscriber's stolen vehicle and to the apprehension and conviction of the person or persons unlawfully taking such vehicle. (1963, c. 698.)

Editor's Note. — The act inserting this article became effective Oct. 1, 1963.

§ 66-49.10. **License required.**—No motor club, district or branch office of a motor club, or franchise motor club shall engage in business in this State unless it holds a valid license issued to it by the Commissioner as hereinafter provided. (1963, c. 698.)

§ 66-49.11. **Applications for licenses; fees; bonds or deposits.**—Licenses hereunder shall be obtained by filing written application therefor with the Commissioner in such form and manner as the Commissioner shall require. As a prerequisite to issuance of a license:

- (1) The applicant shall furnish to the Commissioner such data and information as the Commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of General Statute 66-49.12, whether or not a license should be issued to the applicant.
- (2) If the applicant is a motor club it shall be required to pay to the Commissioner an annual license fee of one hundred dollars (\$100.00) and to deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000.00), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000.00), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this article and the regulations and orders issued by the Commissioner pursuant

thereto, and upon the good faith performance by the applicant of its contracts for motor club services.

- (3) If the applicant is a branch or district office of a motor club licensed under this article it shall pay to the Commissioner a license fee of ten dollars (\$10.00).
- (4) If the applicant is a franchise motor club it shall pay to the Commissioner an annual license fee of twenty-five dollars (\$25.00) and shall deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000.00), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000.00), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this article and the regulations and orders issued by the Commissioner pursuant thereto and upon the good faith performance by the applicant of its contracts for motor club services.
- (5) Any applicant depositing securities under this section shall do so in the form and manner as prescribed in article 20, chapter 58 of the General Statutes of North Carolina, and the provisions of article 20, chapter 58 of the General Statutes of North Carolina, shall be applicable to securities pledged under this article. (1963, c. 698.)

§ 66-49.12. Issuance or refusal of license; notice of hearing on refusal; renewal.—Within sixty (60) days after an application for license is filed, the Commissioner shall issue a license to the applicant unless he shall find:

- (1) That the applicant has not met all of the requirements of this article, or
- (2) That the applicant does not have sufficient financial responsibility to engage in business as a motor club in this State, or
- (3) That the applicant has failed to make a reasonable showing that its managers, officers, directors and agents are persons of reliability and integrity. If any such finding is made, the Commissioner shall notify the applicant as soon as practicable of the reason for his refusal to issue the license, and inform the applicant of its right to a hearing on the matters as provided in General Statute 66-49.14. All licenses issued hereunder, and all renewals thereof, shall expire on June 30th following such issuance or renewal. Renewal of all licenses not previously revoked or suspended shall be automatic upon timely payment by the licensee of the annual fee. (1963, c. 698.)

§ 66-49.13. Powers of Commissioner. — The Commissioner shall have the same powers and authority for the purpose of conducting investigations and hearings under this article as that vested in him by General Statutes 58-9.2 and 58-44.6.

- (1) To investigate possible violation of this article and to report evidence thereof to the Attorney General who may recommend prosecution to the appropriate solicitor;
- (2) To suspend or revoke any license issued under this article upon a finding, after notice and opportunity for hearing, that the holder of said license has violated any of the provisions of this article, or has failed to maintain the standards requisite to original licensing as indicated in General Statute 66-49.12 hereof;
- (3) To require any licensee to cease doing business through any particular agent or representative upon a finding after notice and opportunity for hearing, that such agent or representative has intentionally made

false or misleading statements concerning the motor club services offered by the motor club represented by him;

- (4) To approve or disapprove the name, trademarks, emblems, and all forms which an applicant for license or licensee employs or proposes to employ in connection with its business. If such name, trademarks or emblems is distinctive and not likely to confuse or mislead the public as to the nature or identity of the motor club using or proposing to use it, then it shall be approved, otherwise, the Commissioner may disapprove its use and effectuate such disapproval by the issuance of an appropriate order; and
- (5) To make any rules or regulations necessary to enforce the provisions of this article. (1963, c. 698.)

§ 66-49.14. **Hearing on denial of license; judicial review of determination by Commissioner.**—Any applicant for a license or renewal of a license hereunder shall be entitled to a hearing before the Commissioner in the event such application is denied or not acted upon within a reasonable time. Any applicant or licensee adversely affected by a determination of the Commissioner shall have a right to seek judicial review of such determination under the provisions and limitations of General Statute 58-9.3. (1963, c. 698.)

§ 66-49.15. **Agent for service of process.**—Every motor club licensed hereunder shall appoint and maintain at all times an agent for service of process who shall be a resident of North Carolina. (1963, c. 698.)

§ 66-49.16. **Violations; penalty.**—Any person, firm, association or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court. (1963, c. 698.)

§ 66-49.17. **Disposition of fees.**—In the event an application for license filed hereunder is not approved, the Commissioner shall retain ten dollars (\$10.00) of the fee paid to him in connection with said application, and return the balance to the applicant. All fees collected by the Commissioner hereunder shall be available to the Department of Insurance for paying the expense incurred in connection with the administration of this article. (1963, c. 698.)

§ 66-49.18. **Insurance licensing provisions not affected.**—Nothing in this article shall be construed as amending, repealing, or in any way affecting any laws now in force relating to the licensing of insurance agents or insurance companies, or to the regulation thereof, as provided in chapter 58 of the General Statutes. (1963, c. 698.)

ARTICLE 10.

Fair Trade.

§ 66-50. **Title of article.** — This article may be known and cited as the "Fair Trade Act." (1937, c. 350, s. 10.)

Editor's Note. — For a discussion of the act from which this article was codified, see 15 N. C. Law Rev. 367. For note on constitutionality of fair trade acts, see 31 N. C. Law Rev. 509.

Article Is Constitutional. — The Fair Trade Act, permitting the manufacturer or distributor of trademarked goods to establish the minimum retail sale price of such goods by contract with wholesalers and retailers, and providing that sale by retailers

not parties to the contracts at prices less than those stipulated in the contracts should be deemed unfair competition, is not void as creating or tending to create monopolies in contravention of Art. I, § 31, of the State Constitution, since the restrictions imposed by the act are limited and apply solely to trademarked goods in their vertical distribution from manufacturer or distributor through the wholesalers and retailers to the consumer, which

goods are sold by the retailer in competition with goods of the same general class of other manufacturers or, in the case of patented goods, in competition with comparable products of other manufacturers, and therefore the act does not create or tend to create a monopoly by horizontal agreements between persons in the same business in competition with each other. *Lilly & Co. v. Saunders*, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

The Fair Trade Act, permitting the establishment of minimum retail prices on trademarked goods by agreement, does not deprive a retailer not a party to a contract with the manufacturer or distributor of any property right in preventing such retailer from selling the trademarked article at a price less than that stipulated by contract, since such retailer acquires title with knowledge and subject to the stipulations relative to the minimum retail price permitted by the law in protecting the property right of the manufacturer or

distributor in his trademark and good will, which property right subsists while the goods bear his trademark, even after he has parted with title of the commodity itself. *Lilly & Co. v. Saunders*, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

The Fair Trade Act is not a special act regulating trade in contravention of Constitution, Art. II, § 29. Nor is it unconstitutional as a delegation of legislative authority. *Lilly & Co. v. Saunders*, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

The North Carolina Fair Trade Act is valid under the North Carolina Constitution and the Constitution of the United States. *Parker Pen Co. v. Dart Drug Co., Inc.*, 202 F. Supp. 646 (1962).

Applied in *Union Carbide Corp. v. Davis*, 253 N. C. 324, 116 S. E. (2d) 792 (1960).

Cited in *Warner v. Gulf Oil Corp.*, 178 F. Supp. 481 (1959).

§ 66-51. **Definitions.**—The following terms, as used in this article, are hereby defined as follows:

- (1) "Commodity" means any subject of commerce.
- (2) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. "Person" shall not include the State of North Carolina or any of its political subdivisions.
- (3) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.
- (4) "Retailer" means any person selling a commodity to consumers for use.
- (5) "Wholesaler" means any person selling a commodity other than a producer or retailer. (1937, c. 350, s. 1.)

§ 66-52. **Authorized contracts relating to sale or resale of commodities bearing trademark, brand or name.**—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others, shall be deemed in violation of any law of the State of North Carolina by reason of any of the following provisions which may be contained in such contract:

- (1) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.
- (2) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.
- (3) That the seller will not sell such commodity:
 - a. To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

- b. To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. (1937, c. 350, s. 2.)

§ 66-53. **Certain evasions of resale price restrictions prohibited.**—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this article (except to the extent authorized by the said contract):

- (1) The offering or giving of any article of value in connection with the sale of such commodity;
- (2) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or
- (3) The sale or offering for sale of such commodity in combination with any other commodity shall be deemed a violation of such resale prices restriction, for which the remedies prescribed by § 66-56 shall be available. (1937, c. 350, s. 3.)

§ 66-54. **Contracts with persons other than the owner of the brand, etc., not authorized.**—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this article, by any person other than the owner of the trademark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trademark, brand or name. (1937, c. 350, s. 4.)

§ 66-55. **Resales not precluded by contract.**—No contract containing any of the provisions enumerated in § 66-52 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

- (1) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and when plain notice of the fact is given to the public: Provided, the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;
- (2) When the trademark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement or sale thereof;
- (3) When the goods are altered, secondhand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;
- (4) By any officer acting under an order of court;
- (5) When any commodity is sold to a religious, charitable or educational organization or institution, provided such commodity is for the use of such organization or institution and not for resale. (1937, c. 350, s. 5.)

§ 66-56. **Violation of contract declared unfair competition.**—Willfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this article, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. (1937, c. 350, s. 6.)

Cross Reference. — See note under § **Retailer Deemed to Contract in Contemplation of Article.**—The fact that a manu-

facturer or distributor of trademarked commodities permits the sale of such commodities to a noncontracting retailer does not preclude the manufacturer or distributor from maintaining a suit against such retailer under this article, since the manufacturer or distributor has the option to obtain a contract or rely upon the statute, and since the sale to the noncontracting retailer does not confer upon him the right to violate the statute with reference to which he is deemed to have contracted in making the purchase. *Lilly & Co. v. Saunders*, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

Permanent Injunction Authorized.—This section authorizes a suit by a manufacturer or distributor protected by the act against

a noncontracting retailer to permanently enjoin such retailer from selling trademarked commodities of the manufacturer or distributor in violation of the act upon allegations of accrued and prospective irreparable damages. *Lilly & Co. v. Saunders*, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

Reasonable Profit Is No Defense.—The fact that a retailer makes a reasonable profit upon trademarked articles is no defense in a suit against such retailer for selling such articles at a price below that allowed by this article, since the standard of the statute is one of retail price and not of reasonable profit. *Lilly & Co. v. Saunders*, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

§ 66-57. **Exemptions.** — This article shall not apply to any contract or agreement between or among producers or distributors or, except as provided in subdivision (3) of § 66-52, between or among wholesalers, or between or among retailers, as to sale or resale prices. This article shall not apply to any prices offered in connection with or contracts or purchases made by the State of North Carolina or any of its agencies, or any of the political subdivisions of the said State. (1937, c. 350, s. 7.)

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 services 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 (25¢) 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 farms, dairy, live-stock 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 subdivision (6) of subsection (c).

ARTICLE 12.

Coupons for Products of Photography.

§ 66-59. **Title of article.**—The title of this article shall be “An Act to Prevent the Perpetration of Certain Fraudulent Practices by Photographers within the State of North Carolina.” (1943, c. 25, s. 1.)

Article Invalid as Applied to Interstate Commerce.—This article is repugnant to the Commerce Clause—Article I, 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).
Quoted in *State v. Mobley*, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-60. **Definitions.** — (a) **Coupon.** — The term “coupon” as used herein shall mean any coupon, certificate, receipt or similar device, by whatever name called.

(b) **Photographer.**—The term “photographer” as used herein shall mean any individual, firm, partnership, association, corporation, or other group or combination acting as a unit.

(c) **Solicitor.**—The term “solicitor” as used herein shall mean any agent, salesman, employee, solicitor, canvasser, or any other person acting for or on behalf of a photographer. (1943, c. 25, s. 2.)

§ 66-61. **Coupons redeemable in products of photography prohibited unless bond given.**—No photographer or solicitor shall sell or issue any coupon, whether for a consideration or otherwise, purporting to be exchangeable, redeemable, or payable, in whole or in part, for any products of photography, including photographs, coloring, tinting, frames, mounts, folders, copying or the reproduction of photographs, and all other products of photography, unless the principal for which said business is conducted shall first file with the clerk of the superior court in each and every county in which said business is to be conducted a good and sufficient bond in the principal sum of two thousand dollars (\$2,000.00), the condition of such bond being that the principal shall well and truly discharge all contracts, representations and other obligations made by said principal and all contracts, representations and other obligations made by any solicitor of such principal. (1943, c. 25, s. 3.)

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 bonds 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.** — The coupons, as above defined, issued in any county shall be serially numbered, and before any bond, herein required to be filed, can be withdrawn, the principal on said bond shall file a sworn statement with the clerk of the superior court, in a form approved by said clerk, showing the lowest and highest serial number of the coupon, the total number issued, and the total number that has been redeemed. On the unredeemed coupons, the said principal shall show the name and address of the person to whom the said coupon was issued; that each of said persons have been notified, in writing, at the address shown, at least thirty (30) days prior thereto, to redeem said coupons, or otherwise that said coupon would become void on a day certain stated in said notice. (1943, c. 25, s. 4.)

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.** — Any person sustaining any loss or damage by reason of any photographer or solicitor failing to fully perform and discharge any contract, representation or other obligation in connection with the sale of any coupon purporting to be exchangeable, redeemable or payable, in whole or in part, for any product of photography, whether such contract, promise or representation be made by the photographer or solicitor, may recover in any court of competent jurisdiction against the principal and his, her or its surety, the sum of twenty-five dollars (\$25.00), in addition to any actual loss or damage sustained, and any amount so recovered shall be a specific lien on the bond filed as herein required. (1943, c. 25, s. 5.)

Quoted in *State v. Mobley*, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 66-64. **Violation a misdemeanor.**—Any person violating the provisions of this article, including the make of any false statement in the affidavit required under § 66-62, shall be guilty of a misdemeanor and, upon conviction, be fined or imprisoned, or both, in the discretion of the court. (1943, c. 25, s. 6.)

Editor's Note.—The word "make" which appears near the beginning of the section, and which also appears in the act from which this section was codified, was obviously intended to read "making."

Quoted in *State v. Mobley*, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

ARTICLE 13.

Miscellaneous Provisions.

§ 66-65. **Indemnity bonds required of agents, etc., to state maximum liability and period of liability.** — Wherever any person, firm, or corporation, engaged in the business of merchandising any articles whatsoever, shall require of its agents, solicitors, salesmen, representatives, consignees, or peddlers, or other persons selling or handling its merchandise, as a condition precedent to selling or handling any of the merchandise of said person, firm, or corporation,

that such agents, solicitors, salesmen, representatives, consignees, or peddlers should furnish and provide a bond or guaranty or indemnity contract guaranteeing the full and faithful accounting of moneys collected from such merchandise, such bond or indemnity contract shall state specifically therein the maximum amount of money or other liability which the principal and the sureties or guarantors thereof undertake thereby to pay in event of default of said bond or indemnity or guaranty contract; and said bond or indemnity or guaranty contract shall also state specifically the period of time during which liability may be incurred on account of any default in said bond or indemnity or guaranty contract.

Any bond or indemnity or guaranty contract which does not comply with the provisions of this section shall be null and void and no action may be maintained against the surety or guarantor to recover any sum due thereon in any court of this State. (1943, c. 604, ss. 1, 2.)

Editor's Note. — For comment on this section, see 21 N. C. Law Rev. 362.

§ 66-66. Manufacture or sale of anti-freeze solutions compounded with inorganic salts or petroleum distillates prohibited.—The manufacture or sale of anti-freeze solutions which are designated, intended, advertised, or recommended by the manufacturer or seller for use in the cooling systems of motor vehicles or gasoline combustion engines, and which are compounded with calcium chloride, magnesium chloride, sodium chloride, or other inorganic salts or with petroleum distillates is hereby prohibited.

Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1943, c. 625, ss. 1, 2.)

§ 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": Provided 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.)

Cross Reference.—As to prohibition of use of title "certified public accountant" by partnership or association unless all members qualified, see § 93-4.

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.

For comment on the 1951 amendments to this article, see 29 N. C. Law Rev. 377, 409.

Statute Is Highly Penal. — Chapter 77, Laws of 1913, codified as §§ 66-68 through 66-71, is of a highly penal character, and its meaning will not be extended by interpretation to include cases that do not come clearly within its provision. *Jennette v. Coppersmith*, 176 N. C. 32, 97 S. E. 54 (1918); *Security Finance Co. v. Hendry*, 189 N. C. 549, 127 S. E. 629 (1925).

And the courts will not lend their aid to extend a highly penal statute, although it is within the police power, unless the case comes within the letter of the law, and also within its meaning and palpable design. It is just as clearly the policy of the law that it will not lend its aid in enforcing a claim founded on its own violation. *Security Finance Co. v. Hendry*, 189 N. C. 549, 127 S. E. 629 (1925).

The intent of the statute is to prevent fraud or imposition upon those dealing with a business conducted under an assumed name, and to afford them means for knowing the status and responsibility

of the concern with which they deal. *Price v. Edwards*, 178 N. C. 493, 101 S. E. 33 (1919).

The statute was enacted as a police regulation to protect the general public from fraud and imposition. *Courtney v. Parker*, 173 N. C. 479, 92 S. E. 324 (1917); *Security Finance Co. v. Hendry*, 189 N. C. 549, 127 S. E. 629 (1925).

The statute manifestly is for the protection of creditors of persons who fail to comply with its provisions, or of others who do business with them. The consequences of a violation are prescribed by § 66-71. They seem to be limited to punishment as a misdemeanor, for it is expressly provided that failure to comply with this section, shall not prevent a recovery in a civil action by the person who shall violate the statute. *Farmers' Bank, etc., Co. v. Murphy*, 189 N. C. 479, 127 S. E. 527 (1925).

The statute does not apply between partners who are presumed to know the status and responsibility of the partnership; and a surviving partner may maintain his action against the heirs of the dead one to recover his share in the assets of a partnership in a legitimate business, notwithstanding the business had been conducted in the name solely of the dead partner, and the requirements of the statute had not been complied with. *Price v. Edwards*, 178 N. C. 493, 101 S. E. 33 (1919).

Where a partnership in a legitimate business has been conducted in the name

of one of the partners alone, as between themselves the statute does not apply; and an action of the silent partner to recover his share of the assets from the other is not founded upon any wrong avoiding his recovery. *Price v. Edwards*, 178 N. C. 493, 101 S. E. 33 (1919).

Where a partnership is being conducted under the surname of the proprietors in such manner as to afford a reasonable and sufficient guide to a correct knowledge of the individuals composing the firm, the statute does not apply. *Befarah v.*

Spell, 176 N. C. 193, 96 S. E. 949 (1918).

In *Jennette v. Coppersmith*, 176 N. C. 82, 97 S. E. 54 (1918), it was held that the title of the plaintiffs' firm, *Jennette Bros.*, afforded a reasonable and sufficient guide to correct knowledge of the individuals composing the firm, and therefore did not come clearly within the doctrine of "assumed" names within the meaning of this statute.

Cited in *Patterson v. Southern Ry. Co.*, 214 N. C. 38, 198 S. E. 364 (1938).

§ 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 (25¢). (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 transferred this section from § 59-87. It should be noted that the 1951 amendment

to § 66-68 (formerly § 59-85) made that section applicable to corporations and 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 transferred this section from § 59-88. The amendment also rewrote the section, inserting the reference to "partner or corporation" and the provision for a civil penalty, and making other changes.

Nature and Purpose of Section. — See note to § 66-68.

Contracts in Violation of Statute Not Void.—It is clear that the legislature intended, by adding what is now subsection (b) of this section, that the punishment

should be confined to the fine or imprisonment set out, but that contracts made by persons carrying on or conducting or transacting business in violation of § 66-68 should not be void. *Security Finance Co. v. Hendry*, 189 N. C. 549, 127 S. E. 629 (1925). See *Real Estate Co. v. Sasser*, 179 N. C. 497, 103 S. E. 73 (1920); *Farmers'*

Bank, etc., Co. v. Murphy, 189 N. C. 479, 127 S. E. 527 (1925).

Subsection (b) had the effect of changing the decision in *Courtney v. Parker*, 173 N. C. 479, 92 S. E. 324 (1917). See *Security Finance Co. v. Hendry*, 189 N. C. 549, 127 S. E. 629 (1925).

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.)

Cross Reference.—As to running of statute of limitations against undisclosed partner, see § 1-28.

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) 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.
- (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) "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, offering 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.
- (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 requirement 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 subdivision (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 man-made objects 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 imperfection 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 subdivision, and this subdivision 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 subdivision.

- (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 ($\frac{1}{5}$ 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 $\frac{1}{200}$ 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 ac-

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-day (30) 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, Davidson, Durham, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Jackson, Lee, McDowell, New Hanover, Northampton, Onslow, Orange, Pitt, Randolph, Richmond, Robeson, Sampson, Stanly, Surry, Swain, Transylvania, Union, Wake and Wayne. (1957, c. 1058, ss. 10½, 10¾; 1959, cc. 928, 1089; c. 1251, s. 1; c. 1287; 1963, cc. 205, 738.)

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.

The first 1963 amendment inserted the county of Davidson. The second 1963 amendment inserted the county of Sampson.

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.

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ARTICLE 1.

Owner's Liability.

§ 67-1. Liability for injury to livestock or fowls.—If any dog, not being at the time on the premises of the owner or person having charge thereof, shall kill or injure any livestock or fowls, the owner or person having such dog in charge shall be liable for damages sustained by the injury, killing, or maiming of any livestock, and costs of suit. (1911, c. 3, s. 1; C. S., s. 1669.)

Cross References. — As to dogfighting, see § 14-362. As to admittance of dogs to bedrooms by innkeeper or guest, see § 72-7; but see also § 67-29, relating to guide dogs.

Editor's Note.—As to owner's liability

for personal injury by dog, see *Perry v. Phipps*, 32 N. C. 259 (1849); *Harris v. Fisher*, 115 N. C. 318, 20 S. E. 461 (1894). As to property in dogs and liability for wrongfully killing or injuring them, see *Dodson v. Mock*, 20 N. C. 282 (1838); *Mowery v. Salisbury*, 82 N. C. 175 (1880); *State v. Smith*, 156 N. C. 628, 72 S. E. 321 (1911); *Beasley v. Byrum*, 163 N. C. 3, 79

S. E. 270 (1913). As to right to kill dog attempting to destroy animals used for food, see *Parrott v. Hartsfield*, 20 N. C. 242 (1838); *State v. Smith*, 156 N. C. 628, 72 S. E. 321 (1911).

For note on liability of owner for trespass of dogs while hunting, see 33 N. C. Law Rev. 134.

§ 67-2. **Permitting bitch at large.**—If any person owning or having any bitch shall knowingly permit her to run at large during the erotic stage of copulation he shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1862-3, c. 41, s. 2; Code, s. 2501; Rev., s. 3303; C. S., s. 1670.)

Cited in *Pegg v. Gray*, 240 N. C. 548, 82 S. E. (2d) 757 (1954).

§ 67-3. **Sheep-killing dogs to be killed.**—If any person owning or having any dog that kills sheep or other domestic animal, upon satisfactory evidence of the same being made before any justice of the peace of the county, and the owner duly notified thereof, shall refuse to kill it, and shall permit such dog to go at liberty, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days, and the dog may be killed by anyone if found going at large. (1862-3, c. 41, s. 1; 1874-5, c. 108, s. 2; Code, s. 2500; Rev., s. 3304; C. S., s. 1671.)

Cross References.—As to what dogs may be killed, see § 67-14, and see note to § 67-1. As to liability for killing listed dogs, see § 67-27.

Cited in *Parrott v. Hartsfield*, 20 N. C. 242 (1838); *Daniels v. Homer*, 139 N. C. 219, 51 S. E. 922 (1905).

§ 67-4. **Failing to kill mad dog.**—If the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to any person under his control, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he shall forfeit and pay the sum of fifty dollars to him who will sue therefor; and the offender shall be liable to pay all damages which may be sustained by anyone, in his property or person, by the bite of any such dog, and shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (R. C., c. 67; Code, s. 2499; Rev., s. 3305; C. S., s. 1672.)

Cross References. — As to killing mad dogs, see §§ 67-14, 67-27. As to rabies, vaccination, etc., generally, see § 106-364 et seq.

Actual Knowledge Unnecessary.—In an action under this section it is not necessary to prove that the biting dog was in fact mad. The words "good reason to believe" apply both to the condition of the biting dog and to the fact that the dog was bitten by a mad dog. *Wallace v. Douglas*, 32 N. C. 79 (1849).

Dog Can Be Destroyed.—If owner refuses to destroy a dog, which is mad or is bitten by a mad dog, he subjects himself to the possibility of a fine and imprisonment and the dog can be destroyed by order of the justice issuing the warrant under this section. *Beasley v. Byrum*, 163 N. C. 3, 79 S. E. 270 (1913).

As to contributory negligence of person bitten by a mad dog, see *Holton v. Moore*, 165 N. C. 549, 81 S. E. 779 (1914).

ARTICLE 2.

License Taxes on Dogs.

§ 67-5. **Amount of tax.**—Any person owning or keeping about him any open female dog of the age of six months or older shall pay annually a license or privilege tax of two dollars. Any person owning or keeping any male dog, or female dog other than an open female dog of the age of six months or older, shall

pay annually on each dog so owned or kept a license or privilege tax of one dollar. (1919, c. 116, ss. 1, 2; C. S., s. 1673.)

Local Modification.—Clay: 1933, c. 301; Graham: 1931, c. 35; Jackson: 1947, c. 105; Macon: 1933, c. 301; Swain: 1933, c. 149.

Cross Reference.—As to credit of vaccination fee on dog tax, see § 106-372.

Constitutional Exercise of Police Power.—A statute imposing a specified tax upon all persons owning or keeping a dog within

a certain county is for the privilege of keeping the dog therein and comes under the police regulations of the county. It is therefore constitutional and valid and will not be restrained. *Newall v. Green*, 169 N. C. 462, 86 S. E. 291 (1915); *McAlister v. Yancey County*, 212 N. C. 208, 193 S. E. 141 (1937).

§ 67-6. License tags; optional with county commissioners.—To every person paying the license or privilege tax prescribed in § 67-5 there shall be issued by the sheriff a metal tag bearing county name, a serial number, and expiration date, which shall be attached by owner to a collar to always be worn by any dog when not on premises of the owner or when engaged in hunting. The Superintendent of Public Instruction shall at all times keep on hand a supply of tags to be furnished the sheriffs of the several counties. Provided, that the county commissioners of each county shall, by order duly made in regular session, make an order determining whether the collar and tag shall be applied to that county. (1919, c. 116, s. 2½; C. S., s. 1674; Ex. Sess. 1920, c. 37.)

Editor's Note.—Prior to the 1920 amendment the metal tags were kept by the Commissioner of Agriculture.

§ 67-7. Dogs to be listed; penalty for failure to list.—It shall be the duty of every owner or keeper of a dog to list the same for taxes at the same time and place that other personal property is listed, and the various tax listers in the State shall have proper abstracts furnished them for listing dogs for taxation, and any person failing or refusing to list such dog or dogs shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. The owner of the home or lessee of such owner shall be responsible for listing of any dog belonging to any member of his family. (1919, c. 116, s. 3; C. S., s. 1675.)

Local Modification.—Mitchell: Pub. Loc. 1925, c. 265. (See § 67-18.)

§ 67-8. When tax is due.—The license or privilege tax herein imposed shall be due and payable on the first day of October of each and every year. (1919, c. 116, s. 3; C. S., s. 1676; 1943, c. 119.)

Editor's Note.—The 1943 amendment eliminated a provision as to penalty for failure to pay tax.

§ 67-9. Receipt for tax a license.—Upon the payment to the sheriff or tax collector of the license or privilege tax aforesaid, such sheriff or tax collector shall give the owner or keeper of such dog or dogs a receipt for the same which shall constitute a license under the provisions of this article. (1919, c. 116, s. 3; C. S., s. 1677.)

§ 67-10. Tax listers to make inquiry, compile reports; compensation.—The tax listers for each township, town, and city in this State shall annually, at the time of listing property as required by law, make diligent inquiry as to the number of dogs owned, harbored, or kept by any person subject to taxation. The list takers shall, on or before the first day of July in each year, make a complete report to the sheriff or tax collector on a blank form furnished them by the proper authority, setting forth the name of every owner of any dog or dogs, how many of each and the sex owned or kept by such person. The county com-

missioners may pay the tax listers for such services such amounts as may be just out of the money arising under this article. (1919, c. 116, ss. 4, 6; C. S., s. 1678.)

§ 67-11. **Purchasers to ascertain listing.** — Any person coming in possession of any dog or dogs after listing time shall immediately ascertain whether such dog or dogs have been listed for taxes or not, and if not so listed, it is hereby made the duty of such owner or keeper of such dog or dogs to go to the sheriff or tax collector of his county and list such dog or dogs for taxes, and it is made the duty of the owner or keeper of such dog or dogs to pay the privilege or license tax as is herein provided for in other cases. (1919, c. 116, s. 4; C. S., s. 1679.)

§ 67-12. **Permitting dogs to run at large at night; penalty; liability for damage.**—No person shall allow his dog over six months old to run at large in the nighttime unaccompanied by the owner or by some member of the owner's family, or some other person by the owner's permission. Any person intentionally, knowingly, and willfully violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, and shall also be liable in damages to any person injured or suffering loss to his property or chattels. (1919, c. 116, s. 5; C. S., s. 1680.)

Local Modification.—Buncombe, Halifax, New Hanover, Wake: 1925, c. 314; Watauga: Pub. Loc. 1927, c. 503. (See § 67-18.)

Cross Reference.—As to permitting dogs to run at large on Capitol Square, see § 14-396.

Valid Exercise of Police Power.—A city ordinance which prohibits the owner from allowing dogs to run at large without muzzles is a valid exercise of the police power. *State v. Clifton*, 152 N. C. 860, 67 S. E. 751 (1910).

§ 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, Craven, Currituck, Dare, 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, Wake, 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; c. 367, s. 7; 1955, cc. 111, 134; 1957, c. 46; 1961, c. 659; 1963, c. 266, s. 1; c. 725, s. 1.)

Local Modification. — Avery Forsyth, McDowell, Randolph, Watauga: 1931, c. 283; Avery, Mitchell: 1933, c. 273; Bertie: 1943, c. 189; Buncombe: 1937, c. 119;

Burke: 1945, c. 245; Cabarrus: 1939, c. 225; Caldwell: 1937, c. 23; Caswell: 1935, c. 188; 1941, c. 19; Chowan: 1925 c. 15; 1949, c. 219; Cumberland: 1935, c. 361; David-

son: 1925, c. 79; Duplin: 1937, c. 47; Forsyth: 1933, c. 547; Granville: 1955, c. 158, s. 5; Greene: 1937, c. 92; Guilford: 1933, c. 547; 1945, c. 138; 1957, c. 203, amending 1951, c. 143; Jones: 1939, c. 151; Lee: 1949, c. 349; Madison: 1935, c. 412; Mecklenburg: 1935, c. 30; Mitchell: 1937, c. 73; Onslow: 1933, c. 200; 1939, c. 85; 1949, c. 137; Pender: 1937, c. 76; Pitt: 1933, c. 561; Rockingham: 1925, c. 25; Sampson: 1949, c. 349; Stanly: 1935, c. 30; Surry: 1933, c. 310; Tyrreil: 1949, c. 219; Union: Pub. Loc. 1927, c. 501; Vance: Pub. Loc. 1925, c. 103; Warren: 1943, c. 545; 1947, c. 443; Wayne: 1939, c. 39; Wilson: 1931, c. 37; Yancey: Pub. Loc. 1925, c. 57, s. 2.

Session Laws 1947, c. 853, s. 2 repealed Public Laws 1935, c. 50 relating to Alamance County.

Editor's Note. — The 1945 amendments inserted "Nash," "Robeson," "Gaston" and "Cleveland," respectively, in the list of counties in the proviso. The 1947 amendment inserted "Alamance." The 1953 amendments inserted "Catawba" and "Orange." The 1955 amendments inserted "Mecklenburg" and "Pamlico." The 1957 amendment inserted "Person."

The 1961 amendment inserted "Craven" in the list of counties

The first 1963 amendment, effective July 1, 1963, inserted "Wake" in the list of counties. And the second 1963 amendment inserted "Dare."

This section is a police regulation not stopping the defendant in the county's action from establishing any defense available to him under the pleadings, nor does it change the method of procedure as to the burden of proof, or otherwise, except that it limits recovery of the injured person, electing to proceed under this statute, to a sum not exceeding the amount thereunder ascertained. *Board v. George*, 182 N. C. 414, 109 S. E. 77 (1921).

This section is constitutional, and does not deprive the defendant of a jury trial.

§ 67-14. Mad dogs, dogs killing sheep, etc., may be killed. — Any person may kill any mad dog, and also any dog if he is killing sheep, cattle, hogs, goats, or poultry. (1919, c. 116, s. 8; C. S., s. 1682.)

Cross References. — As to liability of owner who fails to kill sheep-killing dog, see § 67-3. As to liability of owner who

Board v. George, 182 N. C. 414, 109 S. E. 77 (1921).

Mandamus Will Lie. — Where a person having a legal right to recover under this section, makes satisfactory proof to the county commissioners of injury inflicted by a dog, it is the legal duty of the commissioners to appoint freeholders to ascertain the amount of damage done, and mandamus will lie to compel them to perform this duty. *White v. Holding*, 217 N. C. 329, 7 S. E. (2d) 825 (1940).

Testimony of Nonexpert Witness.—Admission of judgment of a nonexpert witness upon the personal observation of the carcass of the sheep, as to the length of time it had been killed, is not erroneous as the expression of a theoretical or scientific opinion. *Board v. George*, 182 N. C. 414, 109 S. E. 77 (1921).

Right to Trial by Jury.—The ascertainment of damages by three disinterested freeholders, and the payment thereof by county commissioners from the dog taxes, with the right of the county to sue to recover the amount so paid from the owner of the dog if known or discovered, as provided by this section, reserves to such owner the right to a trial by jury in the action of the commissioners, and does not permit recovery in excess of the sum awarded for the damages caused as ascertained under the provisions of the statute. *Board v. George*, 182 N. C. 414, 109 S. E. 77 (1921).

Cost of Assessment. — In an action by the county, under this section, the reasonable cost of the services of the persons chosen to make the assessment, which is paid by the county, is a part of the money paid on account of the injury or destruction caused by the dog, and defendant's exception thereto will not be sustained. Semble, the question of the reasonableness of this amount is a question for the jury, when aptly and properly raised and presented. *Board v. George*, 182 N. C. 414, 109 S. E. 77 (1921).

§ 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 nui-

sance, 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 a 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.)

§ 67-15. Dogs, when listed, personal property; larceny of dog a misdemeanor.—All dogs, when listed for taxes, become personal property and shall be governed by the laws governing other personal property: Provided, the larceny of any dog upon which aforesaid tax has been paid shall be a misdemeanor. (1919, c. 116, s. 9; C. S., s. 1683.)

Cross Reference.—As to larceny of listed dog, see §§ 14-84, 67-27. the absence of a statute, stealing a dog is not larceny in this State. *State v. Holder*, 81 N. C. 527 (1879).

Not Larceny in Absence of Statute.—In

§ 67-16. Failure to discharge duties imposed under this article. — Any person failing to discharge any duty imposed upon him under this article shall be guilty of a misdemeanor, and upon conviction shall pay a fine not exceeding fifty dollars or be imprisoned not more than thirty days. (1919, c. 116, s. 10; C. S., s. 1684.)

§ 67-17: Deleted.

Editor's Note. — This section has been deleted as it appeared to be local legislation of the type contemplated by § 67-18 and repealed by that section. It was held to have been so repealed in *McAlister v. Yancey County*, 210 N. C. 208, 193 S. E. 141 (1936).

§ 67-18. Application of article.—This article, §§ 67-5 to 67-18, inclusive, is hereby made applicable to every county in the State of North Carolina, notwithstanding any provisions in local, special or private acts exempting any county or any township or municipality from the provisions of the same enacted at any General Assembly commencing at the General Assembly of nineteen hundred and nineteen and going through the General Assembly of nineteen hundred and twenty-nine. (1929, c. 318.)

Applied in *McAlister v. Yancey County*, 212 N. C. 208, 193 S. E. 141 (1937).

ARTICLE 3.

Special License Tax on Dogs.

§ 67-19. **Nothing in this article abrogated by article 2; special tax an additional tax.**—Nothing contained in article 2 of this chapter shall have the effect of abrogating any of the provisions of this article, and the special license tax on dogs provided for under this article shall be in addition to the license tax on dogs provided for under article 2 of this chapter: Provided that article 2 shall not be construed as repealing any existing ordinance of any city or town or any ordinance of any city or town hereafter enacted, regulating the keeping or use of dogs in cities and towns. (1919, c. 116, s. 11; C. S., s. 1685; Ex. Sess. 1920, c. 53.)

Editor's Note. — The 1920 amendment added the proviso.

§ 67-20. **Special dog tax submitted to voters on petition.** — Upon the written application of one-third of the qualified voters of any county in this State made to the board of commissioners of such county, asking that an election be held in said county to adopt the provisions of this article for levying and collecting a special dog tax in said county, it shall be the duty of said board of commissioners from time to time to submit the question of "special dog tax" or "no special dog tax" to the qualified voters of said county; and if at any such election a majority of the votes cast shall be in favor of said special dog tax, then the provisions of this article shall be in full force and effect over the whole of said county, and the special dog tax hereinafter provided for shall be levied and collected in said county; but if a majority of the votes cast at such election shall be against said special dog tax, then the provisions of this article shall not apply to any part of said county. (1917, c. 206, s. 1; C. S., s. 1686.)

§ 67-21. **Conduct of elections.**—Every election held under the provisions of this article shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the General Assembly: Provided, that no such election shall be held in any county oftener than once in two years. (1917, c. 206, s. 3; C. S., s. 1687.)

§ 67-22. **Commissioners to provide for registration; ballots and machinery.**—The board of commissioners of any county in this State in which an election is to be held under the provisions of this article may provide for a new registration of voters in said county if they deem necessary, or they may provide for the use of the registration of voters in effect at the general election for county officers in said county next preceding the holding of the election hereunder, and they shall appoint such officers as may be necessary to properly hold such election and shall designate the time and places for holding such elections, and make all rules, regulations, and do all other things necessary to carry into effect the provisions of this article. (1917, c. 206, s. 4; C. S., s. 1688.)

§ 67-23. **Canvass of votes and returns.**—At the close of said election the officers holding same shall canvass the vote and certify the returns to the said board of commissioners of said county, and the said board of commissioners shall canvass the said returns and declare the results of said election in the manner now provided by law for holding special tax school elections. (1917, c. 206, s. 4; C. S., s. 1689.)

§ 67-24. **Contents and record of petition; notice of election.** — The qualified voters of any county who shall make written application to the board of commissioners of said county asking that an election be held under the provisions of this article shall designate and insert in said application the amount of special dog tax to be levied and collected in said county, which tax shall not exceed the sum of five dollars nor be less than the sum of one dollar for each dog,

whether male or female, and the board of commissioners shall have said written application, specifying the amount of said special dog tax to be voted for in said county, recorded in the records of their proceedings, and shall cause to be published in some newspaper published or circulated in said county, and posted at the courthouse door and five other public places in said county, a notice of the time and places for holding said election and specifying the amount of tax to be voted for in said county. (1917, c. 206, s. 5; C. S., s. 1690.)

§ 67-25. **License tax.**—Any person or persons, firm or corporation, owning or keeping any dog or dogs, whether male or female, in any county which shall adopt the provisions of this article for the levy and collection of said special dog tax shall pay annually a license or privilege tax on each dog, whether male or female, such sum or sums as may be designated and inserted in the written application of the qualified voters of said county asking for said election and as recorded in the proceedings of the board of county commissioners of said county, which shall not exceed the sum of five dollars nor be less than the sum of one dollar for each dog: Provided, the tax voted for and levied on female dogs may be greater than the tax on male dogs, but in no event shall said special tax exceed the sum of five dollars, nor be less than the sum of one dollar for any dog, whether male or female. (1917, c. 206, s. 6; C. S., s. 1691.)

Local Tax Valid.—The legislature may empower the authorities of a town to regulate the manner in which dogs may be kept in the said town. Hence, a tax levied under this authority is constitutional and valid. *Mowery v. Salisbury*, 82 N. C. 175 (1880).

§ 67-26. **Collection and application of tax.**—The special dog tax voted for under the provisions of this article shall be due and collectible at the same time and in the same manner as provided by law for the collection of taxes on other personal property in said county, and shall be collected by the collector of other taxes in said county in the same manner and under the same penalties provided by law for collection of taxes on other personal property in said county, and shall be applied to the road fund, or school fund, of said county, as may be directed by the board of commissioners of said county. (1917, c. 206, s. 8; C. S., s. 1692.)

Cross Reference.—As to application of proceeds of general dog tax, see § 67-13.

§ 67-27. **Listed dogs protected; exceptions.** — Any person who shall steal any dog which has been listed for taxation as herein provided shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court; and any person who shall kill any dog the property of another, after the same has been listed as herein provided, shall be liable to the owner in damages for the value of such dog. Nothing in this article shall prevent the killing of a mad dog, sheep-killing, cattle-killing, hog-killing or goat-killing dog, or egg-sucking dog on sight, when off the premises of its owner, and the owner shall not recover any damages for the loss of such dog. (1917, c. 206, s. 9; C. S., s. 1693; 1963, c. 337.)

Cross References.—As to listed dogs as personal property, see § 67-15. As to larceny of taxed dogs, see § 14-84.

Editor's Note.—The 1963 amendment inserted "cattle-killing, hog-killing or goat-killing" in the second sentence.

§ 67-28. **Application of article to counties having dog tax.** — Any county in this State which now has a local law taxing dogs may, by election in the manner herein provided for, accept the provisions of this article, and if adopted by a majority of the qualified voters of said county at such election, the local law taxing dogs in such county shall thereby be repealed and annulled, and the provisions of this article shall be in full force and effect in such county. (1917, c. 206, s. 10; C. S., s. 1694.)

ARTICLE 4.

Guide Dogs.

§ 67-29. **Accompanying blind persons in public conveyances, etc.** — Any blind person accompanied by a dog described as a "guide dog," or any dog educated by a recognized training agency or school, which is used as a leader or guide, is entitled with his dog to the full and equal accommodations, advantages, facilities and privileges of all public conveyances, and all places of public accommodation, subject only to the conditions and limitations applicable to all persons not so accompanied. (1943, c. 111; 1963, c. 61.)

Editor's Note. — The 1963 amendment "dog" in the section and in the article heading substituted "guide dog," for "seeing-eye dog."

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; Harnett: 1963, c. 664; Orange: 1953, c. 367, ss. 1-5, 8.

Editor's Note. — The 1955 amendment inserted the second sentence.

The first 1957 amendment substituted in the first sentence "one or more county dog wardens" for "a county dog warden." The second 1957 amendment added the last sentence.

§ 67-31. **Powers and duties of dog warden.**—The powers and duties of the county dog warden shall be as follows:

- (1) 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.
- (2) 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. “not to exceed 15 days” to “a period to be determined by the board of county

Editor’s Note. — The 1955 amendment changed the period of impounding from 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; Duplin: 1963, c. 226; Johnston: 1961, c. 689; 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.

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ARTICLE 1.

Lawful Fences.

§ 68-1. **Fences to be five feet high.**—Every planter shall make a sufficient fence about his cleared ground under cultivation, at least five feet high, unless otherwise provided in this chapter, unless there shall be some navigable stream or deep watercourse that shall be sufficient, instead of such fence, and unless his lands shall be situated within the limits of a county, township or district wherein the stock law may be in force. (1777, c. 121, s. 2; 1791, c. 354, s. 1; R. C., c. 48, s. 1; Code, s. 2799; Rev., s. 1660; C. S., s. 1827.)

Local Modification.—Bertie, Buncombe, Carteret, Hyde, Madison, McDowell, New Hanover, Northampton, Pamlico: C. S. § 1829.

Cross Reference.—As to fence four and one-half feet high being lawful in certain counties, see § 68-2.

Requirements Mandatory. — Proof that plaintiff's fence is a "good ordinary one" such as the neighbors have, does not dispense with the obligation imposed by this section. Runyan v. Patterson, 87 N. C. 343 (1882).

Effect of Failure to Comply with Section.—If the statutory requirement is not complied with one cannot recover damages caused by animals of another, al-

though the animal may be vicious and the fences are "good ordinary ones" such as the plaintiff's neighbors have. Runyan v. Patterson, 87 N. C. 343 (1882).

A pasture field is not "ground under cultivation," within the meaning of this section, irrespective of whether it is woods pasture or cleared pasture. State v. Perry, 64 N. C. 305 (1870).

The word "planter" as used in this section does not include hirelings, laborers or employees who have no discretion as to the plans for fencing. State v. Taylor, 69 N. C. 543 (1873).

Cited in State v. Anderson, 123 N. C. 705, 31 S. E. 219 (1898).

§ 68-2. Local: Four and a half feet in certain counties.—A fence four and one-half feet high is a lawful fence in the counties of Alleghany, Bladen, Brunswick, Burke, Caldwell, Cherokee, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Harnett, Henderson, Jackson, Lenior, Perquimans, Randolph, Richmond, Robeson, Rutherford, Sampson, Tyrrell, Wake, Washington, Wilkes and Yancey. This section does not apply to stock-law fences. (1889, c. 175; 1891, c. 36; 1905, c. 333; Rev., s. 1661; 1909, cc. 55, 94; P. L. 1911, c. 15; C. S., s. 1828.)

Local Modification. — Tyrrell: C. S. § 1828.

Cited in McCoy v. Tillman, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

§ 68-3. Watercourse made lawful fence by county commissioners.—Any five electors, residents of the same county, may apply to the board of commissioners of the county, at any regular meeting of the same, by written petition praying that any watercourse, or any part of any watercourse, in the county, may be made a lawful fence. Notice of such petition shall be posted forty days at the courthouse door, by the clerk of the board, before such petition shall be acted upon. Upon the hearing of such petition, the board of county commissioners is authorized to declare any watercourse, or any part of any watercourse to which the petition applies, a lawful fence. And the several acts of the General Assembly, declaring certain watercourses, in part or in whole, lawful fences, are so far repealed as to enable the board of commissioners of any county to declare any of such acts, or parts thereof, to be null and void in said county. Any order made under this section shall be of record and signed by the chairman, and may be rescinded by the board of commissioners at any regular meeting. (1872-3, c. 98; Code, ss. 2808, 2809, 2810; Rev., s. 1663; C. S., s. 1830.)

§ 68-4. Injury to wire fence forbidden.—If any person shall willfully destroy, cut or injure any part of a wire fence or a fence composed partly of wire and partly of wood situated on the land of another, he shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not exceeding thirty days or fined not exceeding fifty dollars. (1889, c. 516; Rev., s. 3413; C. S., s. 1831.)

Purpose of Section.—This section is not in conflict with § 14-144, as that section was meant to protect the inclosure while this one was meant to protect the fences

irrespective of whether or not they inclosed any field. State v. Biggers, 108 N. C. 760, 12 S. E. 1024 (1891).

§ 68-5. Local: Building unguarded barbed-wire fences along public highways.—If any person shall erect or maintain a barbed-wire fence along any public road or highway, and within ten yards thereof, without putting a

railing, smooth wire, board or plank on the top of such fence not less than three inches in width, he shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court. This section shall apply to the counties of Brunswick, Catawba, Cumberland, Durham, Forsyth, Greene, Iredell, Macon, Mitchell, Richmond, Rowan, Rutherford, Stanly, Stokes, Swain, Wilkes and Yadkin: Provided, that in Rutherford County only a railing or plank shall be used at the top of such fence. (1895, c. 65; 1899, cc. 43, 225; 1905, c. 220; Rev., s. 3769; 1909, cc. 318, 604, 629, 810; C. S., s. 4422.)

ARTICLE 2.

Division Fences.

§ 68-6. **Division fences maintainable jointly.**—Where two or more persons have lands adjoining, which are either cultivated or used as a pasture for stock, the respective owners of each piece of land shall make and maintain one half of the fence upon the dividing line. (1868-9, c. 275, s. 1; Code, s. 2800; Rev., s. 1664; C. S., s. 1832.)

Quoted in *McCoy v. Tillman*, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

§ 68-7. **Remedy against delinquent owner.**—If any person who is liable to build or keep up a part of any division fence fails at any time to do so, the owner of the adjoining land, after notice may build or repair the whole, and recover of the delinquent one half of the cost before any court having jurisdiction. (1868-9, c. 275, s. 7; Code, s. 2807; Rev., s. 1670; C. S., s. 1833.)

Only Civil Liability.—A violation of this section does not subject the wrongdoer to indictment. His liability is civil only. *State v. Watson*, 86 N. C. 626 (1882).

Quoted in *McCoy v. Tillman*, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

§ 68-8. **Fence erected because of changed use of land.**—If the owner of a tract of land, who chooses neither to cultivate it, to use it as a pasture, nor to permit his stock to run on it, afterwards uses it in either of these ways and does not so enclose his stock that they cannot enter on the lands of an adjoining owner, he shall refund to such owner one half the value of any fence erected by the latter on the dividing line. (1868-9, c. 275, s. 2; Code, s. 2801; Rev., s. 1665; C. S., s. 1834.)

§ 68-9. **When owner may remove his part of division fence.**—If any owner of land liable to contribute for the keeping up of a division fence determines neither to cultivate his land nor permit his stock to run thereon, he may give the adjoining owner three months' notice of his determination; and in that case, at any time after the expiration of such notice and between the first day of January and the first day of March, but at no other time, he may remove the half of the fence kept up by himself, and shall be no longer liable to keep up the same. (1868-9, c. 275, s. 8; 1883, c. 111; Code, s. 2802; 1903, c. 20; Rev., s. 1671; C. S., s. 1835.)

Only Civil Liability.—A violation of this section will not subject one to indictment. *State v. Watson*, 86 N. C. 626 (1882).

In counties where the "stock law" is ap-

plicable, this section will not be applied and a division fence may be dispensed with at any time without notice. *State v. Edmonds*, 121 N. C. 679, 28 S. E. 545 (1897).

§ 68-10. **Proceeding to value division fence.**—The value of such fence shall be ascertained as follows: Either owner may summon the other to appear before any justice of the peace of the township in which the dividing line is situate; or if it be situate in more than one township, then before any justice of the peace of any township in which any part of it is situate. In his summons he shall name a certain day, not less than five days after the summons, for the

appearance of the defendant; he shall also state the purpose of the summons to be the adjustment of all matters in controversy respecting the dividing fence between the parties. The justice shall hear the complaint and defense. If the facts be found such as entitle either party to demand contribution of the other, the justice shall call on the complainant to name an indifferent person, qualified to act as a juror of the township, and if the complainant refuses the justice shall name one for him. The justice shall then call on the defendant to name an indifferent person, qualified to act as a juror of the township, and if the defendant refuses the justice shall name one for him. The justice shall then name a third indifferent person. These three persons, or any two of them, shall view the premises and decide all matters in controversy between the parties, relating to a fence on the dividing line. They shall make a written report to the justice, who shall give judgment thereon, and for the costs, which shall be paid by the owners of the several pieces of land equally. The jurors shall each receive one dollar per day. The fees of the justice and constable shall be as in other cases. Either party may appeal as provided in other cases of justices' judgments. (1868-9, c. 275, s. 3; Code, s. 2803; Rev., s. 1666; C. S., s. 1836.)

§ 68-11. **Contents of jurors' report.**—The report of the jurors shall also state the kind of fence which ought to be kept up, and assign to each owner, in such manner as that it may be identified, the part which he shall keep up. (1868-9, c. 275, s. 4; Code, s. 2804; Rev., s. 1667; C. S., s. 1837.)

§ 68-12. **Register to record report.**—The justice shall return the report, together with a transcript of the proceedings, to the register of deeds of his county for registration. The justice shall collect from the parties the fees of the register, and pay the same to him. (1868-9, c. 275, s. 5; Code, s. 2805; Rev., s. 1668; C. S., s. 1838.)

§ 68-13. **Final judgment on report; effect.**—The final judgment upon the report of the jurors shall be binding on the owners of the respective lands and their assigns, so long as such ownership shall continue, or until the same shall be set aside, modified or reversed. (1868-9, c. 275, s. 6; Code, s. 2806; Rev., s. 1669; C. S., s. 1839.)

§ 68-14. **Removal of common fence misdemeanor.** — If any person owning, occupying, cultivating or being in possession of any lands under a common fence protecting the lands, crops or property of others, shall remove such fence or any part thereof during the time in which any crops are growing or being actually cultivated thereon, or property is protected by such fence, and before such crops are harvested, without the consent and permission of such person or persons whose crop or property is protected by such common fence, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that the provisions of this section shall not apply when ninety days' notice of such removal shall have been given to all persons owning, cultivating or in possession of lands surrounded by such common fence, or having property protected thereby, and when thereafter such fence shall be removed between the first day of January and the first day of March following such notice of intended removal. (Code, s. 2820; 1903, c. 20; Rev., s. 3412; C. S., s. 1840.)

Editor's Note. — When a fence is altogether on the land of a person, although used as a common fence, he has the right to move it and he is not subject to criminal prosecution, but a civil right might arise under § 68-9. *State v. Watson*, 86 N. C. 626 (1882). Neither will an indictment lie for removing a fence when a party remov-

ing the fence has possession of the land on both sides of the fence although title may be in the prosecutor, and the defendant is only a tenant by curtesy. *State v. Williams*, 44 N. C. 197 (1853).

Cited in *State v. Dunn*, 95 N. C. 697 (1886).

ARTICLE 3.

Stock Law.

§ 68-15. **Term "stock" defined.**—The word "stock" in this chapter shall be construed to mean horses, mules, colts, cows, calves, sheep, goats, jennets, and all neat cattle, swine and geese. (Code, s. 2822; Rev., s. 1681; C. S., s. 1841.)

Local Modification.—Currituck: 1937, c. 389; Dare: 1935, c. 263; 1937, c. 213; Onslow: 1933, c. 151; 1937, c. 356; Robeson: 1917, c. 662.

Cross Reference. — For act making Cherokee, Clay and Iredell counties "stock law territory", see note to G. S. 68-23.

A dog is not "stock" within the meaning of the section, but nevertheless subject to larceny. *Meekins v. Simpson*, 176 N. C. 130, 96 S. E. 894 (1918).

§ 68-16. **County elections.**—Upon the written application of one-fifth of the qualified voters of any county made to the board of commissioners thereof, it shall be the duty of the commissioners from time to time to submit the question of "stock law" or "no stock law" to the qualified voters of said county. And if at any such election a majority of the votes cast is in favor of "stock law," then the provisions of this chapter relating to the stock law shall be in force over the whole of said county. (Code, s. 2812; Rev., s. 1672; C. S., s. 1842.)

Cross Reference. — As to "majority of qualified voters," see N. C. Const., Art. VII, § 6.

In a county where only a part of the townships have stock laws, an election covering the whole county is held valid, and it does not interfere with the principles of local self-government. *Smalley v. Board*, 122 N. C. 607, 29 S. E. 904 (1898);

Perry v. Board, 130 N. C. 558, 41 S. E. 787 (1902).

Mandamus to Compel Election.—When a petition duly signed by the required number of voters is filed with the commissioners, and they refuse to call an election, mandamus may be brought to compel them to grant the petition. *Perry v. Board*, 130 N. C. 558, 41 S. E. 787 (1902).

§ 68-17. **Township elections.**—Upon the written application of one-fifth of the qualified voters in any township, made to the board of commissioners of the county wherein the township is situated, it shall be the duty of the commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of the township; and if at any such township election a majority of the votes cast is in favor of "stock law," then the stock law shall be in force in said township. (Code, 2813; Rev., s. 1673; C. S., s. 1843.)

Voting in County Election.—The fact that a township has "stock laws" does not bar the voters in that township from vot-

ing in a county election. *Smalley v. Board*, 122 N. C. 607, 29 S. E. 904 (1898).

§ 68-18. **District elections.**—Upon the written application of one-fifth of the qualified voters of any district or territory, whether the boundaries of said district follow township lines or not, made to the board of county commissioners at any time, and setting forth well-defined boundaries of the district, it shall be the duty of the commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of the district, and if at any such election a majority of the votes cast is in favor of "stock law," then the stock law shall be in force over the whole of said district. (Code, s. 2814; Rev., s. 1674, C. S., s. 1844.)

"Well-Defined Boundaries."—The words "well-defined boundaries" are not too indefinite to admit of proof to locate the boundaries where the beginning is "at a certain tract of land," and the difficulty as to the uncertainty of the point of beginning is removed where there is a call for the

boundaries of lands of successive proprietors, thence to a certain point. *Newsom v. Earnheart*, 86 N. C. 391 (1882).

Right to Unite Districts. — The commissioners have no power when several districts adjoin each other to unite them into one territory, provide for the con-

struction of one boundary fence, and assess a uniform tax on all the real property in the several districts so united to meet the

expense of the fence. *Bradshaw v. Board*, 92 N. C. 278 (1885).

§ 68-19. **Local: How territory released from stock law.**—Upon the written application of a majority of the qualified voters in any district, territory or well-defined boundary, made to the board of county commissioners, at any time, setting forth that the citizens of said district, territory or boundary are within the stock-law boundary, and are desirous of being released from the laws governing stock-law territory, it shall be the duty of the commissioners to submit the question of “no stock law” or “stock law” to the qualified voters of said district or territory, and if at any such election a majority of the votes cast is against stock law, then the said district or territory shall be released and free from the operation of the stock law: Provided, the expense incurred in changing the fence in such boundary, district or territory so released be paid by the property holders in such boundary, district or territory, and that the commissioners of the county levy the tax to pay the same on the property holders of such boundary, district or territory so released, but they shall not be further liable for keeping up said stock-law fence: Provided, that in any territory where stock law now prevails no election against stock law shall be held in less than two years from the date of the election adopting stock law in said territory: Provided further, that if “no stock law” should carry, it shall not take effect until six months from the date of its ratification: Provided still further, that neither “stock law” nor “no stock law” shall take effect during crop season.

This section applies only to the counties of Cherokee, Clay, Graham, Jackson, Macon, Mitchell, Pender, Randolph, Swain, and to Hogback Township in Transylvania County. (1895, c. 35; 1897, cc. 461, 516; 1903, c. 60; Rev., s. 1675; 1907, c. 874, s. 3; P. L. 1911, cc. 265, 469; P. L. 1915, c. 379; P. L. 1917, c. 662; C. S., s. 1845.)

Local Modification.—Currituck: 1937, c. 389; Dare: 1935, c. 263; 1937, c. 213; Jackson, as to Cashiers Township: 1949, c. 752, s. 3.

When a “no stock law” is duly passed, before the stock can be turned out to run at large the district or county passing such law must be inclosed so that the stock will not range out of “no stock law” territory and on the crops of others not in the “no stock law” territory. *Marsburn v. Jones*, 176 N. C. 516, 97 S. E. 422 (1918).

This section provides that the expense incurred in building such a fence shall be paid by a tax on the property holders of the district or county. This certainly does not authorize a tax solely upon the real estate in the county or district. *Hawes v. Commissioners*, 175 N. C. 268, 95 S. E. 482 (1918). Therefore, to raise this fund an election must be held and authority granted by the majority of the voters. *Marsburn v. Jones*, 176 N. C. 516, 97 S. E. 422 (1918).

§ 68-20. **How election conducted.** — Every election under this chapter shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the General Assembly: Provided, no such county, township or district election shall be held oftener than once in any one year, although the boundaries of such district may not be the same. (Code, s. 2815; Rev., s. 1676; C. S., s. 1846.)

§ 68-21. **Powers and duties of county commissioners.**—The board of commissioners of the county may provide for a new registration of voters, designate places for holding elections, and make all regulations, and do all other things necessary to carry into effect the provisions of this chapter relating to the stock law. (Code, s. 2826; Rev., s. 1677; C. S., s. 1847.)

Building and Repairing Fences.—County commissioners are not required by the stock law to personally superintend the fence around the no fence territory; they discharge their duty under the statute

when they levy the necessary taxes, appoint the committees, etc., to keep the fence in repair. *State v. Commissioners*, 97 N. C. 388, 1 S. E. 641 (1887).

But an owner of stock, however, who re-

sides outside of such territory, is not liable to have his stock impounded within such territory, unless the county commissioners have kept the fence in good repair. In such case the presumption is that the

fence is in good order, and the burden of showing the contrary is on the party alleging it. *Coor v. Rogers*, 97 N. C. 143, 1 S. E. 613 (1887).

§ 68-22. **Admission of lands adjoining stock-law territory.**—Any person, or any number of persons, owning land in a county, district or township which shall not adopt the stock law, or adjoining any county, township or district where a stock law prevails, may have his or their lands enclosed within any fence built in pursuance of this chapter. All such adjacent lands, when so enclosed, shall be subject to all the provisions of law with respect to livestock running at large within the original district so enclosed, as if it were a part of the township, county or district with which it is hereby authorized to be enclosed. Any number of landowners, whose lands are contiguous, may at any time build a common fence around all their lands, with gates across all public highways; and no livestock shall run at large within any such enclosure, under the pains and penalties prescribed in this chapter. (Code, s. 2821; Rev., s. 1678; C. S., s. 1848.)

Cited in *Edwards v. Supervisors*, 127 N. C. 62, 37 S. E. 73 (1900).

§ 68-23. **Allowing stock at large in stock-law territory forbidden.**—If any person shall allow his livestock to run at large within the limits of any county, township or district in which a stock law prevails or shall prevail pursuant to law, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Code, s. 2811; 1889, c. 504; Rev., s. 3319; C. S., s. 1849.)

Editor's Note.—For act declaring Nash County to be stock-law territory, see Session Laws 1943, c. 451.

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.

For acts declaring Iredell County and Clay County, respectively, to be "stock-law territory," and subject to this and other sections, see Session Laws 1961, cc. 497, 580.

Duty to Restrain Stock.— This section imposes upon all persons the statutory duty of restraining their stock from running at large. *McCoy v. Tillman*, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

This section impliedly subjects the owner to civil responsibility as a tortfeasor if he knowingly or negligently permits his livestock 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).

This section implies knowledge, consent or willingness on the part of the owner that the animals be at large, or negligence equivalent thereto, and the mere fact that animals are at large does not raise the presumption that the owner permits them to run at large, nor does the doctrine of res ipsa loquitur apply upon the establishment of the facts that animals are found at large. *Gardner v. Black*, 217 N. C. 573, 9 S. E. (2d) 10 (1940).

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).

Cited in *State v. Brigman*, 94 N. C. 888 (1886).

§ 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 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. 2186; Rev., s. 1679; C. S., s. 1850; 1951, c. 569.)

Local Modification.—Camden, Currituck, Gates, Pasquotank, Perquimans: Pub. Loc. 1927, c. 327.

Cross Reference. — As to larceny of stock and malicious injury thereto, see § 14-85.

Editor's Note. — The 1951 amendment increased the amounts of the impounding fees from "fifty cents" to "one dollar" and from "twenty-five cents" to "fifty cents."

Constitutionality.—This and the following sections are constitutional. Hogan v. Brown, 125 N. C. 251, 34 S. E. 411 (1899). And resident owners may be required to pay a higher penalty than nonresident owners. Broadfoot v. Fayetteville, 121 N. C. 418, 28 S. E. 515 (1897).

Not Applicable to Stock under Control.—This section does not authorize the taking up and impounding of livestock unless running at large, and does not apply to cows securely tied to trees under the immediate control of the owner with the permission of the lessee of the land, and it is forcible trespass to take them away over the protest of the owner, to prevent which the owner may use all necessary force, unless the taking is by appropriate legal proceedings. Kirkpatrick v. Crutchfield, 178 N. C. 348, 100 S. E. 602 (1919). See State v. Hunter, 118 N. C. 1196, 24 S. E. 708 (1896).

When and by Whom Stock May Be Impounded. — All persons are under the statutory duty of restraining their live-

stock from running at large, and when out of the pasture such stock are at large and subject to be taken up and impounded by any person, even though they are at large as a result of the negligence of the person who so impounds them, where the owner has knowledge of their being at large and neglects to restrain them. McCoy v. Tillman, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

Strays from No-Fence Territory. — In State v. Mathis, 149 N. C. 546, 63 S. E. 99 (1908), the court said: "While it is usual for the counties or townships which adopt a 'stock law' to build a common fence, it is not necessary that they do so." In State v. Garner, 158 N. C. 630, 74 S. E. 458 (1912), the court held that the owner of cattle who permits them to run at large in fence territory, but they stray across the line into a no-fence territory, is liable, though he does not turn them out for that purpose. Owen v. Williamson, 171 N. C. 57, 59, 87 S. E. 959 (1916).

Liability for Killing Strays. — Under this section one has the power to take up a stray, and the law requires that he do so in preference to killing or injuring it. If he wantonly kills such stray, he is guilty of a misdemeanor. State v. Brigman, 94 N. C. 888 (1886). See § 14-366.

Applied in Beasley v. Edwards, 211 N. C. 393, 190 S. E. 221 (1937).

Cited in Chadwick v. Salter, 254 N. C. 389, 119 S. E. (2d) 158 (1961).

§ 68-25. Owner notified; sale of stock; application of proceeds.—If the owner of such stock be known to the impounder he shall immediately inform the owner where his stock is impounded, and if the owner shall for two days after such notice willfully refuse or neglect to redeem his stock, then the impounder, after ten days' written notice posted at three or more public places within the township where the stock is impounded, and describing the stock and stating place, day and hour of sale, or if the owner be unknown, after twenty days' notice in the same manner, and also at the courthouse door, shall sell the stock at public auction, and apply the proceeds in accordance with the provisions of this article, and the balance he shall turn over to the owner if known, and if the owner be not known, to the county commissioners for the use of the school fund of the district wherein said stock was taken up and impounded, subject in their hands for six months to the call of the legally entitled owner. (Code, s. 2817; Rev., s. 1680; C. S., s. 1851.)

Cross Reference.—As to constitutional-ity, see note to § 68-24.

When Owner May Not Complain. — Where a party lawfully impounds a sow, sells same under provisions of a recorder's judgment, and pays himself his lawful fees for impounding the sow and his damages

caused by the sow, and pays to the owner the amount due him out of the purchase price, the owner may not complain. Beasley v. Edwards, 211 N. C. 393, 190 S. E. 221 (1937).

Cited in McCoy v. Tillman, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

§ 68-26. **Impounding unlawfully misdemeanor.** — If any person shall willfully and unlawfully toll, drive, or in any way move any other person's horse, mule, ass, neat cattle, sheep, hog, goat, or dog, from the range or elsewhere, into any stock-law district, or into the limits of any city or town having the right to impound or destroy the same, with intent to secure the poundage or other penalty, or with intent to injure the owner of such animal, or to require him to pay any poundage or penalty on account of such animal, or for hire or reward, he shall be guilty of a misdemeanor. If any person shall unlawfully and willfully remove any animal above named from any lawful inclosure, with intent to injure the owner, he shall be guilty of a misdemeanor. (1895, c. 141, s. 1; Rev., s. 3309; C. S., s. 1852.)

§ 68-27. **Illegally releasing or receiving impounded stock misdemeanor.**—If any person unlawfully receives or releases any impounded stock, or unlawfully attempts to do so, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Code, s. 2819; 1889, c. 504; Rev., s. 3310; C. S., s. 1853.)

§ 68-28. **Impounded stock to be fed and watered.**—If any person shall impound, or cause to be impounded in any pound or other place, any animal, and shall fail to supply to the same during such confinement a sufficient quantity of good and wholesome food and water, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1881, c. 368, s. 3; Code, s. 2484; 1891, c. 65; Rev., s. 3311; C. S., s. 1854.)

Stated in *McCoy v. Tillman*, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

§ 68-29. **Right to feed impounded stock; owner liable.**—In case any animal is at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any such pound or other place in which any animal shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal. (1881, c. 368, s. 4; Code, s. 2485; Rev., s. 1682; C. S., s. 1855.)

The difference between an impounding fee and a charge for food, is recognized by the law. Section 68-24 prescribed the impounding fees for taking up stock running at large, and this section prescribes for payment of feeding such stock when taken up. The former fees go to the officer or

the town or county, and the latter is a humane provision without which the stock might suffer for want of food and water. *Owen v. Williamston* 171 N. C. 57, 87 S. E. 959 (1916).

Cited in *McCoy v. Tillman*, 224 N. C. 201, 29 S. E. (2d) 683 (1944).

§ 68-30. **Injuring lands in stock-law territory by riding or driving.**—If any person, by riding or driving upon the lands of another without permission, or while driving livestock along any roadway, public or private, shall willfully, deliberately or recklessly do or permit to be done any actual injury to said land, or to the crops or other property growing or being thereon, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. But no such offender shall be proceeded against unless the party injured, or someone in his behalf, shall cause a warrant to be issued or an indictment to be found against the party offending, within fifteen days after the commission of the offense. (Code, s. 2828; 1889, c. 118; Rev., s. 3321; C. S., s. 1856.)

§ 68-31. **Owner in stock-law territory allowing stock outside.**—If any person having stock within the limits of a stock-law territory shall allow the same to run at large beyond the boundaries of said territory, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that a person owning or renting land outside of the stock-law territory may turn his stock upon the said land outside of the stock-law district. (Code, s. 2827; 1885, c. 371; 1889, c. 266; Rev., s. 3322; C. S., s. 1857.)

§ 68-32. **Stock-law territory to be fenced around.**—The stock law authorized by this chapter shall not be enforced until a fence has been erected around any territory proposed to be enclosed, with gates on all the public roads passing into and going out of said territory: Provided, all streams which are or may be declared to be lawful fences shall be sufficient boundaries, in lieu of fences: Provided further, no fence shall be erected along the boundary lines of any county, township, or district where a stock law prevails. (Code, s. 2823; Rev., s. 1683; C. S., s. 1858.)

§ 68-33. **Commissioners may declare natural barrier sufficient fence.**—In any county in the State in which or in any portion of which the stock law is now in force or may hereafter be adopted, the county commissioners of said county in their discretion may declare any watercourse, mountain, mountain range or parts of same, and also other natural and sufficient obstructions along the line of said stock-law territory to be and constitute a sufficient stock-law fence, and in that event such watercourse, mountain, mountain range or part thereof and obstructions so declared by said commissioners shall be and constitute a lawful fence to all intents and purposes. (1901, c. 542; Rev., s. 1684; C. S., s. 1859.)

When Absence of Built Fence No Defence. — It is competent for the county commissioners to forbid stock from running at large within the county, and declare a mountain range, a creek, or other natural line, a fence as the limit within which the law shall operate, and it is not a

valid defence that no fence had been built on the line to prevent the stock from the adjoining county to run at large on his side of the line when one is prosecuted for allowing his stock to run at large. *State v. Mathis*, 149 N. C. 546, 63 S. E. 99 (1908).

§ 68-34. **Assessment of landowners for fence.**—For the purpose of building stock-law fences, the board of commissioners of the county may levy and collect a special assessment upon all real property, taxable by the county, within the county, township or district which may adopt the stock law, but no such assessment shall be greater than one fourth of one per centum on the value of said property. (Code, s. 2824; Rev., s. 1685; C. S., s. 1860.)

Cross Reference. — As to tax for "no stock law" fence, see note to § 68-19.

Constitutionality. — This section does not come within the prohibition of the State Constitution providing for uniform tax, as this is not of the nature of a tax, but is an assessment to defray expenses of local improvements, although called a tax by the legislature. *Cain v. Commissioners*, 86 N. C. 8 (1882); *Shuford v. Commissioners*, 86 N. C. 552 (1882).

When Applicable.—The provisions of this section apply both to the cases where the adoption of the stock law is dependent on a popular vote, and where it is made absolute by an act of the General Assembly. *Busbee v. Commissioners*, 93 N. C. 143 (1885).

These local assessments are not under all the restraints put upon the taxing power. They stand upon a different footing and rest upon the equitable and just consideration that lands rendered more valuable by the improvements ought to contribute to the expense of making the improvements, and that these expenses ought not to fall upon the entire body of the taxpayers. The advantage is to the land, and to the persons only as owners of the land. *Busbee v. Commissioners*, 93 N. C. 143 (1885).

District in Two Counties.—If the district organized lies in two counties the assessment shall be as if it was all in one county. *Commissioners v. Commissioners*, 92 N. C. 187 (1885).

Township Withdrawn from Stock Law.

—This section does not authorize the imposition of the assessment on the real estate of a township withdrawn from the benefit of the stock law by express legislative enactment for the purpose of raising money to replace the money withdrawn from the general fund to pay the expenses of fences erected by the commissioners. *Harper v. Commissioners*, 133 N. C. 106, 45 S. E. 526 (1903).

Assessment Must Be for Stock-Law

§ 68-35. **Condemnation of land for fence.**—If the owner of any land objects to the building of any fence herein allowed, his land, not exceeding twenty feet in width, shall be condemned for the fenceway in accordance with the procedure specified in the article *Condemnation Proceedings* under the chapter *Eminent Domain*. (Code, s. 2825; Rev., s. 1686; C. S., 1861.)

§ 68-36. **Injury to stock-law fences misdemeanor in stock-law territory.**—If any person willfully tears down, or in any manner breaks a fence or gate, or leaves open a gate erected around a stock-law territory, or willfully breaks any enclosure within any township, district or county where a stock law is in force, and where any stock is confined, so that the same escape therefrom, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Code, s. 2820; 1889, c. 504; Rev., s. 3411; C. S., s. 1862.)

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.

For acts declaring Iredell County and Clay County, respectively, to be "stock-

Fences Only.—An assessment by a county upon the real estate to build a fence for the purpose of keeping the stock in anti-stock-law territory from trespassing is unauthorized by law. *Hawes v. Commissioners*, 175 N. C. 268, 95 S. E. 482 (1918).

The roadbed and right of way of a railroad are liable to an assessment for local improvements. *Commissioners v. Seaboard Air Line R. Co.*, 133 N. C. 216, 45 S. E. 566 (1903).

law territory," and subject to this and other sections, see *Session Laws 1961*, cc. 497, 580.

Cited in *State v. Dunn*, 95 N. C. 697 (1886).

§ 68-37. **Impounder violating stock law misdemeanor.** — If any impounder willfully misappropriates money that he may receive from sale of stock impounded, or in any manner willfully violates any provisions of the law in regard thereto, he shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Code, s. 2820; 1889, c. 504; Rev., s. 3312; C. S., s. 1863.)

Cited in *State v. Dunn*, 95 N. C. 697 (1886).

§ 68-38. **Local: Depredations of domestic fowls in certain counties.**—In the counties and parts of counties hereinafter enumerated, where the stock law prevails, it shall be unlawful for any person to permit any turkeys, geese, chickens, ducks or other domestic fowls to run at large, after being notified as provided in this section, on the lands of any other person while such lands are under cultivation in any kind of grain or feedstuff, or while being used for gardens or ornamental purposes.

Any person so permitting his fowls to run at large, after having been notified to keep them up, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five dollars or imprisoned not exceeding five days, or if it shall appear to any justice of the peace that after two days' notice any person persists in allowing his fowls to run at large and fails or refuses to keep them upon his own premises, then the said justice of the peace may, in his discretion, order any sheriff, constable or other officer to kill said fowls when so depredating. (C. S., s. 1864.)

Alamance, 1901, c. 645.

Avery, 1935, c. 77.

- Beaufort, Pub. Loc. 1927, c. 316.
 Bladen, 1901, c. 645.
 Buncombe, 1907, c. 508.
 Burke, 1907, c. 508.
 Cabarrus, 1901, c. 645.
 Caldwell, Pub. Loc. 1911, c. 244.
 Caswell, 1943, c. 64.
 Chatham, 1945, c. 329.
 Clay, 1935, c. 51.
 Cleveland, 1901, c. 645.
 Columbus, 1933, c. 308.
 Craven, 1945, c. 329.
 Cumberland, 1945, c. 329.
 Currituck, 1901, c. 645.
 Davidson, Pub. Loc. 1911, c. 244.
 Duplin, Ex. Sess., 1908, c. 73; 1933, c. 186.
 Edgecombe, 1901, c. 645.
 Gaston, Pub. Loc. 1919, c. 31.
 Gates, 1935, c. 77.
 Graham, 1901, c. 645.
 Granville, Pub. Loc. 1911, c. 244.
 Guilford, 1901, c. 645.
 Harnett, 1931, c. 443.
 Henderson, Pub. Loc. 1911, c. 636.
 Iredell, 1935, c. 170.
 Jackson, Pub. Loc. 1919, c. 31.
 Johnston, 1935, c. 78.
 Lee, Pub. Loc. 1913, c. 725.
 Lenoir, Pub. Loc. 1911, c. 244.
 Macon, Pub. Loc. 1919, c. 31.
 Madison, 1953, c. 1253.
 Martin, 1935, c. 77.
 Mecklenburg, 1901, c. 645.
 Moore, 1935, c. 77.
 Nash, 1943, c. 451.
 Onslow, Pub. Loc. 1911, c. 244.
 Orange, 1903, c. 115.
 Pasquotank, 1901, c. 645.
 Perquimans, 1949, c. 1221.
 Richmond, Pub. Loc. 1927, c. 72.
 Rockingham, Ex. Sess. 1924, c. 205; 1931, c. 434.
 Rowan, 1909, c. 847.
 Sampson, 1935, c. 196.
 Stokes, 1931, c. 22.
 Surry, 1901, c. 645.
 Swain, Pub. Loc. 1911, c. 244.
 Transylvania, Pub. Loc. 1911, c. 244.
 Tyrrell, Ex. Sess., 1921, c. 41.
 Union, 1935, c. 77.
 Vance, 1909, c. 748.
 Washington, 1947, c. 222.
 Wayne, Pub. Loc. 1911, c. 244.
 Wilson, 1937, c. 122.
- Local Modification.**—Catawba: 1903, c. 482; Davie: Pub. Loc. 1915, c. 167; Forsyth: Pub. Loc. 1915, c. 39; Greene: 1907, c. 917; Ex. Sess. 1908, c. 78; Lincoln: Pub. Loc. 1915, c. 312; McDowell: Pub. Loc. 1917, c. 328; Pitt: Pub. Loc. 1915, c. 462; Randolph: Pub. Loc. 1913, c. 645; Scotland: Pub. Loc. 1915, c. 714; Wake: Pub.

Loc. 1915, c. 378; Yadin: Pub. Loc. 1915, c. 39; Pub. Loc. 1917, c. 321; Yancey: Pub. Loc. 1913, c. 739.

Editor's Note. — The 1945 amendment added Chatham, Craven and Cumberland

to the list of counties appearing in this section. The 1947 amendment added Washington to the list, the 1949 amendment added Perquimans, and the 1953 amendment added Madison.

§ 68-39. Eastern North Carolina, territory placed under stock law. — From and after January first, one thousand nine hundred and twenty-two, all of that part of eastern North Carolina lying east of that branch of the Atlantic Coast Line Railroad running from Wilmington, North Carolina, northerly to the Virginia line and passing through Goldsboro, Wilson, and Weldon (formerly known as the Wilmington and Weldon Railroad), shall be and is hereby declared to be "stock-law territory," and shall be subject to all of the provisions of §§ 68-15 to 68-38, inclusive: Provided, that that portion of North Carolina which borders the Atlantic Ocean and which is separated from the mainland by a body of water such as an inlet or sound, shall not be considered to fall within the provisions of this law. (1921, c. 50, s. 1; C. S., s. 1864(a).)

Local Modification.—Currituck: 1937, c. 389; Dare: 1935, c. 263; 1937, c. 213; Onslow: 1933, c. 151; 1937, c. 356.

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).

Cross Reference. — For provisions with

§ 68-40. Counties divided by railroad.—Wherever the railroad referred to in § 68-39 shall divide a county so that a part of the county lies east and a part west of the said railroad, then the whole of said county shall be "stock-law territory," and under the provisions of this article from and after January first, one thousand nine hundred and twenty-two. (1921, c. 50, s. 2; C. S., s. 1864-(b).)

§ 68-41. Repeal of local laws or regulations. — Sections 68-39 and 68-40 shall not be construed to repeal or change local laws or regulations regarding the subject matter covered by those sections except so far as said local laws and regulations actually conflict with the provisions thereof and prevent the proper enforcement of said provisions, and the said local laws, rules, and regulations on the subject matter similar to that covered by said sections shall remain in full force and effect, except as they do and until they do acutally interfere with the enforcement of the said provisions. (1921, c. 230; C. S., s. 1864(c).)

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.)

Constitutionality.—In an action instituted to enjoin a sheriff from removing plaintiffs' cattle from Shackelford Banks, it was held that plaintiffs were not entitled to challenge the constitutionality of this article, since it does not purport to authorize the destruction or removal of cattle from any portion of the outer banks,

but provides for enforcement of its provisions solely by criminal prosecution, and plaintiffs would be entitled to attack the constitutionality of that statute only as a defense to a criminal prosecution thereunder. Chadwick v. Salter, 254 N. C. 389, 119 S. E. (2d) 158 (1961).

§ 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.)

CH. 69. FIRE PROTECTION

Chapter 69. Fire Protection.

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ARTICLE 1.

Investigation of Fires and Inspection of Premises.

§ 69-1. **Fires investigated; reports; records.**—The Commissioner of Insurance and the chief of the fire department, or chief of police where there is no chief of fire department, in municipalities and towns, and the sheriff of the county where such fire occurs outside of a municipality, are hereby authorized to investigate the cause, origin, and circumstances of every fire occurring in such municipalities or counties in which property has been destroyed or damaged, and shall specially make investigation whether the fire was the result of carelessness or design. A preliminary investigation shall be made by the chief of fire department or chief of police, where there is no chief of fire department in municipalities, and by the sheriff of the county where such fire occurs outside of a municipality, and must be begun within three days, exclusive of Sunday, of the occurrence of the fire, and the Commissioner of Insurance shall have the right to supervise and direct the investigation when he deems it expedient or necessary. The officer making the investigation of fires shall forthwith notify the Commissioner of Insurance, and must within one week of the occurrence of the fire furnish to the Commissioner a written statement of all the facts relating to the cause and origin of the fire, the kind, value, and ownership of the property destroyed, and such other information as is called for by the blanks provided by the Commissioner. The Commissioner of Insurance shall keep in his office a record of all fires occurring in the State, together with all facts, statistics, and circumstances, including the origin of the fires, which are determined by the investigations provided for by this article. This record shall at all times be open to public inspection. (1899, c. 58; 1901, c. 387; 1903, c. 719; Rev., s. 4818; C. S., s. 6074; 1943, c. 170.)

§ 69-2. **Commissioner of Insurance to make examination; arrests and prosecution.**—It is the duty of the Commissioner of Insurance 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; 1943, c. 170; 1955, c. 642, s. 1; 1959, c. 1183.)

Editor's Note.—The 1955 amendment inserted in the last sentence "or fraud in connection with the crime of arson or other wilful burning." Immediately following the quoted words, the amendment also substituted "he may arrest with warrant or cause such person or persons to be ar-

rested" for "he shall cause such person to be arrested."

The 1959 amendment struck out "he," the second word of the last sentence, and inserted in lieu thereof "the Commissioner, or any deputy appointed to conduct such investigations."

§ 69-3. **Powers of Commissioner in investigations.** — The Commissioner of Insurance, or his deputy appointed to conduct such examination, has the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses to testify in relation to any matter which is by provisions of this article a subject of inquiry and investigation, and may administer oaths and affirmations to persons appearing as witnesses before them. False swearing in any such matter or proceeding is perjury and shall be punished as such. The Commissioner or his deputy has authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same. All investigations held by or under the direction of the Commissioner or his deputy may, in their discretion, be private, and persons other than those required to be present by the provisions of this article may be excluded from the place where the investigation is held, and witnesses may be kept apart from each other and not allowed to communicate with each other until they have been examined. (1899, c. 58, s. 3; 1901, c. 387, s. 3; Rev., s. 4820; C. S., s. 6076; 1943, c. 170.)

§ 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.)

§ 69-4. **Inspection of premises; dangerous material removed.**—The Commissioner of Insurance, or the chief of fire department or chief of police where there is no chief of fire department, or local inspector of buildings in municipalities where such officer is elected or appointed, has the right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises in their jurisdiction. It is the duty of the Commissioner of Insurance to require in all municipalities of the State that such officers make in their respective municipalities annual inspection of the buildings therein and quarterly inspection of all premises within the fire limits, and report in detail the results of their inspection to the Commissioner of Insurance upon blanks furnished by him. When any of such officers find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such building or premises they shall order the same to be removed or remedied, and this order shall be forthwith complied with by the owner or occupant of such buildings or premises. The owner or occupant may, within twenty-four hours, appeal to the Commissioner of Insurance from the order, and the cause of the complaint shall be at once investigated by his direction, and unless by his authority the order of the officer above named is revoked it remains in force and must be forthwith complied with by the owner or occupant. The Commissioner of Insurance, fire chief, or fire committee shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction upon complaint of any person having an interest in such building or premises or property adjacent thereto. The Commissioner may, in person or by deputy, visit any municipality and make such inspections alone or in company with the local officer. The local inspector shall be paid by the municipality a reasonable salary or proper fees to be fixed by its governing board. (1899, c. 58, s. 4; 1901, c. 387, s. 4; 1903, c. 719; Rev., s. 4821; C. S., s. 6077; 1943, c. 170.)

Cross Reference.—As to regulation of buildings by municipalities, see § 160-115 et seq.

§ 69-5. **Deputy investigators.**—It shall be the duty of the Commissioner of Insurance to appoint two or more persons as deputies, whose particular

duty it shall be to investigate forest fires and endeavor to ascertain the persons guilty of setting such fires and cause prosecution to be instituted against those who, as a result of such investigation, are deemed guilty. (1899, c. 58, s. 6; 1901, c. 387, s. 6; 1903, c. 719, s. 2; Rev., s. 4823; 1915, c. 109, s. 2; 1919, c. 186, s. 7; C. S., s. 6078; Ex. Sess. 1924, c. 119; 1943, c. 170.)

Editor's Note.—The provisions of this section were derived from the 1924 amendment.

Cited in *O'Neal v. Wake County*, 196 N. C. 184, 145 S. E. 28 (1928).

§ 69-6. Reports of Commissioner of Insurance. — The Commissioner of Insurance shall submit annually, as early as consistent with full and accurate preparation, and not later than the first day of June, a detailed report of his official action under this article, and it shall be embodied in his report to the General Assembly. He shall, in his annual report, make a statement of the fires investigated, the value of property destroyed, the amount of insurance, if any, the origin of the fire, when ascertained, and the location of the property damaged or destroyed, whether in town, city, or country. (1899, c. 58, s. 7; 1901, c. 387, s. 7; Rev., s. 4824; 1915, c. 109, s. 1; C. S., s. 6079; 1943, c. 170.)

§ 69-7. Fire prevention and Fire Prevention Day.—It is the duty of the Commissioner of Insurance, 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 Commissioner of Insurance, Superintendent of Public Instruction and State Board of Education.

The Commissioner of Insurance 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 Commissioner of Insurance 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; 1943, c. 170; 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 1925 amendment inserted the provisions relating to pam-

phlet or fire drill instructions and conducting monthly fire drills. The 1947 amendment substituted "Commissioner of Insurance" for "Insurance Commission." And the 1957 amendment rewrote the section.

ARTICLE 2.

Fire Escapes.

§ 69-8. Construction of buildings regulated.—All hotels, lodging houses, school dormitories, hospitals, sanitariums, apartment houses, flats, tenement houses and all buildings other than private dwellings not over three stories in height, in which rooms are to be rented or leased or let or offered for rent, let or leased for living or sleeping purposes, hereafter constructed in this State shall be constructed so that the occupants of all rooms above the first floor shall have unobstructed access to two separate and distinct ways of egress extending from the uppermost floor to the ground, such ways of egress to be so arranged in

reference to rooms that in case of fire on one stairway the other stairway can be reached by the occupant without his or her having to pass the stairway involved. Entrance to all such ways of egress aforementioned in this section shall be from corridors or hallways of not less than three feet in width, and in no case shall entrance to such ways of egress be through a room or closet, and where such building is in the opinion of the Commissioner of Insurance of sufficient size to require more than two ways of egress the "National Fire Protection Association" standard governing corridors and stair areas shall be adhered to. Every hotel, lodging house, school dormitory, hospital, sanatorium, apartment house, flat, tenement or other building, other than a private dwelling not over three stories in height, in which rooms are rented, leased, let or offered for rent, leased or let, shall forthwith, at the owner's expense, be provided with additional ways of egress as the Commissioner of Insurance shall deem practicable in order that the object of this article may be accomplished and that existing dangers may not be perpetuated. (1909, c. 637, s. 1; C. S., s. 6081; 1923, c. 149, s. 4; 1943, c. 170.)

Editor's Note. — The 1923 amendment rewrote this section.

Nonsuit Held Proper.—These actions to recover for personal injuries and for wrongful death resulting from a fire in defendants' building, the third floor of which was rented for sleeping quarters, were founded on this section, upon allegations that defendants failed to have two exits from the sleeping quarters in case of fire. All the evidence tended to show that the

building was constructed prior to 1913, and there was no evidence that the Commissioner of Insurance ever deemed practical that the building should be provided with any additional ways of egress in order that the dangers existing should be terminated. It was held that defendants' motion to nonsuit was properly allowed, since plaintiffs failed to bring themselves within the statute relied upon. *Woods v. Hall*, 214 N. C. 16, 197 S. E. 557 (1938).

§ 69-9. Places of public amusement, how constructed.—Every theater, opera house, or other like place of public amusement shall have as many doors for egress therefrom as may be necessary and can be made consistently with the proper strength of the building; all such doors shall be hung so as to open outwardly, or both outwardly and inwardly; and the seats therein shall be arranged in rows properly spaced, with aisles of adequate width, so as to afford easy egress therefrom. All scenery shall be made as secure against becoming inflamed as reasonably practical, and also all reasonably practical arrangements shall be made for the constant supply of water and other means for extinguishment of fires, and they shall be kept constantly effective during the presence of an audience. The Commissioner of Insurance may require all theaters to be equipped with a front curtain of asbestos or other fireproof material, to be furnished by owner of the building, and this curtain shall be raised and lowered not less than twice before each performance, in order to guarantee its being in perfect working order. (1909, c. 637, s. 2; C. S., s. 6082; 1943, c. 170.)

§ 69-10. Doors in certain buildings to open outwardly.—In all public schoolhouses and other buildings, and also all theaters, assembly rooms, halls, churches, factories with more than ten employees, and all other buildings or places of public resort where people are accustomed to assemble (excepting schoolhouses and churches of one room on the ground floor) which shall hereafter be erected, together with all those heretofore erected and which are still in use as such buildings or places of resort, the doors for ingress and egress shall be so hung as to open outwardly from the audience rooms, halls, or workshops of such buildings or places, or the doors may be hung on double hinges, so as to open with equal ease outwardly or inwardly. And it is further provided that, in order to safeguard the public from the dangers of fire and contingencies arising and resulting therefrom in places of this kind, and the owner or owners from unnecessary confusion and expense, plans for all such theaters, opera houses, moving picture shows, and other like places of amusement to be hereafter erected

shall be submitted to and approved, as to the safety of the building from fire and the occupants in case of fire, by the Commissioner of Insurance, before work is begun on the building. This requirement shall apply also where any building standing or part thereof is to be changed to use as a theater, opera house, moving picture show or other like place of amusement. (1909, c. 637, s. 3; C. S., s. 6083; 1923, c. 149, s. 1; 1943, c. 170.)

Editor's Note. — The 1923 amendment reduced the number of employees mentioned near the beginning of the section from twenty to ten, and inserted the requirement that the plans of buildings shall be submitted to and approved by the Commissioner of Insurance.

§ 69-11. Fire escapes to be provided.—All factories, manufacturing establishments or workshops of three or more stories in height, in which ten or more people are employed above the first floor thereof, shall be provided with one or (if the proper official shall deem necessary) more outside fire escapes, not less than six feet in length and three feet in width, properly and safely constructed, guarded by iron railings not less than three feet in length and taking in at least one door and one window or two windows at each story and connected with the interior by easily accessible and unobstructed openings; and the fire escapes shall connect by iron stairs not less than twenty-four inches wide, the steps to be not less than six inches tread, placed at not more than an angle of forty-five degrees slant, and protected by a well secured hand-rail on both sides, with a twelve-inch wide drop ladder from the lowest platform reaching to the ground. Each story of all factories, manufacturing establishments or workshops of three or more stories in height shall be amply supplied with means for extinguishing fires. All the main doors, both inside and outside, in factories, except fire doors, shall open outwardly, when the proper official shall so direct, and no outside or inside door of any building wherein operatives are employed shall be locked, bolted, or otherwise fastened during the hours of labor so as to prevent egress. (1909, c. 637, s. 4; C. S., s. 6084; 1923, c. 149, s. 2.)

Editor's Note. — The 1923 amendment reduced the number of the employees mentioned near the beginning of this section from thirty to ten.

§ 69-12. Ways of escape provided.—Every building now or hereafter used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theater, public hall, place of assembly or place of public resort, and every building in which twenty or more persons are employed, allowed or accustomed to assemble or accommodated above the second story in a factory, workshop, office building or mercantile or other establishment, when the owner or agent of the owner of the buildings is notified in writing by the Commissioner of Insurance or one of his deputies, shall be provided with proper ways of egress or other means of escape from fire sufficient for the use of all persons accommodated, assembled, employed, lodging or residing in such building or buildings, and such ways of egress and means of escape shall be kept free from obstructions, in good repair, and ready for use. Every room above the second story in any such building in which twenty or more persons are employed shall be provided with more than one way of egress by stairways on the inside or outside of the building. All doors in any building subject to the provisions of this article shall open outwardly, if the Commissioner of Insurance or one of his deputies shall so direct in writing. (1909, c. 637, s. 5; C. S., s. 6085; 1923, c. 149, s. 3; 1927, c. 55, s. 1; 1943, c. 170.)

Editor's Note. — The 1923 amendment made the section applicable to buildings where people are "allowed or accustomed to assemble or accommodated." The 1927 amendment made it apply to office buildings where people are employed.

§ 69-13. Enforcement by Commissioner of Insurance.—The Commissioner of Insurance is charged with the execution of this article, and he or the chief of the fire department is vested with all privileges, duties, and obligations

placed upon them in this chapter, in regard to the inspection of buildings, for the purpose of enforcing the provisions of this article in regard to the buildings and requirements herein. Any owner or occupant of premises failing to comply with the provisions of this article, in accordance with the orders of the authorities above specified, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect. If any owner or lessee of any building referred to in this article shall deem himself aggrieved by any ruling or order or any chief of fire department or local inspector, he may within twenty-four hours appeal to the Commissioner of Insurance, and the cause of complaint shall at once be investigated by the direction of the Commissioner, and unless by his authority the order or ruling is revoked it shall remain in full force and effect and be forthwith complied with by the owner or lessee. (1909, c. 637, s. 6; C. S., s. 6086; 1943, c. 170.)

ARTICLE 3.

State Volunteer Fire Department.

§ 69-14. **Purpose of article.** — The purpose of this article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this article. (1939, c. 364, s. 1.)

§ 69-15. **Personnel.**—The personnel of the North Carolina State Volunteer Fire Department shall consist of all active members of the organized fire departments, who are members of the North Carolina State Firemen's Association, of municipalities whereof the governing bodies shall subscribe to and endorse this article. (1939, c. 364, s. 2.)

§ 69-16. **Organization.**—The North Carolina State Fire Marshal shall be chief of the State Volunteer Fire Department; regular municipal fire chiefs shall be assistant chiefs; assistant chiefs shall be deputy chiefs; battalion chiefs, captains; lieutenants and privates shall hold the same position that they occupy in their municipal companies. When engaged in rendering assistance at the scene of any emergency, the ranking officer of the first department arriving at the scene of the emergency shall have complete charge of all operations until the arrival of a superior officer. All subordinate officers and men shall act under the direction of such ranking officer. Whenever present at the scene of an emergency, the chief shall have full and complete control and authority over operations of all members of the Department. (1939, c. 364, s. 3.)

§ 69-17. **Acceptance by municipalities.** — Any municipality having an organized fire department and desiring to participate in the establishment of the State Volunteer Fire Department, may do so by a resolution of the governing body accepting and endorsing the provisions of this article: Provided, that acceptance shall not be compulsory. (1939, c. 364, s. 4.)

§ 69-18. **Withdrawal.**—Any municipality which has accepted the provisions of this article may withdraw its fire departments from membership in the State Volunteer Fire Department by resolution of the governing body thereof. Notice of such withdrawal shall be given to the State Fire Marshal and withdrawal shall not become effective until sixty (60) days after his receipt thereof. (1939, c. 364, s. 5.)

§ 69-19. **Dispatching firemen and apparatus from municipalities.**—Municipalities endorsing this article shall retain full and complete control and authority in sending or permitting firemen and apparatus to go beyond the limits

of the municipality. The governing bodies of such municipalities shall designate and authorize a person, and at least two alternates, who shall have authority to grant or deny permission to firemen and apparatus to leave the municipality in all cases where request is made for assistance beyond its corporate limits, and the municipality shall, through the office of its municipal fire chief, furnish to the office of the State Commissioner of Insurance, and to the secretary of the North Carolina State Firemen's Association, a list of the persons so authorized by the municipality. The Secretary of the State Firemen's Association shall furnish to all municipalities and counties accepting this article a list of all such persons so designated in all municipalities within the State. (1939, c. 364, s. 6; 1943, c. 170.)

§ 69-20. **No authority in State Volunteer Fire Department to render assistance to nonaccepting counties.** — The State Volunteer Fire Department shall not have authority to render assistance in any emergency occurring within a county which has not accepted the terms and conditions of this article by resolution of the board of county commissioners: Provided, that nothing in this article shall be construed to prevent any municipality from voluntarily permitting its fire department to render assistance in any emergency, notwithstanding that it may arise in a county which has failed to accept this article. (1939, c. 364, s. 7.)

§ 69-21. **Acceptance by counties.** — Any county desiring to accept the benefits of this article may do so by resolution of the board of county commissioners. The board may make the necessary appropriation therefor and levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in § 153-9, and in addition to the rate allowed by the Constitution. Any such county may thereupon make agreements and enter into contracts with respect to payment for services rendered by the State Volunteer Fire Department within its boundaries in the following manner:

The county may contract with any municipality which has accepted the terms of this article, whether within or without said county, to pay to such municipality an annual fee as a consideration for the municipality providing equipment and carrying compensation insurance which will enable it to respond to calls from within the county so contracting, and to pay an additional sum per truck for each mile traveled from the station house to the scene of the emergency, and to pay an additional sum per truck per hour or fraction thereof for the use of its water or chemical pumping equipment. Said sums shall be paid to the city within thirty (30) days after such services have been performed: Provided, that nothing in this section shall be construed to prevent the county and municipality from adopting a different schedule of fees in cases where those provided above shall be considered excessive or inadequate: Provided, that if the emergency shall occur within the limits of another city or town, such city or town and not the county wherein it lies shall be responsible for the payments and shall assume all liabilities as provided in this section. (1939, c. 364, s. 8.)

§ 69-22. **Municipalities not to be left unprotected.**—At no time shall the entire personnel or equipment of any municipal fire department be absent from the municipality in response to a call to another municipality, or other place lying at a distance exceeding two miles from the corporate limits, but there shall remain within the municipal limits such personnel and equipment as in the judgment of the local fire chief might provide sufficient protection during the absence of the remainder. (1939, c. 364, s. 9.)

§ 69-23. **Rights and privileges of firemen; liability of municipality.** —When responding to a call and while working at a fire or other emergency outside the limits of the municipality by which they are regularly employed or in volunteer fire service, all members of the State Volunteer Fire Department

shall have the same authority, rights, privileges and immunities which are afforded them while responding to calls within their home municipality. In permitting its fire department or equipment to attend an emergency or answer a call beyond the municipal limits, whether under the terms of this article or otherwise, a municipality shall be deemed in exercise of a governmental function, and shall hold the privileges and immunities attendant upon the exercise of such functions within its corporate limits. (1939, c. 364, s. 10.)

Cross Reference.—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

§ 69-24. Relief in case of injury or death.—In case of injury or death of any member of the State Volunteer Fire Department arising out of and in the course of the performance of his duties, while such member is assisting at any emergency arising beyond the limits of the municipality with which he is connected, or while going to or returning from the scene of such emergency, such fireman shall be entitled to compensation under the terms of the North Carolina Workmen's Compensation Act, and the municipality with which he is connected shall be liable for the compensation provided under that Act. (1939, c. 364, s. 11.)

§ 69-25. Sums from contingent fund of State made available for administration of article.—In order to assist in carrying out the purposes of the article the Governor may, from time to time, make provisions for assistance to the North Carolina State Firemen's Association in a sum not to exceed two thousand five hundred dollars (\$2,500.00), in any one year, out of the contingent fund appropriated in the General Appropriation Act. One half of the amount so provided shall, in each instance, go to the State Firemen's Relief Fund, and one half to the expenses of the said Association incurred in carrying out the provisions of this article. (1939, c. 364, s. 12.)

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 com-

(Here insert name)

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¢) of 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 near

the beginning of the section "of fifteen per cent of the resident freeholders" for "by a majority of the qualified voters."

The 1959 amendment substituted the "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 Fire Protection District".
(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 (10¢) 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 Pro-

(Here insert name)

tection District Commission, 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.)

Cross Reference.—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

§ 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 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 levy 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 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:

- (1) 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.
- (2) 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.
- (3) 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 beginning of the next succeeding fiscal year after such action is taken. (1955, c. 1270; 1959, c. 805, s. 5.)

Local Modification. — Orange, as to subdivision (1): 1957, c. 302.

Editor's Note.—The 1959 amendment added subdivision (3).

§ 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.

§ 69-26. **Administration.**—For the purpose of administering and enforcing the provisions of this article, reference is made to article 9 of chapter 143 of the General Statutes of North Carolina, known as the Building Code Council and Building Code and all rights, powers, duties and authorities provided in said code shall apply and be in force in the administration and enforcement of this

article except as may be specifically provided hereunder; and such rules, regulations, standards, classifications or restrictions necessary in the administration and enforcement hereof and appeals therefrom and thereupon shall be made in accordance with said article 9, chapter 143 of the General Statutes of North Carolina. (1947, c. 1066.)

§ 69-27. **Alarms, bells and gongs.**—In any hotel or other building of like occupancy, there shall be provided a manually operated fire alarm, bell or gong system, approved by the Commissioner of Insurance, suitable to arouse all occupants of such buildings if necessary in case of fire or other emergency and capable of being operated by one operation at the main desk or at the telephone switchboard. Where practicable, the alarm system shall be connected with the city fire alarm system and shall be subject to periodic inspection as directed by the Commissioner of Insurance. (1947, c. 1066.)

Cited in *Parker v. Duke University*, 230 N. C. 656, 55 S. E. (2d) 189 (1949).

§ 69-28. **Watchman service.**—Every proprietor or keeper of any hotel or other building of like occupancy, two stories or more in height or designed to provide twenty or more rooms for sleeping accommodations shall provide or cause to be provided watchman service, utilizing a standard watch clock system in such manner so that each and every floor, corridor and accessible space, exclusive of rooms being occupied, shall be inspected at least once each hour between 10:00 p. m. and 6:00 a. m. Within the corporate limits of municipalities, this watchman service shall be satisfactory to the chief of the fire department and/or the Commissioner of Insurance. In every building subject to the provisions of this section, there shall be kept a record showing compliance therewith, and this record shall be subject to inspection by the Commissioner of Insurance or his deputies or the chief of the fire department. Provided that in lieu of a watchman service such hotel or other building of like occupancy may be provided with an automatic fire detection system approved by the Commissioner of Insurance and the North Carolina Building Code Council. (1947, c. 1066.)

§ 69-29. **Automatic sprinklers.**—(a) In any hotel or other building of like occupancy of B, C, D or E construction as defined in the North Carolina Building Code more than three stories in height, there shall be provided in such building an automatic sprinkler system to be of such design, construction and scope as may meet the approval of the North Carolina Building Code Council, provided, however, that if in the opinion of the Commissioner of Insurance any such building three stories or less in height shall not have ample and adequate protected fire escapes or exits, then he may require the responsible party to provide or cause to be provided in such building an approved automatic sprinkler system of such design, construction and scope as may be approved by the North Carolina Building Code Council.

(b) In any hotel or other building of like occupancy of A or A1 construction, as defined in the North Carolina Building Code, more than four stories in height, there shall be provision that such rooms or areas in such building as are occupied or used for such purposes as linen rooms, storage rooms, carpenter shop, upholstery and furniture repair shop, kitchens, laundries, paint shop, mattress renovation shops, basements and other areas of special fire hazard shall be cut off in a manner approved by the Commissioner of Insurance or his deputy or the chief of fire department of the city in which the building is located, and, in the discretion of said Commissioner of Insurance or his deputy, the responsible party may be required to provide in such areas an approved automatic sprinkler system.

(c) In any hotel or other building of like occupancy of any type construction, wherein, under subsections (a) and (b) above, an automatic sprinkler system is required to be installed, if, in the opinion of the Commissioner of Insurance or

his deputy, reasonable life safety may be insured, such Commissioner or his deputy may permit the installation of an approved automatic detection system in lieu of an automatic sprinkler system.

(d) A period of three years from the effective date of this article shall be allowed for compliance with the provisions of this section.

(e) The obligation of this article with respect to installation of alarms, bells or gongs and of automatic sprinklers or automatic fire detection systems shall rest upon the owner of the building as the lessor, or upon the operator thereof as the lessee, as the case may be, in accordance with the terms and provisions of the lease contract; and in the absence of any determining provision in such lease contract, or in the absence of any written lease, the obligation with respect to such installations shall be determined in accordance with the law of the State. (1947, c. 1066.)

Editor's Note.—This article became effective Sept. 1, 1947.

§ 69-30. Interior stairways and vertical openings. — (a) In new or existing hotel buildings all interior stairways used as exits, except stairways from a lobby to a mezzanine and open stairways permitted under subsection (b) below, shall be so enclosed as to provide a safe path of escape to the outside of the building without danger from fire or smoke, by means of enclosures and self-closing doors having at least one hour fire resistance rating, or otherwise enclosed in a manner approved by the Commissioner of Insurance or his deputy, and any vertical openings other than stairways through which fire and smoke may spread from story to story, shall be enclosed in a manner approved by the Commissioner of Insurance or his deputy.

(b) In existing hotel buildings of less than four stories in height, the enclosure of floor openings as provided in subsection (a) above may be waived by the Commissioner of Insurance or his deputy if life safety is not endangered thereby (1947, c. 1066.)

§ 69-31. Fire extinguishers.—Every proprietor or keeper of any hotel or other building of like occupancy shall provide and keep in proper operating condition at least two two and one-half (2½ gal.) gallon extinguishers on each floor utilized for sleeping purposes or at least one two and one-half gallon fire extinguisher for each fifteen (15) rooms utilized for sleeping purposes on each floor, whichever is the greater number. It shall further be the duty of every proprietor or keeper of any hotel or other building of like occupancy to insure that all employees working in said building shall be trained in the use of fire extinguishers and other fire fighting equipment located or installed in said building. (1947, c. 1066.)

§ 69-32. Alterations and decorations.—In all hotels or other buildings of like occupancy, located in a city which has a fire department, after September 1, 1947, no interior structural alteration, temporary or permanent, shall be made or no decorations or scenery shall be placed in the public spaces thereof without the prior approval and permit of the chief of the fire department of that city. (1947, c. 1066.)

§ 69-33. Careless or negligent setting of fires. — Any person who in any fashion or manner negligently or carelessly sets fire to any bedding, furniture, draperies, house or household furnishings or other equipment or appurtenances in or to any hotel or other building of like occupancy shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$50.00 nor more than \$500.00 or to imprisonment or to both fine and imprisonment in the discretion of the court. (1947, c. 1066.)

§ 69-34. Penalty for noncompliance.—Any owner, owners, proprietor or keeper of any hotel or other building of like occupancy who fails to comply

with any of the foregoing provisions of this article shall be guilty of a misdemeanor and punished by a fine of not less than \$10.00 nor more than \$50.00. Each day of noncompliance herewith shall constitute a separate offense. (1947, c. 1066.)

§ 69-35. Unsafe buildings condemned.—The Commissioner of Insurance is empowered to inspect or cause to be inspected any hotel or other building of like occupancy and any such building which shall be found to be especially dangerous to life, because of its liability to fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, insufficient means of egress, decay or other causes shall be held to be unsafe and the Commissioner of Insurance shall affix or cause to be affixed a notice of dangerous character of the structure in a conspicuous place on the exterior wall of such building. (1947, c. 1066.)

§ 69-36. Penalty for allowing unsafe building to remain occupied.—If any person shall continue to use or occupy or permit the use or occupancy of any hotel or other building of like occupancy which has been condemned as unsafe and dangerous to life by the Commissioner of Insurance or his authorized deputy, after having been notified in writing of the unsafe and dangerous character of said building, and if such use and occupancy shall continue for a period as much as 30 days without remedying the conditions complained of to the satisfaction of the Commissioner of Insurance or the chief of the fire department of the city in which the building is located, such person shall be guilty of a misdemeanor and shall pay a fine of not less than \$10.00 nor more than \$50.00 for each day of such continued use and occupancy after the expiration of such 30 day period following such notice. Provided that such 30 day period may be enlarged (for good cause shown) by the Commissioner of Insurance or by the chief of the fire department of the city in which the building is located to such time as in his discretion he may find proper. (1947, c. 1066.)

§ 69-37. Penalty for removing notice from condemned building.—If any person, except by authority of the Insurance Commission, shall remove any condemnation notice which has been affixed to any hotel or other building of like occupancy, he shall be guilty of a misdemeanor and shall be fined not less than \$10.00 nor more than \$50.00 for each offense. (1947, c. 1066.)

§ 69-38. Construction of article.—Nothing in this article shall be construed to limit powers granted to and duties imposed upon the chiefs of fire departments and building inspectors by article 11, chapter 160 of the General Statutes of North Carolina, but the powers granted in this article shall be in addition thereto. (1947, c. 1066.)

Chapter 70. Indian Antiquities.

Sec.	Sec.
70-1. Private landowners urged to refrain from destruction.	70-3. Preservation of relics on public lands.
70-2. Possessors of relics urged to commit them to custody of State agencies.	70-4. Destruction or sale of relic from public lands made misdemeanor.

§ 70-1. **Private landowners urged to refrain from destruction.**—Private owners of lands containing Indian relics, artifacts, mounds or burial grounds are urged to refrain from the excavation or destruction thereof and to forbid such conduct by others, without the co-operation of the director of the State Museum and the secretary of the North Carolina Historical Commission or without the assistance or supervision of some person designated by either as qualified to make scientific archaeological explorations. (1935, c. 198, s. 1.)

§ 70-2. **Possessors of relics urged to commit them to custody of State agencies.**—All persons having in their possession collections of Indian relics, artifacts, and antiquities which are in danger of being lost, destroyed or scattered are urged to commit them to the custody of the North Carolina State Museum, the North Carolina Historical Commission, or some other public agency or institution within the State which is qualified to preserve and exhibit them for their historic, scientific and educational value to the people of the State. (1935, c. 198, s. 2.)

§ 70-3. **Preservation of relics on public lands.**—It shall be the duty of any person in charge of any construction or excavation on any lands owned by the State, by any public agency or institution, by any county, or by any municipal corporation, to report promptly to and preserve for the director of the State Museum or the secretary of the North Carolina Historical Commission any Indian relic, artifact, mound, or burial ground discovered in the course of such construction or excavation. (1935, c. 198, s. 3.)

§ 70-4. **Destruction or sale of relic from public lands made misdemeanor.**—Any person who shall excavate, disturb, remove, destroy or sell any Indian relic or artifact, or any of the contents of any mound or burial ground, on or from any lands owned by the State, by any public agency or institution, by any county, or by any municipal corporation, except with the written approval of the director of the State Museum or the secretary of the North Carolina Historical Commission, shall be guilty of a misdemeanor. (1935, c. 198, s. 4.)

Chapter 71.

Indians.

- Sec.
 71-1. Cherokee Indians of Robeson County; rights and privileges.
 71-2. Separate privileges in schools and institutions.
 71-3. Chapter not applicable to certain bands of Cherokees.
 71-4. Rights of eastern band of Cherokee Indians to inherit, acquire, use and dispose of property.

- Sec.
 71-5. Eligibility of members of eastern band of Cherokee Indians to hold office in tribal organization.
 71-6. Lumbee Indians of North Carolina; rights, privileges, immunities, obligations and duties.

§ 71-1. **Cherokee Indians of Robeson County; rights and privileges.**—The persons residing in Robeson, Richmond, and Sampson counties, who have heretofore been known as “Croatan Indians” or “Indians of Robeson County,” together with their descendants, shall hereafter be known and designated as “Cherokee Indians of Robeson County,” and by that name shall be entitled to all the rights and privileges heretofore or hereafter conferred, by any law or laws of the State of North Carolina, upon the Indians heretofore known as the “Croatan Indians” or “Indians of Robeson County.” In all laws enacted by the General Assembly of North Carolina relating to said Indians subsequent to the enactment of said chapter fifty-one of the Laws of eighteen hundred and eighty-five, the words “Croatan Indians” and “Indians of Robeson County” are stricken out and the words “Cherokee Indians of Robeson County” inserted in lieu thereof. (1885, c. 51, s. 2; Rev., s. 4168; 1911, c. 215; P. L. 1911, c. 263; 1913, c. 123; C. S., s. 6257.)

§ 71-2. **Separate privileges in schools and institutions.**—Such Cherokee Indians of Robeson County and the Indians of Person County, defined in the chapter Education, § 115-66, shall be entitled to the following rights and privileges:

- (1) Separate schools, with the educational privileges provided in the chapter Education.
- (2) Suitable accommodations in the State Hospital for the Insane at Raleigh, as provided in the chapter Hospitals for the Insane, in the article entitled Organization and Management.
- (3) The sheriffs, jailers, or other proper authorities of Robeson and Person counties shall provide in the common jails of said counties, and in the homes for the aged and infirm thereof, separate cells, wards, or apartments for such Indians in all cases where it shall be necessary under the laws of this State to commit any of said Indians to such jails or county homes. (1911, c. 215, s. 6; 1913, c. 123; P. L. 1913, c. 22; C. S., s. 6258.)

Cross Reference.—For care of in mental hospitals, see § 122-5. pital for the Insane at Raleigh is now known as the Dorothea Dix Hospital.

Editor’s Note.—The former State Hos-

§ 71-3. **Chapter not applicable to certain bands of Cherokees.**—Neither this chapter nor any other act relating to said “Cherokee Indians of Robeson County” shall be construed so as to impose on said Indians any powers, privileges, rights, or immunities, or any limitations on their power to contract, heretofore enacted with reference to the eastern band of Cherokee Indians residing in Cherokee, Graham, Jackson, Swain and other adjoining counties in North Carolina, or any other band or tribe of Cherokee Indians other than those now residing, or who have since the Revolutionary War resided, in Robeson County,

nor shall said "Cherokee Indians of Robeson County," as herein designated, be subject to the limitations provided in the chapter Contracts Requiring Writing, in § 22-3, entitled Contracts with Cherokee Indians. (1913, c. 123, s. 5; C. S., s. 6259.)

§ 71-4. Rights of eastern band of Cherokee Indians to inherit, acquire, use and dispose of property.—Subject only to restrictions and conditions now existing or hereafter imposed under federal statutes and regulations, or treaties, contracts, agreements, or conveyances between such Indians and the federal government, the several members of the eastern band of Cherokee Indians residing in Cherokee, Graham, Jackson, Swain and other adjoining counties in North Carolina, and the lineal descendants of any bona fide member of such eastern band of Cherokee Indians, shall inherit, purchase, or otherwise lawfully acquire, hold, use, encumber, convey and alienate by will, deed, or any other lawful means, any property whatsoever as fully and completely in all respects as any other citizen of the State of North Carolina is authorized to inherit, hold, or dispose of such property. (1947, c. 978, s. 1.)

§ 71-5. Eligibility of members of eastern band of Cherokee Indians to hold office in tribal organization.—Any person who is a lineal descendant of any bona fide member of such eastern band of Cherokee Indians who is a member of said band and who is domiciled on the lands of the said eastern band of Cherokee Indians shall be eligible to hold any elective or appointive office or position within the tribal organization, including the position of chief, and may be elected or appointed and shall thereafter serve in such manner and for such time as a majority of the accredited membership of such eastern band of Cherokee Indians may decide at any election held for such purpose or appointment made by the accredited officials of said eastern band of Cherokee Indians. (1947, c. 978, s. 2.)

§ 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 1.

Innkeepers.

- Sec.
72-1. Must furnish accommodations.
72-2. Liability for loss of baggage.
72-3. Safekeeping of valuables.
72-4. Loss by fire.
72-5. Negligence of guest.
72-6. Copies of this article to be posted.
72-7. Admittance of dogs to bedrooms.

Article 2.

Sanitary Inspection and Conduct.

- 72-8 to 72-29. [Repealed.]

Article 3.

Immoral Practices of Guests of Hotels and Lodginghouses.

- 72-30. Registration to be in true name; addresses; peace officers.

Article 4.

Licensing and Regulation of Tourist Camps and Homes, Cabin Camps, Roadhouses and Public Dance Halls.

- 72-31. License required.
72-32. Exemptions.
72-33. Application to county commissioners for license.
72-34. Verification of application; disqualifications for license.
72-35. List of employees furnished to sheriff upon request.
72-36. Registration of guest.
72-37. False registration and use for immoral purposes made misdemeanor.

Sec.

- 72-38. Operator knowingly permitting violations, guilty of misdemeanor.
72-39. Inducing female to enter tourist camps, etc., for immoral purpose made misdemeanor.
72-40. Revocation of operator's license.
72-41. Tax imposed declared additional.
72-42. Time of payment of license; expiration date.
72-43. Operation without license made misdemeanor.
72-44. Violations of article made misdemeanor.
72-45. Application of article to municipalities.

Article 5.

Sanitation of Establishments Providing Food and Lodging.

- 72-46. State Board of Health to regulate sanitary conditions of hotels, cafes, etc.
72-47. Inspection; report and grade card.
72-48. Violation of article a misdemeanor.
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.

- 72-50. Rate advertisements to contain additional data.
72-51. Violation a misdemeanor.
72-52. Article declared supplemental.

ARTICLE 1.

Innkeepers.

§ 72-1. **Must furnish accommodations.** — Every innkeeper shall at all times provide suitable food, rooms, beds and bedding for strangers and travelers whom he may accept as guests in his inn or hotel. (1903, c. 563; Rev., s. 1909; C. S., s. 2249.)

Cross References.—As to innkeeper's lien on baggage, see §§ 44-30 to 44-32. As to obtaining entertainment at hotels and boardinghouses without paying therefor, see § 14-110. As to fire protection, see §§ 69-26 to 69-38.

What Constitutes Inn or Hotel.—A public inn or hotel is a public house of entertainment for all who choose to visit it,

and where all transient persons who may choose to come will be received as guests, for compensation; and it does not lose its character as such by reason of its being located at a summer resort or a watering place, or by taking some as boarders by a special contract or for a definite time. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

Sleeping Car Not an Inn.—Though a "sleeping car" is a place for the reception of travelers, it is not an "inn." *Garrett v. Southern R. Co.*, 172 N. C. 737, 90 S. E. 903 (1916).

Boardinghouse. — A boardinghouse is as well known and as distinguishable from every other house in every city, village, and the country as an inn or tavern. It is a house where the business of keeping boarders generally is carried on, and which is held out by the owner or keeper as a place where boarders are kept. *State v. McRae*, 170 N. C. 712, 86 S. E. 1039 (1915).

Distinction between Inn and Boardinghouse.—It is the publicly holding a place out as one where all transient persons who may choose to come will be received as guests for compensation that is the principal distinction between a hotel and a boardinghouse. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

What Constitutes Boardinghouse Keeper.—The keeper of a boardinghouse is one who reserves the right to select and choose his patrons and takes them in only by special arrangement, and usually for a definite time. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

Same—Not an Innkeeper.—One who entertains strangers only occasionally, although he receives compensation for it, is not an innkeeper. *State v. Mathews*, 19 N. C. 424 (1837).

Boarder and Guest Distinguished.—In 16 A. and E. Enc. (2 Ed.), it is said: "The essential difference between a boarder and a guest at an inn lies in the character in which the party comes—that is, whether he is a transient person or not, and, accordingly, one who stops at an inn as a transient or a guest, with all the rights, privileges, and liberties incident to that station. On the other hand, one who seeks accommodation with a view to permanency, as to make the place his home for the time being, is not a guest, but a boarder. The length of his stay, however, is not of itself ordinarily decisive, for he will continue to be a guest as long as he remains in the transitory condition of that relation." *Holstein v. Phillips*, 146 N. C. 366, 371, 59 S. E. 1037 (1907).

When Guest Can Be Ejected.—Guests of a hotel, and travelers or other persons entering it with the bona fide intent of becoming guests, cannot be lawfully prevented from going in, or be put out, by force, after entrance, provided they are able to pay the charges and tender the money necessary for that purpose, if requested by the landlord, unless they be persons of bad or suspicious character, or

of vulgar habits, or so objectionable to the patrons of the house, on account of the race to which they belong, that it would injure the business to admit them to all portions of the house, or unless they attempt to take advantage of the freedom of the hotel to injure the landlord's chances of profit derived either from his inn or any other business incidental to or connected with its management and constituting a part of the provision for the wants or pleasure of his patrons. *State v. Steele*, 106 N. C. 766, 11 S. E. 478 (1890).

Same—Breach of Rules.—A guest's right of occupancy of a hotel is dependent upon proper behavior and decent conduct and obedience to reasonable rules and regulations of the proprietors; for a breach of such implied conditions they may be summarily removed. *Hutchins v. Durham*, 118 N. C. 457, 24 S. E. 723 (1896).

Remedy of Ejected Guest.—Guests at a hotel cannot maintain ejection if evicted, but can only sue for damages if wrongfully turned out. *Hutchins v. Durham*, 118 N. C. 457, 24 S. E. 723 (1896).

One Not a Guest Is a Licensee.—One who is in a hotel for social purposes, at the invitation of one of its guests, is a licensee, at the will of its management, and may be forbidden the premises for improper conduct. *Money v. Travelers Hotel Co.*, 174 N. C. 508, 93 S. E. 964 (1917).

Same—Can Be Expelled.—When persons, unobjectionable on account of character or race, enter a hotel not as guests, but intent on pleasure or profit to be derived from intercourse with its inmates, they are there not of right, but under an implied license that the landlord may revoke at any time, because barring the limitation imposed by holding out inducements to the public to seek accommodation at his inn, the proprietor occupies it as his dwelling house, from which he may expel all who have not acquired rights growing out of the relation of guests, and must drive out all who, by their bad conduct, create a nuisance and prove an annoyance to his patrons. *State v. Steele*, 106 N. C. 766, 11 S. E. 478 (1890).

Force Allowable in Expelling Licensee.—The board rule laid down by Wharton (1 Cr. L., sec. 625), is that the proprietor of a public house has a right to request a person who visits it, not as a guest or on business with guest to depart, and if he refuse, the innkeeper has a right to lay his hands gently on him and lead him out, and if resistance be made, to employ sufficient force to put him out. For so doing, he can justify his conduct on a prosecution

for assault and battery. *State v. Steele*, 106 N. C. 766, 11 S. E. 478 (1890).

Other Rights of Innkeeper.—An innkeeper has, unquestionably, the right to establish a newsstand or a barbershop in his hotel, and to exclude persons who come for the purpose of vending newspapers or books, or of soliciting employment as barbers, and, in order to render his business more lucrative, he may establish a laundry or a livery stable in connection with his hotel, or an innkeeper may contract with the proprietor of a livery stable in the vicinity to secure for

the latter, as far as he legitimately can, the patronage of his guests in that line for a per centum of the proceeds or profits derived by such owner of vehicles and horses from dealing with the patrons of the public house. After concluding such contracts, the innkeeper may make, and, after personal notice to violators, enforce a rule excluding from his hotel the agents and representatives of other livery stables who enter to solicit the patronage of his guests. *State v. Steele*, 106 N. C. 766, 11 S. E. 478 (1890).

§ 72-2. **Liability for loss of baggage.**—Innkeepers shall not be liable for loss, damage or destruction of the baggage or property of their guests except in case such loss, damage, or destruction results from the failure of the innkeeper to exercise ordinary, proper and reasonable care in the custody of such baggage and property; and in case of such loss, damage or destruction resulting from the negligence and want of care of the said innkeeper he shall be liable to the owner of the said baggage and property to an amount not exceeding one hundred dollars. Any guest may, however, at any time before a loss, damage or destruction of his property, notify the innkeeper in writing that his property exceeds in value the said sum of one hundred dollars, and shall upon demand of the innkeeper furnish him a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for the loss, damage or destruction of said property because of any negligence on his part for the full value of the same. Proof of the loss of any such baggage, except in case of damage or destruction by fire, shall be prima facie evidence of the negligence of said hotel or innkeeper. (1903, c. 563, s. 2; Rev., s. 1910; C. S., s. 2250.)

Boarder and Guest Distinguished.—See note to § 72-1.

Liability Extends to Guest.—When one is received at a public inn or hotel and entertained as a guest, without any prearrangement as to terms or time, but on the implied invitation held out to the public generally, he is a transient only—a guest and not a boarder—and entitled to recover of the defendant innkeeper as such. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

Same—Common-Law Liability.—The decisions of this State are to the effect that, in the absence of statutory regulation, the keeper of a public inn, or hotel, which is the modern and more frequently used term, is responsible to his guest for the safety of the latter's goods, chattels, and money, when placed *infra hospitium* and which he has with him for the purposes of his journey. The proprietor is held to be an insurer to the extent that he must make good to the guest all loss or damage arising from any cause except the act of God or the public enemy, or the fault of the guest himself or his agents or servants. *Quinton v. Courtney*, 2 N. C. 40 (1794); *Neal v. Wilcox*, 49 N. C. 146 (1856); *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

Ordinary Care Now Required.—Even at a public inn or hotel, one who holds the position of a regular boarder or lodger can only hold the proprietor to the exercise of ordinary care on the part of himself and his employees. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

Failure to comply with § 72-6 renders innkeeper liable as at common law. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).

Liability for Personal Injuries.—The innkeeper is not insurer of his guest's personal safety, but his liability does extend to injuries received by the guest from being placed in an unsafe room. This is a matter peculiarly within the innkeeper's knowledge and entirely beyond the control of the guest. In that particular he is peculiarly within the innkeeper's power and protection. *Patrick v. Springs*, 154 N. C. 270, 70 S. E. 395 (1911).

Same—Negligence of Guest.—The guest must use reasonable care on his part to protect himself, and if he is himself negligent and could have avoided the injury by due care, he cannot recover. *Patrick v. Springs*, 154 N. C. 270, 70 S. E. 395 (1911).

§ 72-3. **Safekeeping of valuables.**—It is the duty of innkeepers, upon the request of any guest, to receive from said guest and safely keep money, jewelry and valuables to an amount not exceeding five hundred dollars; and no innkeeper shall be required to receive and take care of any money, jewelry or other valuables to a greater amount than five hundred dollars: Provided, the receipt given by said innkeeper to said guest shall have plainly printed upon it a copy of this section. No innkeeper shall be liable for the loss, damage or destruction of any money or jewels not so deposited. (1903, c. 563, s. 3; Rev., s. 1911; C. S., s. 2251.)

§ 72-4. **Loss by fire.**—No innkeeper shall be liable for loss, damage or destruction of any baggage or property caused by fire not resulting from the negligence of the innkeeper or by any other force over which the innkeeper had no control. Nothing herein contained shall enlarge the limit of the amount to which the innkeeper shall be liable as provided in preceding sections. (1903, c. 563, s. 4; Rev., s. 1912; C. S., s. 2252.)

Cross Reference.—As to fire protection, see §§ 69-26 to 69-38.

§ 72-5. **Negligence of guest.**—Any innkeeper against whom claim is made for loss sustained by a guest may show that such loss resulted from the negligence of such guest or of his failure to comply with the reasonable and proper regulations of the inn. (1903, c. 563, s. 7; Rev., s. 1914; C. S., s. 2253.)

Cross References.—As to liability for keeper's lien on baggage, see §§ 44-30 to 44-32. As to personal injuries and effect of negligence of guest, see note to § 72-2. As to inn-

§ 72-6. **Copies of this article to be posted.**—Every innkeeper shall keep posted in every room of his house occupied by guests, and in the office, a printed copy of this article and of all regulations relating to the conduct of guests. This chapter shall not apply to innkeepers, or their guests, where the innkeeper fails to keep such notices posted. (1903, c. 563, ss. 5, 6; Rev., s. 1913; C. S., s. 2254.)

Effect of Noncompliance with Section. liable as at common law. *Holstein v. Phillips*, 146 N. C. 366, 59 S. E. 1037 (1907).
—Where the provision of this section is not complied with the principle of the common law obtains and the keeper is

§ 72-7. **Admittance of dogs to bedrooms.**—It shall be unlawful for any innkeeper or guest owning, keeping, or who has in his care a dog or dogs, to permit such a dog or dogs admittance to any bedroom or rooms used for sleeping purposes in any inn or hotel.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine not to exceed fifty dollars or be imprisoned not more than thirty days. (1927, c. 67.)

Cross Reference.—As to special provisions for guide dogs, see § 67-29.

ARTICLE 2.

Sanitary Inspection and Conduct.

§§ 72-8 to 72-29: Repealed by Session Laws 1945, c. 829, s. 4.

Cross Reference.—For sanitation of establishments providing food and lodging, see §§ 72-46 to 72-49.

ARTICLE 3.

Immoral Practices of Guests of Hotels and Lodginghouses.

§ 72-30. **Registration to be in true name; addresses; peace officers.**
—No person shall write, or cause to be written, or if in charge of a register know-

ingly permit to be written, in any register in any lodginghouse or hotel any other or different name or designation than the true name or names in ordinary use of the person registering or causing himself to be registered therein. Any person occupying any room or rooms in any lodginghouse or hotel shall register or cause himself to be registered where registration is required by such lodginghouse or hotel. Any person registering or causing himself to be registered at any lodginghouse or hotel, shall write, or cause to be written, in the register of such lodginghouse or hotel the correct address of the person registering, or causing himself to be registered. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred dollars (\$200). This section shall not apply to any peace officer of this State who shall privately give his true name to the clerk or proprietor of such hotel or lodginghouse. (1921, c. 111; C. S., s. 2283(v).)

ARTICLE 4.

Licensing and Regulation of Tourist Camps and Homes, Cabin Camps, Roadhouses and Public Dance Halls.

§ 72-31. **License required.**—Every person, firm or corporation engaged in the business of operating outside the corporate limits of any city or town in this State a tourist camp, cabin camp, tourist home, roadhouse, public dance hall, or any other similar establishment by whatever name called, where travelers, transient guests, or other persons are or may be lodged for pay or compensation, shall, before engaging in such business, apply for and obtain from the board of county commissioners of the county in which such business is to be carried on a license for the privilege of engaging in such business and shall pay for such license an annual tax in the amount of two dollars (\$2.00). (1939, c. 188, s. 1.)

Editor's Note.—For comment on this article, see 17 N. C. Law Rev. 335.

What Must Be Shown to Convict of Operating a "Roadhouse."—This article is regulatory, involving police power as well as taxing power, and the words, "tourist camp, cabin camp, tourist home, roadhouse, public dance hall, or other similar establishment," in this section are qualified

by the words "where travelers, transient guests, or other persons are or may be lodged for pay," so that to convict a person operating a "roadhouse" and impose the penalties of § 72-43, it must be shown that such person lodged or offered to lodge transient guests. *State v. Campbell*, 223 N. C. 828, 28 S. E. (2d) 499 (1944).

§ 72-32. **Exemptions.** — This article shall not apply to hotels and inns within the definition of § 72-9, nor to persons who incidental to their principal business or occupation accept from time to time seasonal boarders in their private residences: Provided, however, this shall not be construed to exempt from the provisions of this article residences maintained in connection with a store or other establishment operated for the sale of articles of merchandise. (1939, c. 188, s. 2.)

Editor's Note.—Section 72-9, referred to in this section, has been repealed. It defined "hotel" as "any inn or public lodginghouse where transient guests are

lodged for pay." It also defined the term "transient guest" as "one who puts up for less than one week at a time at such hotel."

§ 72-33. **Application to county commissioners for license.** — Every person, firm or corporation making application for license to engage in the business described in § 72-31 shall make application to the board of county commissioners in the county in which such business is to be engaged in and the application shall contain:

- (1) The name and residence of the applicant and the length of the residence within the State of North Carolina.
- (2) The address and place for which such license is desired.
- (3) The name of the owner of the premises upon which the business licensed is to be carried on.

- (4) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction.
- (5) That such applicant is of good moral character and has never been convicted of a felony involving moral turpitude, or adjudged guilty of violating either the State or federal prohibition laws within the last two years prior to the filing of the application. (1939, c. 188, s. 3.)

§ 72-34. **Verification of application; disqualifications for license.** — The application prescribed in § 72-33 must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant, or otherwise, that such applicant has been convicted of a felony involving moral turpitude or adjudged guilty of violating either State or federal prohibition laws within the last two years prior to the filing of the application, or within two years from the completion of sentence thereon, the license herein provided for shall not be granted, unless it shall appear to the satisfaction of the board of county commissioners that the licensed premises will be operated in a lawful manner; in which case they may, in their discretion, issue such license. Before any such license shall be issued, the governing body of the county shall be satisfied that the statements required by § 72-33 are true. Every establishment named in this article shall be subject to inspection by the State Board of Health and the county health authorities in the county in which such business is carried on. (1939, c. 188, s. 4.)

§ 72-35. **List of employees furnished to sheriff upon request.** — At any time upon request of the sheriff of the county in which such business is carried on, the operator of every establishment named in this article shall furnish said sheriff with a list of all employees who are employed by him in connection with said business; and, in every instance when such an operator goes out of business or there is a change of ownership or management thereof, such operator shall immediately file with the clerk of the board of county commissioners of the county in which such business is carried on a notice to this effect, giving the name and address of the purchaser or the new owner or manager thereof. (1939, c. 188, s. 5.)

§ 72-36. **Registration of guest.** — Any person or persons occupying any room or rooms in a tourist camp, cabin camp, tourist home, roadhouse, or any other similar establishment by whatever name called, shall register or cause himself to be registered before occupying the same, and if traveling by motor vehicle shall register at the same time the automobile license tag of such motor vehicle and the name of the manufacturer of such motor vehicle; and no person shall write or cause to be written, or, if in charge of a register, knowingly permit to be written in any register in any of the establishments herein named, any other or different name or designation than the true name or names in ordinary use of the person registering or causing himself to be registered therein, or the true name of the manufacturer of such motor vehicle or the correct license plate and number thereof. Every person to whom a license is issued under the provisions of this article shall provide a permanent register for the purposes set forth herein. (1939, c. 188, s. 6.)

Cited in *State v. Campbell*, 223 N. C. 828, 28 S. E. (2d) 499 (1944).

§ 72-37. **False registration and use for immoral purposes made misdemeanor.**—Any man or woman found occupying the same room in any establishment within the meaning of this article for any immoral purpose, or any man or woman falsely registering as or otherwise representing themselves to be husband and wife in any such establishment shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 7.)

Cited in *State v. Campbell*, 223 N. C. 828, 28 S. E. (2d) 499 (1944).

§ 72-38. **Operator knowingly permitting violations, guilty of misdemeanor.**—Any person being the operator or keeper of any establishment within the meaning of this article who shall knowingly permit any man or woman to occupy any room in any establishment within the meaning of this article for any immoral purposes, or who shall knowingly permit any man or woman to falsely register as husband and wife in such an establishment, shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 8.)

Tourist Camp as Nuisance.—Under § 19-2 the operation of a tourist camp in a disorderly manner may be enjoined or it may be abated as a nuisance against public morals. *Carpenter v. Boyles*, 213 N. C. 432, 196 S. E. 850 (1938).

§ 72-39. **Inducing female to enter tourist camps, etc., for immoral purpose made misdemeanor.**—Any person who shall knowingly persuade, induce or entice, or cause to be persuaded, induced or enticed, any woman or girl to enter any establishment within the meaning of this article for the purpose of prostitution or debauchery, or for any other immoral purpose, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 9.)

§ 72-40. **Revocation of operator's license.**—In addition to the penalty herein prescribed for a violation of this article, the court, before whom such person is tried and where a conviction is had, shall have the power to revoke the license to operate the establishment or establishments licensed under this article, and whenever any person, firm or corporation has been so convicted, the court, if it shall appear that said premises were being operated in violation of the law with the knowledge, consent or approval of the owner thereof, shall have the authority to prohibit the issuance of any similar license for said premises to any person for a term of six months after the revocation of said license. (1939, c. 188, s. 10.)

§ 72-41. **Tax imposed declared additional.** — The tax imposed by this article shall be in addition to all other licenses and taxes levied by law upon the business taxed hereunder. (1939, c. 188, s. 11.)

§ 72-42. **Time of payment of license; expiration date.** — Licenses issued under this article shall be due and payable in advance annually on or before the first day of June of each year, or at the date of engaging in such business, and shall expire on the thirty-first day of May of each year, and shall be for the full amount of the tax prescribed, regardless of the date such business is begun. Upon the expiration of the license herein required, it shall be unlawful for any person, firm or corporation to continue such business until a new license is applied for and obtained for the privilege of engaging in such business, as in this article required. (1939, c. 188, s. 12.)

§ 72-43. **Operation without license made misdemeanor.** — It shall be unlawful for any person, firm or corporation to engage in such business without first obtaining a license therefor. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 13.)

Cross Reference.—See note to § 72-31.

§ 72-44. **Violations of article made misdemeanor.** — Unless another penalty is in this article or by the laws of this State provided, any person violating any of the provisions of this article shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 14.)

§ 72-45. **Application of article to municipalities.**—The governing body of any city or town shall have the authority to make any or all of the provisions

of this article applicable to any business as defined herein which may be located in the limits of any such city or town. (1939, c. 188, s. 15.)

Local Modification. — Bladen, Caswell, Graham, Hyde, Moore: 1939, c. 188, s. 18; Guilford: 1939, c. 188, s. 16.

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.; boardinghouses, 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 boardinghouses 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:

- (1) Whether the rate advertised is for a single or multiple occupancy of the room;
- (2) The number of rooms or units in each price level where such advertisement indicates varying rates; and
- (3) 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 73.
Mills.

Article 1.

Public Mills.

- Sec.
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ARTICLE 1.

Public Mills.

§ 73-1. **Public mills defined.**—Every grist or grain mill, however powered or operated, which grinds for toll is a public mill. (1777, c. 122, s. 1; R. C., c. 71, s. 1; Code, s. 1846; Rev., s. 2119; C. S., s. 2531; 1947, c. 781.)

Editor's Note.—The 1947 amendment re-wrote this section. (1875); *Branch v. Wilmington, etc.*, R. Co., 77 N. C. 347 (1877).

Cited in *Hyatt v. Myers*, 73 N. C. 232

§ 73-2. **Miller to grind according to turn; tolls regulated.**—All millers of public mills shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one-eighth part of the Indian corn and wheat, and one-fourteenth part for chopping grain of any kind; and every miller and keeper of a mill making default therein shall, for each offense, forfeit and pay five dollars to the party injured: Provided, that the owner may grind his own grain at any time. (1777, c. 122, s. 10; 1793, c. 402; R. C., c. 71, s. 6; Code, s. 1847; 1905, c. 694; Rev., s. 2120; 1907, c. 367; C. S., s. 2532.)

Local Modification. — Bertie, Hertford, ampton: 1929, c. 129; Lenoir: 1929, c. 139; Hyde: 1933, c. 150; Chowan: 1937, c. 4; Pamlico, Robeson: 1929, c. 311; Pender: 1933, c. 298; Sampson: 1937, c. 164; Cleveland: 1933, c. 158; Franklin, North-

§ 73-3. **Measures to be kept; tolls by weight or measure.**—All millers shall keep in their mills the following measures, namely, a half bushel and peck of full measure, and also proper toll dishes for each measure; but the toll allowed by law may be taken by weight or measure at the option of the miller and customer. (1777, c. 122, s. 11; R. C., c. 71, s. 7; Code, s. 1848; 1885, c. 202; Rev., s. 2121; C. S., s. 2533.)

§ 73-4. **Keeping false toll dishes misdemeanor.**—If any owner, by himself or servant, keeping any mill, shall keep any false toll dishes, he shall be guilty of a misdemeanor. (1777, c. 122, s. 11; R. C., c. 71, s. 7; Code, s. 1848; Rev., s. 3679; C. S., s. 2534.)

Words "False Toll Dish" Defined.—The words "false toll dish," as used in the statute, mean a toll dish measuring more than one-eighth of a half bushel. *State v. Perry*, 50 N. C. 252 (1858).

The measure kept need not be averred in the indictment. *State v. Perry*, 50 N. C. 252 (1858).

Sufficiency of Evidence.—An indictment for keeping false toll dishes was suf-

ficiently supported by proving that measures of one-seventh and one-sixth of a half bushel were kept. *State v. Perry*, 50 N. C. 252 (1858).

But an indictment for keeping a false toll dish is not sustained by proof that the mill owner took one-sixth part of each half bushel with a half gallon toll dish. *State v. Nixon*, 50 N. C. 257 (1858).

ARTICLE 2.

Condemnation for Mill by Owner of One Bank of Stream.

§ 73-5. **Special proceedings; parties; summons.**—Any person wishing to build a water mill, who has land on only one side of a stream, shall issue a summons returnable to the superior court of the county in which the land sought to be condemned, or some part of it, lies, against the persons in possession and the owners of the land on the opposite side of the stream, and against such others as have an interest in the controversy, and the procedure shall be as is provided in other special proceedings, except so far as the same may be modified by this chapter. (1868-9, c. 158, s. 1; Code, s. 1849; Rev., s. 2122; C. S., s. 2535.)

Cross Reference.—For full treatment of eminent domain proceedings, see § 40-1 et seq.

Corporation That Erects Mills. — The legislature, in providing for the condemnation of land for the purpose of erecting mills thereon, classifies a corporation that erects mills generally as one of those private corporations which enjoy a prerogative franchise because of some powers or duties, which they are to perform for the public, and to that extent such a corporation is quasi public. *Bass v. Roanoke Nav., etc., Co.*, 111 N. C. 439, 16 S. E. 402 (1892).

Withdrawal of Verbal Consent to Maintaining Dam. — The plaintiff built a mill, and, with the verbal consent of the defend-

ant, constructed a dam across a stream upon land of the latter. After the mill had been in operation for several years, the defendant withdrew his consent to the further use of the land for this purpose, and notified the plaintiff to level the dam, which he failed to do. Thereupon the defendant caused the obstruction to be removed. In an action by the plaintiff for damages, it was held that the plaintiff should have taken a conveyance of the easement, or pursued the remedy pointed out for the condemnation of land for mill purposes. *Kivett v. McKeithan*, 90 N. C. 106 (1884).

Cited in *Benbow v. Robbins*, 71 N. C. 338 (1874); *Gwaltney v. Scottish Carolina Timber, etc., Co.*, 111 N. C. 547, 16 S. E. 692 (1892).

§ 73-6. **Commissioners to be appointed.**—If no just cause is shown against the building of such mill, the court shall appoint three freeholders, one of whom shall be chosen by the plaintiff, another by the defendants, and the third by the court, or if the plaintiff or defendants refuse or fail, or unreasonably delay to name a commissioner, the court shall name one in lieu of such delinquent party. These commissioners may be changed from time to time by permission

of the court for just cause shown. (1868-9, c. 158, s. 2; Code, s. 1850; Rev., s. 2123; C. S., s. 2536.)

Right of Appeal.—Defendants have a view, lay off and value land for a millsite. Minor v. Harris, 61 N. C. 322 (1867).
right to appeal from an interlocutory order of the court appointing freeholders to

§ 73-7. Meeting to be appointed and commissioners notified; witnesses examined.—The third commissioner shall cause the others to be notified of the time and place of meeting, and shall preside at their meetings. They may, if necessary, summon and examine witnesses, who shall be sworn by the presiding commissioner. Any commissioner named by or for either of the parties who, without just cause, fails to attend any meeting notified by the president, shall forfeit and pay to the opposite party fifty dollars; and if the president, in like manner, unreasonably delays to notify the other commissioners of a meeting, or fails to attend one that is appointed, he shall forfeit and pay to the plaintiff fifty dollars, and to the defendant a like sum. (1868-9, c. 158, s. 3; Code, s. 1851; Rev., s. 2124; C. S., s. 2537.)

§ 73-8. Oath and duty of commissioners.—The commissioners shall be sworn by some officer qualified to administer an oath to act impartially between the parties, and to perform the duties herein imposed on them honestly and to the best of their ability. They shall view the premises where the mill is proposed to be built, and shall lay off and value a portion of the land of the plaintiff, not to exceed one acre in area, and an equal area of land of the defendants opposite thereto, and report their proceedings to the court within a reasonable time, not exceeding sixty days. (1868-9, c. 158, s. 4; Code, s. 1852; Rev., s. 2125; C. S., s. 2538.)

§ 73-9. Contents of commissioners' report.—The report of the commissioners shall set forth:

- (1) The location, quantities and value of the several areas laid off by them.
- (2) Whether either of them includes houses, gardens, orchards or other immediate conveniences.
- (3) Whether the proposed mill will overflow another mill or create a nuisance in the neighborhood.
- (4) Any other matter upon which they have been directed by the court to report, or which they may think necessary to the doing of full justice between the parties. (1868-9, c. 158, s. 5; Code, s. 1853; Rev., s. 2126; C. S., s. 2539.)

§ 73-10. When building not to be allowed.—If the area laid off on the land of either party take away houses, gardens, orchards, or other immediate conveniences; or if the mill proposed will overflow another mill, or will create a nuisance in the neighborhood, the court shall not allow the proposed mill to be built. (1868-9, c. 158, s. 6; Code, s. 1854; Rev., s. 2127; C. S., s. 2540.)

Cross Reference.—As to restrictions on condemnation of dwelling houses, gardens and burial grounds, see § 40-10.

In General.—The court is forbidden to confirm a report which takes away houses, etc., put on the land by the owner, or on it before the proceedings were commenced. Burgess v. Clark, 35 N. C. 109 (1851).

Denial of Injunction.—An injunction will not be granted to restrain the erection of a dam when money damages will suffice. Burnett v. Nicholson, 72 N. C. 334 (1875).

§ 73-11. Power of court on return of report.—If the report is in favor of building the proposed mill, and is confirmed, then the court may, in its discretion, allow either the plaintiff or defendant to erect such mill at the place proposed, and shall order the costs, and the value of the opposite area, to be paid by the party to whom such leave is granted; and upon such payment, the party to whom such leave is granted shall be vested with title in fee to the opposite

area. Such payment may be made into court for the use of the parties entitled thereto. (1868-9, c. 158, s. 7; Code, s. 1855; Rev., s. 2128; C. S., s. 2541.)

§ 73-12. **Time for beginning and building mill; to be kept up.**—The person to whom leave is granted shall, within one year, begin to build such water mill, and shall finish the same within three years; and thereafter keep it up for the use and ease of its customers, or such as shall be customers to it; otherwise, the said land shall return to the person from whom it was taken, or to such other person as shall have his right, unless the time for finishing the mill, for reasons approved by the court, be enlarged. (1868-9, c. 158, s. 8; Code, s. 1856; Rev., s. 2129; C. S., s. 2542.)

§ 73-13. **Rebuilding mill after destruction.**—If a water mill belonging to a person of unsound mind, a minor, or to one who is imprisoned, should fall, burn or be otherwise destroyed, such person and his heirs shall have three years from the removal of such disability within which to rebuild or repair such mill. (1868-9, c. 158, s. 9; Code, s. 1857; 1903, c. 74, ss. 1, 2; Rev., s. 2130; C. S., s. 2543; 1947, c. 781.)

Editor's Note. — The 1947 amendment rewrote this section.

ARTICLE 3.

Condemnation for Races, Waterways, etc., by Owner of Mill or Millsite.

§ 73-14. **Special proceedings; summons.**—Any person who has land on one or both sides of a stream and wishes to build a water mill, or has a water mill already built and may find it necessary for the better operation of said mill or the building of the said mill to convey water either to or from his mill by ditch, waterway, drain, millrace or tailrace, or in any other manner, over the lands of any other person, or erect a dam or pond said water over the lands of any other person, or raise any dam already built, may make application by petition in writing to the clerk of the superior court of the county in which the said lands to be affected, or a greater part thereof, are situated, for the right to so convey the said water or pond the same by the erection of a dam or the raising of any dam already built; and the procedure shall be as in other special proceedings. (1905, c. 534, s. 1a, k; Rev., s. 2131; C. S., s. 2544.)

§ 73-15. **Contents of petition.**—The petition shall specify the lands to be affected, the name of the owner of said lands, and the character of the ditch, race, waterway or drain or pond intended to be made, and said owner or owners shall be made parties defendant. The petition shall state the distance desired to be condemned on each side of the ditch, waterway or drain to be constructed or erected, and not more than thirty feet from each bank can be condemned. (1905, c. 534, s. 1b; Rev., s. 2132; C. S., s. 2545.)

§ 73-16. **Commissioners to be appointed.**—Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the said lands by the contemplated work, and shall issue a notice to them to meet upon the premises on a day specified, not to exceed ten days from the date of said notice. (1905, c. 534, s. 1c; Rev., s. 2133; C. S., s. 2546.)

§ 73-17. **Oath and duty of commissioners.**—The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by the said work and assess the damage thereto and make report thereof under their hands and seals to the clerk from

whom the notice issued, who shall have power to confirm the same. (1905, c. 534, s. 1d; Rev., s. 2134; C. S., s. 2547.)

§ 73-18. **Assessment of damages.**—In determining the amount of such compensation to be paid to the owners of the said lands and assessing the damages thereto by reason of the erection or construction of such waterway, ditch, drain or dam, they shall make an allowance or deduction on account of any benefits which the parties in interest may derive from the construction or erection of such waterway, ditch, drain or dam, and shall ascertain the damages, as near as may be, to the extent it may damage each acre of land so appropriated or occupied by the said millowner. The damage assessed by the appraisers under this article shall include all damages that the owners shall thereafter suffer or be entitled to by reason of the construction of the said waterways, races, ditches or dams. (1905, c. 534, s. 1e, m; Rev., s. 2135; C. S., s. 2548.)

§ 73-19. **When commissioners' report not to be affirmed.**—If the area laid off on the lands of either party take away houses, gardens, orchards or immediate conveniences, or if the mill proposed or erected will overflow another mill or pond water within two hundred feet of another mill, or will overflow or pond water within two hundred feet of the millsite or premises of a person who has the right under this chapter, or by the authority of law, to rebuild a mill after its destruction, or if the mill create a nuisance in the neighborhood, the court shall not allow the report of the appraisers to be affirmed. (1905, c. 534, s. 1g; Rev., s. 2136; C. S., s. 2549.)

§ 73-20. **When petitioner may enter on lands.**—After the return of the appraisers and the confirmation thereof the petitioner shall have full right and power to enter upon said lands and make such ditches, waterways, drains, races or other necessary works and construct such dams: Provided, he has first paid or tendered the damage assessed as above to the owner of such lands or his known or recognized agent in this State. If the owner is a nonresident and has no known agent in this State, the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner: Provided, further, that the millowner shall not be compelled to pay said damages so assessed unless he shall enter upon such lands and make ditches, drains or other works or erect such dam. (1905, c. 534, s. 1f; Rev., s. 2137; C. S., s. 2550.)

§ 73-21. **Owners of mills and millsites protected.**—No other person shall have the right to erect or maintain any dam, ditch, waterway, drain or race that will overflow or pond water within two hundred feet of the millsite or premises of any person or body corporate who shall have erected a mill, dam, ditch, drain or race under the provisions of this chapter, or of any millsite owned by any person who has the right under this chapter, or by the authority of law, to rebuild a mill after its destruction. When any person violates the provisions of this section the owner of said mill or millsite shall have a right of action against said person to tear down said dam or other works so built or erected to the extent herein forbidden and to abate the same as prescribed by law for the abatement of nuisances. (1905, c. 534, s. 1h; Rev., s. 2138; C. S., s. 2551.)

§ 73-22. **Report to be registered.**—The petitioner, or any other person interested, may have the said assessment registered upon the certificate of the clerk, and shall pay the register the usual legal fees for registering such instruments in his office. (1905, c. 534, s. 1i; Rev., s. 2139; C. S., s. 2552.)

§ 73-23. **Fees of appraisers.**—Each appraiser shall be entitled to a fee of one dollar for each day actually employed in making said assessment, to be paid by the petitioner. (1905, c. 534, s. 1j; Rev., s. 2140; C. S., s. 2553.)

§ 73-24. **Obstructing millraces or dams a misdemeanor.**—Any person who shall obstruct any drain, ditch or dam constructed under this article shall be guilty of a misdemeanor. (1905, c. 534, s. 11; Rev., s. 3381; C. S., s. 2554.)

ARTICLE 4.

Recovery of Damages for Erection of Mill.

§ 73-25. **Action in superior court; procedure.**—Any person conceiving himself injured by the erection of any gristmill, or mill for other useful purposes, may issue his summons returnable before the judge of the superior court of the county where the damaged land or any part thereof lies, against the persons authorized to be made parties defendant. In his complaint he shall set forth in what respect and to what extent he is injured, together with such other matters as may be necessary to entitle him to the relief demanded. The court shall then proceed to hear and determine all the questions of law and issues of fact arising on the pleadings as in other civil actions. (1876-7, c. 197, s. 1; Code, s. 1858; Rev., s. 2141; C. S., s. 2555.)

Cross Reference.—As to damages, see § 73-27 and note.

Exclusiveness of Remedy. — Ordinarily, in cases to which this section applies, the remedy given must be pursued. *Kinsland v. Kinsland*, 186 N. C. 760, 120 S. E. 358 (1923).

Section Does Not Apply to Trespass. —The remedy under this section does not apply to an action for damages for a trespass committed on the plaintiff's land. *Henley v. Wilson*, 77 N. C. 216 (1877).

Sufficiency of Description in Petition.—A petition for damages, caused by the erection of a mill upon the stream below, which described it as a "gristmill" without calling it a public mill, or a gristmill grinding for toll, was sufficient. *Little v. Stanback*, 63 N. C. 285 (1869).

Procedure to Assess Damages. — Under an early statute, it was held that, in a petition for damages for ponding water back, where in the county court the plaintiff's right to relief was denied, the proper course was to impanel a jury to try the allegations made in bar of such right, and if such allegations were found for the plaintiff, the proper course was then to order a jury on the premises to assess the damages, but in all cases where there was an appeal to the superior court, the facts were to be ascertained by a jury at bar, but in that court, those issues pertaining to the question of relief, and those issues as to that of damages, were to be separately submitted. *Jones v. Clarke*, 52 N. C. 418 (1860).

Proper Issue.—In an action for damages resulting from ponding water upon plaintiff's land, caused by the erection of defendant's milldam, an issue involving the amount of annual damage done thereby is the proper one to be submitted to the

jury. *Hester v. Broach*, 84 N. C. 252 (1881).

Easement Limited to Mill Purposes. — Where the lower proprietor has acquired an easement in the lands of the upper proprietor to pond water back thereon from a dam erected on his own land to operate a public mill, the exercise of this right under the easement does not affect the title to the submerged land of the upper proprietor or subject to the lower proprietor to an action for damages so as to start the running of the statute of limitations, nor will this use of the water ponded on the land of the upper proprietor by the lower proprietor for fishing with hook and seine ripen into his exclusive use for these purposes. *Thomas v. Morris*, 190 N. C. 244, 129 S. E. 623 (1925).

Liability for Defect in Bridge. — Where water was thrown, by the erection of a milldam, upon the highway, and the former proprietor of the mill had built bridges over the water, which, during his ownership, he repaired, and which were also repaired by the present proprietor, who did no other work on the roads, it was held that the present proprietor was answerable in damages to an individual who sustained an injury by reason of a defect in one of the bridges. *Mulholland v. Brownrigg*, 9 N. C. 349 (1823).

Proof of Ownership. — In an action for overflowing the plaintiff's land, he need not prove his title, though it be set forth in the declaration, for possession alone is sufficient to support this action against a wrongdoer. *Yeargain v. Johnston*, 1 N. C. 180 (1800).

Plaintiff Entitled to Nominal Damage.—Instructions to a jury, that if a plaintiff sustains no injury from the ponding of water upon his mill wheel, still he is en-

titled to nominal damages, are correct. *Little v. Stanback*, 63 N. C. 285 (1869).

A motion for a new trial for failure of the court to instruct the jury to return at least nominal damages, because some overflow was admitted, it appearing that no such instruction was asked, that the admission was qualified and the testimony conflicting, and that there was evidence to show that no damage was actually done, was properly refused in the discretion of the court. *McGee v. Fox*, 107 N. C. 766, 12 S. E. 369 (1890).

Same—Injury Unnecessary.—In an action for damages for the maintenance of a dam across a stream, the plaintiff is entitled to recover nominal damages, without showing an injury capable of being estimated, or one that is perceptible in the sense that it is attended with some actual damage; for the mere fact of ponding back the water on plaintiff's premises is sufficient to entitle him to nominal damages. *Chaffin v. Fries Mfg. Co.*, 135 N. C. 95, 47 S. E. 226 (1904), rehearing denied in 136 N. C. 364, 48 S. E. 770 (1904).

If the water be ponded back on the land of another by the erection of a milldam, he is entitled, in the remedy by petition, to nominal damages, whether there be actual damage or not. *Wright v. Stowe*, 49 N. C. 516 (1857).

Measure of Damages.—The measure of damages for backing water on land by means of a dam is the difference in the value of the land before and after the injury complained of. *Borden v. Carolina Power, etc., Co.*, 174 N. C. 72, 93 S. E. 442 (1917).

Permanent Damages.—In an action for backing water on plaintiff's land by means of a dam, the plaintiff is entitled to permanent damages, past, present, and prospective. *Borden v. Carolina Power, etc., Co.*, 174 N. C. 72, 93 S. E. 442 (1917). See § 73-27.

Damages to Health.—Damages may be given for injury to health as well as to land by overflowing. *Gillet v. Jones*, 18 N. C. 339 (1835). See also, *Waddy v. Johnson*, 27 N. C. 333 (1844).

Exemplary Damages.—In an action for overflowing plaintiff's land by the erection of a milldam, where a recovery has been

had before, and the nuisance was not abated, plaintiff can recover sufficient exemplary damages to compel an abatement of the nuisance. *Caruthers v. Tillman*, 2 N. C. 501 (1797).

Where Damage Suffered Only When Stream Is Swollen.—Where the erection of a mill on a stream causes the water to overflow the land of a proprietor above only when the stream is swollen, that circumstance will not excuse such party from damages altogether, but will only diminish the quantum of such damages. *Pugh v. Wheeler*, 19 N. C. 50 (1836).

Decrease of Custom.—Where, in suit for damages for ponding water, it appeared that plaintiff sustained injury to his mill by reason of defendant's erecting another mill and dam lower down on the same stream, the measure of damages was the amount of the damages actually sustained by plaintiff up to the time of trial; and, in estimating the same, the decrease of custom (in the matter of toll) could not be considered. *Burnett v. Nicholson*, 86 N. C. 99 (1882).

Counterclaim Inadmissible.—In an action for damages for ponding water back on plaintiff's land, it was no error for the judge to charge that defendants could not set up as offset and counterclaim any benefit which plaintiff had received thereby, and add that the jury should, upon all the evidence, ascertain if plaintiff had sustained any damage. *McGee v. Fox*, 107 N. C. 766, 12 S. E. 369 (1890).

Action May Be Brought at Any Time.—Ponding a stream so as to throw the water over the land of a proprietor above, which the water did not before cover, gives him a good cause of action at any time when he may wish to use his land, unless he has granted the easement, either actually, or by presumption of law from the length of time he has permitted the easement to be enjoyed. *Pugh v. Wheeler*, 19 N. C. 50 (1836).

Easement Not Purchased by Payment of Judgment.—The payment of a judgment for ponding water by a milldam does not amount to the purchase by defendant of an easement to pond back water on plaintiff's land. *Candler v. Asheville Elec. Co.*, 135 N. C. 12, 47 S. E. 114 (1904).

§ 73-26. **When dams, etc., abated as nuisances.**—When damages are recovered in final judgment in such civil actions, and execution issues and is returned unsatisfied, and the plaintiff is not able to collect the same either because of the insolvency of the defendant or by reason of the exemptions allowed to defendant, the judge shall, on the facts being made to appear before him by affidavit or other evidence, order that the dam, or portion of the dam, or other cause

creating the injury, shall be abated as a nuisance, and he shall have power to make all necessary orders to effect this purpose. (1876-7, c. 197, s. 3; Code, s. 1859; Rev., s. 2142; C. S., s. 2556.)

When Section Applicable.—This section applies where water is ponded upon the plaintiff's land by a dam constructed on the property of another or where a trespass of like character is committed, because at common law an action could be brought each day so long as the trespass continued. But the statute does not apply and was never intended to apply to an actual entry upon the complainant's premises and the construction thereon of a dam for the purpose of ponding water and retaining possession. *Kinsland v. Kinsland*, 188 N. C. 810, 125 S. E. 625 (1924).

Denial of Injunction. — An injunction will not be granted to restrain the erection of a dam whereby the mill wheel of the plaintiff is flooded so as to become useless. *Burnett v. Nicholson*, 72 N. C. 334 (1875).

For such an injury damages will adequately compensate, and should the annual damage exceed twenty dollars the plaintiff is remitted to his common-law action, and can compel an abatement of the nuisance. *Burnett v. Nicholson*, 72 N. C. 334 (1875).

Where the owner of land adjoining an old millsite sought to enjoin the erection of a new mill, and it was ascertained by a verdict that the mill, though injurious to the health of the plaintiff's family, was advantageous to the public, relief was refused; especially as the old mill was erected before the plaintiff purchased. *Eason v. Perkins*, 17 N. C. 38 (1831).

When Injunction Granted.—In the case of the erection of a milldam, a court of equity will not interfere by injunction, unless it be shown that it will be a public nuisance, or, if it will be a private nuisance

only to an individual, unless it manifestly appears, that so great a difference will exist between the injury to the individual and the public convenience as will bear no comparison or that the erection of the dam will be followed by irreparable mischief. *Bradsher v. Lea*, 38 N. C. 301 (1844).

Existence of Another Remedy.—On application for an injunction to restrain the defendant from building a new mill, on the ground that the construction of the dam would injure the land of the plaintiff and the health of his family, testimony being heard, the court held that it is not every slight or doubtful injury that will justify the use of the extraordinary power of injunction to restrain a man from using his property as his interests may demand, especially as, if the injury apprehended should result, the complainant could resort to law for damages. *Wilder v. Strickland*, 55 N. C. 386 (1856).

When Demand and Allegation of Insolvency Unnecessary. — The demand for damages in the complaint for ponding water upon and injuring the lands of the upper proprietor, required by this section, is not necessary when the relief sought is to enjoin the maintenance of a dam on the plaintiff's own land by the defendant's trespass thereon, and the abatement of the nuisance thus caused, and the trespass being continuing, the allegation of defendant's insolvency is not necessary. *Kinsland v. Kinsland*, 188 N. C. 810, 125 S. E. 625 (1924).

Cited in *Hester v. Broach*, 84 N. C. 252 (1881).

§ 73-27. Judgment for annual sum as damages.—A judgment giving to the plaintiff an annual sum by way of damages shall be binding between the parties for five years from the issuing of the summons, if the mill is kept up during that time, unless the damages are increased by raising the water or otherwise.

In all cases where the final judgment of the court assesses the yearly damage of the plaintiff as high as twenty dollars, nothing contained in this chapter shall be construed to prevent the plaintiff, his heirs or assigns, from suing as heretofore, and in such case the final judgment aforesaid shall be binding only for the year's damage preceding the issuing of the summons. (1868-9, c. 158, ss. 12, 14; Code, ss. 1860, 1861; Rev., ss. 2143, 2144; C. S., s. 2557.)

Cross Reference.—See note to § 73-25.

Assessment Cannot Go Back Further than Preceding Year.—In proceedings under the statute for ponding water on plaintiff's land, the jury have no right to go back further than one year in assessing damages, but if they do, the error may be corrected by the court only giving judg-

ment for one year preceding the issuing of the summons. *Goodson v. Mullen*, 92 N. C. 207 (1885). See § 73-28.

Judgment May Be for Sum in Gross.—Where, in an action for damages to land by ponding water on it, the jury found that the land was damaged eighty dollars per year, it was not erroneous for the

court to give judgment for a sum in gross, and not for each year's damages. *Goodson v. Mullen*, 92 N. C. 207 (1885).

Recurring Causes of Action. — Case for nuisance in erecting a mill will lie for every fresh continuance after action brought; heavy damages are not usual in the first verdict, but in a second action the damages should be high to compel an abatement of the nuisance. — *v. Deberry*, 2 N. C. 248 (1796).

Conclusiveness of Verdict and Judgment.—In a proceeding to recover damages for ponding water by a milldam the verdict of the jury and the judgment of the court thereon are conclusive as to the assessment of damages, up to the time when such judgment was rendered. An application for relief from damages, assessed for a period subsequent to the time of the judgment, can only be heard if the dam is taken away or lowered. *Beatty v. Conner*, 34 N. C. 341 (1851).

Judgment Not Res Judicata. — An ac-

tion to abate a dam and for damages to land caused by the ponding back of water was submitted to arbitrators to find whether plaintiffs were entitled to damages, and, if so, to distinguish in finding the same between damages from permanent injuries and annual damages for five years from a certain date. The arbitrators assessed "the permanent damage of the plaintiffs to this date to their lands" at a certain sum, and also awarded a certain annual damage for each of the five years. Judgment was entered on the award, the judgment providing that the execution should be subject to the provisions of § 73-26. The judgment was not res judicata of plaintiff's right to recover damages after the termination of the five-year period for all except a fresh injury, since the judgment contemplated the removal of the dam at the end of the five years. *Candler v. Asheville Elec. Co.*, 135 N. C. 12, 47 S. E. 114 (1904).

§ 73-28. **Final judgment; costs and execution.** — If the final judgment of the court is that the plaintiff has sustained no damage, he shall pay the costs of his proceeding; but if the final judgment is in favor of the plaintiff, he shall have execution against the defendant for one year's damage, preceding the issuing of the summons, and for all costs: Provided, that if the damage adjudged does not amount to five dollars, the plaintiff shall recover no more costs than damages. And if the defendant does not annually pay the plaintiff, his heirs or assigns, before it falls due, the sum adjudged as the damages for that year, the plaintiff may sue out execution for the amount of the last year's damage, or any part thereof which may remain unpaid. (1868-9, c. 158, s. 15; Code, s. 1862; Rev., s. 2145; C. S., s. 2558.)

Chapter 74.
Mines and Quarries.

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ARTICLE 1.

Operation of Mines and Quarries.

§ 74-1. **Lessor not held partner of lessee.**—No lessor of property, real or personal, for mining purposes, although the lessor may receive an uncertain sum of the proceeds or net profits, or any other consideration, which, though uncertain at first, may afterwards become certain, shall be held as a partner of the lessee; nor shall any of the legal or equitable relations or liabilities of co-partners exist between them, unless it is so stipulated in the contract between the lessor and lessee. (1830, c. 46; R. C., c. 72; Code, s. 3292; Rev., s. 4930; C. S., s. 6896.)

Cross Reference.—For provision making this article applicable to quarries, see § 74-24.

§ 74-2. **Minors under sixteen not to be employed.**—No minor under sixteen years of age shall be allowed to work in any mine, and in all cases of minors applying for work the agent of such mine shall see that the provisions of this section are not violated; and the inspector may, when doubt exists as to the age of any person found working in any mine, examine under oath such person and his parents, or other witnesses, as to his age. (1897, c. 251, s. 7; Rev., s. 4931; 1919, c. 100, s. 6; C. S., s. 6897.)

§ 74-3. **Operator to furnish timber.**—The owner, agent, or operator of

every coal mine shall keep a supply of timber constantly on hand, and shall deliver the same to the working place of the miner, and no miner shall be held responsible for accident which may occur in the mine where the provisions of this section have not been complied with by the owner, agent, or operator thereof, resulting directly or indirectly from the failure to deliver such timber. (1897, s. 251, s. 8; Rev., s. 4932; C. S., s. 6898.)

§ 74-4. **Unused mines to be fenced.**—All underground entrances to any place not in actual course of working or extension shall be properly fenced across the whole width of such entrance so as to prevent persons from inadvertently entering the same. (1897, c. 251, s. 5; Rev., s. 4933; C. S., s. 6899.)

§ 74-5. **Means of ingress and egress provided.**—No owner or agent of any coal mine worked by shaft shall permit any person to work therein unless there are, to every seam of coal worked in such mine, at least two separate outlets, separated by natural strata of not less than one hundred feet in breadth, by which shafts or outlets distinct means of ingress and egress are always available to the persons employed in the mine; but it is not necessary for the two outlets to belong to the same mine if the persons employed therein have safe, ready, and available means of ingress or egress by not less than two openings. This section shall not apply to opening a new mine while being worked for the purpose of making communications between the two outlets, so long as not more than twenty persons are employed at one time in such mine; neither shall it apply to any mine or part of a mine in which the second outlet has been rendered unavailable by reason of the final robbing of pillars previous to abandonment, as long as not more than twenty persons are employed therein at any one time. The cage or cages and other means of egress shall at all times be available for the persons employed when there is no second outlet. The escapement shafts shall be fitted with safe and available appliances, which shall always be kept in a safe condition, by which the persons employed in the mine may readily escape in case an accident occurs; and in no case shall an air shaft with a ventilating furnace at the bottom be construed to be an escapement shaft within the meaning of this section. To all other coal mines, whether slopes or drifts, two such openings or outlets must be provided within twelve months after shipments of coal have commenced from such mine; and in case such outlets are not provided as herein stipulated, it shall not be lawful for the agent or owner of such slope or drift to permit more than ten persons to work therein at any one time. (1897, c. 251, s. 4; Rev., s. 4934; C. S., s. 6900.)

§ 74-6. **Hoisting engines; how operated.**—No owner or agent of any mine operated by a shaft or slope shall place in charge of any engine used for lowering into or hoisting out of mines persons employed therein any but experienced, competent, and sober engineers, and no engineers in charge of such engine shall allow any persons except as may be deputed for such purposes by the owner or agent to interfere with it or any part of the machinery, and no person shall interfere or in any way intimidate the engineer in the discharge of his duties, and in no case shall more than six men ride on any cage or car at one time, and no person shall ride upon a loaded cage or car in any shaft or slope. (1897, c. 251, s. 6; Rev., s. 4935; 1911, c. 183; C. S., s. 6901.)

§ 74-7. **Ventilation.**—The owner or agent of any coal mine, whether shaft, slope, or drift, shall provide and maintain for every such mine an amount of ventilation of not less than one hundred cubic feet per minute per person employed in such mine, which shall be circulated and distributed throughout the mine in such a manner as to dilute, render harmless and expel the poisonous and noxious gases from every working place in the mine. No working place shall be driven more than sixty feet in advance of a break-through or airway, and all break-throughs or airways, except those last made near the working

places of the mine, shall be closed up by brattice trap doors, or otherwise, so that the currents of air in circulation in the mine may spread to the interior of the mine when the persons employed in such mine are at work. All mines governed by this chapter shall be provided with artificial means of producing ventilation, such as forcing or suction fans, exhaust steam furnaces, or other contrivances of such capacity and power as to produce and maintain an abundant supply of air, and all mines generating fire damp shall be kept free from standing gas. (1897, c. 251, s. 5; Rev., s. 4936; C. S., s. 6902.)

§ 74-8. Daily examinations; safety lamps.—Every working place shall be examined every morning with a safety lamp by a competent person before any workmen are allowed to enter the mine. All safety lamps used in examining mines, or for working therein, shall be the property of the operator of the mine, and a competent person shall be appointed, who shall examine every safety lamp before it is taken into the workings for use, and ascertain it to be clean, safe, and securely locked, and safety lamps shall not be used until they have been so examined and found safe and clean and securely locked, unless permission be first given by the mine foreman to have the lamps used unlocked. No one except the duly authorized person shall have in his possession a key, or any other contrivance, for the purpose of unlocking any safety lamp in any mine where locked lamps are used. No matches or any other apparatus for striking lights shall be taken into any mine, or parts thereof, except under the direction of the mine foreman. (1897, c. 251, ss. 5, 6; Rev., s. 4937; C. S., s. 6903.)

§ 74-9. Report of ventilation.—The mine foreman shall measure the ventilation at least once a week, at the inlet and outlet, and also at or near the face of all the entries, and the measurement of air so made shall be noted on blanks furnished by the inspector; and on the first day of each month the mine boss of each mine shall sign one of such blanks, properly filled with the actual measurement, and present the same to the inspector. (1897, c. 251, s. 6; Rev., s. 4938; C. S., s. 6904.)

§ 74-10. Notice of opening or changing mines given.—The owner, agent, or manager of any mine shall give notice to the inspector in the following cases:

- (1) When any working is commenced for the purpose of opening a new shaft, slope, or mine, to which this chapter applies.
 - (2) When any mine is abandoned, or the working thereof discontinued.
 - (3) When the working of any mine is recommenced after an abandonment or discontinuance for a period exceeding three months.
 - (4) When a squeeze or crush, or any other cause or change, may seem to affect the safety of persons employed in the mine, or when fire occurs.
- (1897, c. 251, s. 7; Rev., s. 4939; C. S., s. 6905.)

§ 74-11. Notice of accidents given.—The owner, agent, or manager of every mine shall, within twenty-four hours next after any accident or explosion, whereby loss of life or personal injury may have been occasioned, send notice, in writing, by mail or otherwise, to the inspector, and shall specify in such notice the character and cause of the accident, and the name or names of the persons killed and injured, with the extent and nature of the injuries sustained. When any personal injury of which notice is required to be sent under this section results in the death of the person injured, notice in writing shall be sent to the inspector within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager; and when loss of life occurs in any mine by explosion, or accident, or results from personal injuries so received, the owner, agent, or manager of such mine shall notify the coroner of the county in which such mine is situated, and the coroner shall hold an inquest upon the body of the person whose death has been thus caused, and inquire carefully into the cause

thereof, and return a copy of the finding of the jury and all the testimony to the inspector. (1897, c. 251, s. 6; Rev., s. 4940; C. S., s. 6906.)

§ 74-12. **Report to inspector.**—The owner, lessee, or agent in charge of any mine or quarry, or who is engaged in mining or quarrying or producing any mineral whatsoever in this State, shall, on or before the thirtieth day of January in every year, send to the office of the inspector upon blanks to be furnished by him a correct return, specifying with respect to the preceding calendar year the quantity of coal, iron ore, fire clay, limestone, or other mineral product of such mine or quarry, and the number of persons ordinarily employed in or about such mine or quarry below and above ground, distinguishing the persons and labor below ground and above ground: Provided, that nothing in this section shall require the owner, lessor or agent in charge of any quarry who does not employ more than ten persons to work in any one quarry at the same time, to file or make any of the reports required under this section. (1897, c. 251, s. 3; Rev., s. 4941; C. S., s. 6907; 1939, c. 223, s. 2.)

Editor's Note.—Prior to the 1939 amendment the report was required to be made on or before the thirtieth of November.

§ 74-13. **Liability for injuries.**—For any injury to person or property occasioned by any willful violation of this chapter, or any willful failure to comply with its provisions, by any owner, agent, or manager of the mine, a right of action shall accrue to the party injured for any damage he may sustain thereby; and in any case of loss of life by reason of such willful neglect or failure a right of action shall accrue to the personal representative of the deceased, as in other actions for wrongful death. (1897, c. 251, s. 6; Rev., s. 4942; C. S., s. 6908.)

§ 74-14. **Punishment for violation.**—If any person shall knowingly violate any of the provisions of the law relating to mines or shall do anything whereby the life or health of persons or the security of any mine and machinery is endangered, or if any miner or other person employed in any mine governed by the statutes shall intentionally or willfully neglect or refuse to securely prop the roof of any working place under his control, or neglect or refuse to obey any orders given by the superintendent of a mine in relation to the security of a mine in the part thereof where he is at work and for fifteen feet back of his working place, or if any miner, workman, or other person shall knowingly injure any water gauge, barometer, air course, or brattice, or shall obstruct or throw open any airways, or shall handle or disturb any part of the machinery of the hoisting engine or signaling apparatus or wire connected therewith, or air pipes or fittings, or open a door of the mine and not have the same closed again, whereby danger is produced either to the mine or those that work therein, or shall enter any part of the mine against caution, or shall disobey any order given in pursuance of law, or shall do any willful act whereby the lives and health of the persons working in the mine or the security of the mine or the machinery thereof is endangered, or if the person having charge of a mine whenever loss of life occurs by accident connected with the machinery of such mine or by explosion shall neglect or refuse to give notice thereof forthwith by mail or otherwise to the inspector and to the coroner of the county in which such mine is situated, or if any such coroner shall neglect or refuse to hold an inquest upon the body of the person whose death has been thus caused, and return a copy of his findings and a copy of all the testimony to the inspector, he shall be guilty of a misdemeanor, and upon conviction fined not more than fifty dollars or imprisoned in the county jail not more than thirty days, or both. (1897, c. 251, s. 8; Rev., s. 3797; C. S., s. 6909.)

ARTICLE 2.

Inspection of Mines and Quarries.

§ 74-15. **Commissioner of Labor to inspect mines and quarries.**—The Commissioner of Labor, acting through the Director of the Division of Standards and Inspection of the Department of Labor, shall perform the duties of mine inspector as provided in this chapter. (1897, c. 251, s. 1; Rev., s. 4943; C. S., s. 6910; 1931, c. 312.)

Cross Reference.—For provision making this article applicable to quarries, see § 74-24.

§ 74-16. **Inspector to examine mines.**—It shall be the duty of the inspector to examine all the mines in the State as often as possible to see that all the provisions and requirements of this chapter are strictly observed and carried out; he shall particularly examine the works and machinery belonging to any mine, examine into the state and condition of the mines as to ventilation, circulation, and condition of air, drainage, and general security. (1897, c. 251, s. 2; Rev., s. 4944; C. S., s. 6911.)

§ 74-17. **May enter to make examinations.**—For the purpose of making the inspection and examinations provided for in this chapter, the inspector shall have the right to enter any mine at all reasonable times, by night or by day, but in such manner as shall not unnecessarily obstruct the working of the mine; and the owner or agent of such mine is hereby required to furnish the means necessary for such entry and inspection; the inspection and examination herein provided for shall extend to fire clay, iron ore, and other mines as well as coal mines. (1897, c. 251, s. 2; Rev., s. 4945; C. S., s. 6912.)

§ 74-18. **Death by accident investigated.**—Upon receiving notice of any death resulting from accident it shall be the duty of the inspector to go himself, or send a representative, at once to the mine in which the death occurred and inquire into the cause of the same, and to make a written report fully setting forth the condition of that part of the mine where such death occurred and the cause which led to the same, which report shall be filed by the inspector in his office as a matter of record and for future reference. (1897, c. 215, s. 6; Rev., s. 4946; C. S., s. 6913.)

§ 74-19. **Record of examinations.**—He shall make a record of all examinations of mines, showing the date when examination is made, the condition in which the mines are found, the extent to which the laws relating to mines and mining are observed or violated, the progress made in the improvements and security of life and health sought to be secured by the provisions of this chapter, number of accidents, injuries received, or deaths in or about the mines, the number of mines in the State, the number of persons employed in or about each mine, together with all such other facts and information of public interest, concerning the condition of mines, development and progress of mining in the State as he may think useful and proper, which record shall be filed in the office of the inspector, and as much thereof as may be of public interest to be included in his annual report. (1897, c. 251, s. 2; Rev., s. 4947; C. S., s. 6914.)

§ 74-20. **Papers to be preserved.**—He shall keep in his office and carefully preserve all maps, surveys, and other reports and papers required by law to be filed with him, and so arrange and preserve the same as shall make them a permanent record of ready, convenient, and connected reference. (1897, c. 251, s. 3; Rev., s. 4948; C. S., s. 6915.)

§ 74-21. **Inspector to enforce law; counsel furnished.**—In case of any controversy or disagreement between the inspector and the owner or operator of

any mine or the persons working therein, or in case of conditions or emergencies requiring counsel, the inspector may call on the Governor for such assistance and counsel as may be necessary. If the inspector finds any of the provisions of this chapter violated or not complied with by any owner, lessee, or agent in charge, unless the same is within a reasonable time rectified, and the provisions of this chapter fully complied with, he shall institute an action in the name of the State to compel the compliance therewith. The inspector shall exercise a sound discretion in the enforcement of this chapter. (1897, c. 251, s. 2; Rev., s. 4949; C. S., s. 6916.)

§ 74-22. **Operation enjoined when law violated.**—On application of the inspector, after suit brought as directed in § 74-21, any court of competent jurisdiction may enjoin or restrain the owner or agent from working or operating such mine until it is made to conform to the provisions of this chapter; and such remedy shall be cumulative, and shall not take the place of or affect any other proceedings against such owner or agent authorized by law for the matter complained of in such action. (1897, c. 251, s. 7; Rev., s. 4950; C. S., s. 6917.)

§ 74-23. **Report to Governor.**—The inspector shall annually make report to the Governor of all his proceedings, the condition and operation of the different mines of the State, and the number of mines and the number of persons employed in or about such mines, the amount of coal, iron ore, limestone, fire clay, or other mineral mined in this State; and he shall enumerate all accidents in or about the mines, and the manner in which they occurred, and give all such other information as he thinks useful and proper, and make such suggestions as he deems important relative to mines and mining, and any legislation that may be necessary on the subject for the better preservation of the life and health of those engaged in such industry. (1897, c. 251, s. 3; Rev., s. 4951; C. S., s. 6918.)

§ 74-24. **Articles one and two made applicable to quarries.**—For the purpose of providing for the safety of workers in quarries in North Carolina, the provisions of articles one and two of this chapter, relating to the operation and inspection of mines, are hereby made applicable to quarries insofar as such provisions are suitable to the operation and inspection of quarries. (1939, c. 223, s. 1.)

ARTICLE 3.

Waterways Obtained.

§ 74-25. **Water and drainage rights obtained.**—Any person or body corporate engaged or about to engage in mining, who may find it necessary for the furtherance of his operations to convey water either to or from his mine or mines over the lands of any other person or persons, may make application by petition in writing to the clerk of the superior court of the county in which the lands to be affected or the greater part are situate, for the right so to convey such water. The owner of the lands to be affected shall be made a party defendant, and the proceedings shall be conducted as other special proceedings. (1871-2, c. 158, ss. 1, 3; Code, ss. 3293, 3294, 3300; Rev., s. 4953; C. S., s. 6920.)

§ 74-26. **The petition, what to contain.**—The petition shall specify the lands to be affected, the name of the owner of such lands, and the character of the ditch or drain intended to be made. (1871-2, c. 158, s. 3; Code, s. 3294; Rev., s. 4954; C. S., s. 6921.)

§ 74-27. **Appraisers; appointment and duties.**—Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons, qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the lands by the contemplated work, and shall issue a notice to them

to meet upon the premises at a day specified, not to exceed ten days from the date of such notice. The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by such work, and assess the damage thereto, and make report thereof under their hands and seals to the clerk from whom the notice issued. (1871-2, c. 158, ss. 4, 5, 9; Code, ss. 3295, 3296, 3299; Rev., s. 4955; C. S., s. 6922.)

§ 74-28. Confirmation of report; payment of damages; rights of petitioner.—After the filing of the report and confirmation thereof by the clerk, who shall have power to confirm or, for good cause, set aside the same, the petitioner shall have full right and power to enter upon such lands and make such ditches, drains, or other necessary work: Provided, he has first paid or tendered the damages, assessed as above, to the owner of such lands or his known and recognized agent, if he be a resident of this State, or have such agent in this State. If the owner be a nonresident and have no known agent in this State, the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner. (1871-2, c. 158, s. 12; Code, s. 3298; Rev., s. 4957; C. S., s. 6923.)

§ 74-29. Registration of report.—The petitioner, or any other person interested, may have the report of the appraisers registered upon the certificate of the clerk and shall pay the register a fee of twenty-five cents therefor. (1871-2, c. 158, s. 8; Code, s. 3298; Rev., s. 4957; C. S., s. 6924.)

§ 74-30. Obstructing mining drains.—If any person shall obstruct any drain or ditch constructed under the provisions of this chapter, he shall be guilty of a misdemeanor. (1871-2, c. 158, s. 12; Code, s. 3301; Rev., s. 3380; C. S., s. 6925.)

§ 74-31. Disposition of waste.—In getting out and washing the products of kaolin and mica mines, the persons engaged in such business shall have the right to allow the waste, water, and sediment to run off into the natural courses and streams. (1917, c. 123; C. S., s. 6926; 1937, c. 378.)

Editor's Note.—The 1937 amendment made this section applicable to mica mines.

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).

ARTICLE 4.

Adjustment of Conflicting Claims.

§ 74-32. Liability for damage for trespass.—If any owner or person in possession of any mine or mining claim shall enter upon, either on the surface or underground, any mine or mining claim, the property of another, and shall mine or carry away any valuable mineral therefrom, he shall be liable to the owner of the mine so trespassed upon for double the value of all such mineral mined or carried away and for all other damages; and the value of the mineral mined or carried away shall be presumed to be the amount of the gross value ascertained by an average assay of the excavated material or vein or ledge from

which it was taken. If such trespass is wrongfully and willfully made, punitive damages may be allowed. (1913, c. 51, s. 1; C. S., s. 6927.)

Action by Cotenant.—Where tenants in common, under the erroneous impression that they owned the fee, removed valuable minerals from the property, upon suit by the other tenant in common for damages under this section and admission by the defendants of the cotenancy, removal and value, plaintiff was entitled to judgment on the pleadings, though not to the damages provided in this section. *Jones v. McBee*, 222 N. C. 152, 22 S. E. (2d) 226 (1942).

§ 74-33. **Persons entitled to bring suit.**—The owner of a mine in this State, or any person in possession under a lease or other contract, may maintain an action to recover damages to such property arising from the operation of any adjacent mine by the owner thereof or other person in possession and working the same under lease or contract, and also to prevent the continuance of the operation of the adjacent mine in such a manner as to injure or endanger the safety of the complainant's mine. (1913, c. 51, s. 1; C. S., s. 6928.)

§ 74-34. **Application and order for survey.**—The person entitled to bring an action, as provided in § 74-33, may apply to any judge of the superior court having jurisdiction to grant injunctions and restraining orders, and obtain an order of survey in the following manner: He shall file an affidavit giving the names of the parties and the location as near as may be, of the mine complained of; the location of the plaintiff's mine, and that he has reason to believe that the defendant, or his agents or employees, are or have been trespassing upon his mine, or working the defendant's mine in such a manner as to damage or endanger the plaintiff's property. Upon the filing of the affidavit, the judge shall cause a notice to be issued to the defendant or his agents, stating the time and place and before whom the application will be heard, and requiring them to appear, in not less than ten nor more than twenty days from the date thereof, and show cause why an order of survey should not be granted. Upon the hearing, and for good cause shown, the judge shall grant an order directed to some competent disinterested surveyor or mining engineer, or both, as the case may be, who shall proceed to make the necessary examination and surveys, as directed by the court, and report their action to the court. The persons selected by the judge to make the survey and examination shall be residents of the State, and, before entering upon the discharge of their duty, shall take and subscribe an oath that they will fairly and impartially survey the mines described in the petition. In all other respects, except as stated above, the surveyors appointed by the judge shall proceed as in surveys in disputed boundaries. (1913, c. 51, s. 2; C. S., s. 6929.)

Applied in *Vance v. Guy*, 224 N. C. 607, 31 S. E. (2d) 766 (1944). **Cited** in *Carolina Mineral Co. v. Young*, 211 N. C. 387, 190 S. E. 520 (1937).

§ 74-35. **Free access to mine for survey.**—Upon the order made for the survey in the manner, at the time, and by the persons mentioned in the order, which shall include a representative of the party making the application, who shall not be one of the surveyors, there shall be given free access to the mine for the purpose of survey, and any interference with the persons acting under the order of survey shall be contempt of court and punished accordingly. If the persons named in the order of survey so require, they, with their instruments, shall be carefully lowered and raised in and out of the mine with the cage, bucket, or skip ordinarily used in the shafts of the mine; and they may demand of the owner of the mine, or his manager or agent, that they be so raised and lowered at a speed agreeable to them and not to endanger their comfort and safety or to injure the accuracy of their instruments. The owner of the mine, his managers or agents, shall be liable in damages to the persons making the examination for any injury to them or to their instruments, caused by the careless and negligent operation of any bucket, cage, or skip at such a high

rate of speed as to injure the persons or their instruments while being lowered or raised in the mine. (1913, c. 51, s. 2; C. S., s. 6930.)

§ 74-36. **Costs of the survey.**—The costs of the order and survey shall be paid by the person making the application; but if he shall maintain an action and recover damages for the injury done or threatened prior to such survey and examination, the costs of the order and survey shall be taxed against the defendant as other costs in the action. The party obtaining the survey shall be liable for any unnecessary injury done to the property examined and surveyed in making the survey. (1913, c. 51, s. 2; C. S., s. 6931.)

Chapter 74A. Company Police.

Sec.

74A-1. Governor may appoint and commission police for public utility and other companies; civil liability of companies.

74A-2. Oath, bond, and powers of company police.

Sec.

74A-3. Company police to wear badges.

74A-4. Compensation of company police.

74A-5. Police powers cease on company's filing notice.

74A-6. Railway conductors and station agents declared special police.

§ 74A-1. Governor may appoint and commission police for public utility and other companies; civil liability of companies.—Any public utility company, construction company or manufacturing company may apply to the Governor to commission such persons as the corporation or company may designate to act as policemen for it. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company from any civil liability for the acts of such policemen, in exercising or attempting to exercise the powers conferred by this chapter. (1871-2, c. 138, ss. 51, 52; Code, ss. 1988, 1989; Rev., ss. 2605, 2606; 1907, c. 128, s. 1; C. S., s. 3484; 1923, c. 23; 1933, c. 61; 1943, c. 676, ss. 1, 4; 1947, c. 390; 1963, c. 1165, s. 2.)

Cross Reference. — As to venue of action against railroad, § 1-81.

Editor's Note.—Session Laws 1963, c. 1165, amended, revised and rewrote chapters 56, 60 and 62 of the General Statutes and recodified them as a new chapter 62 and a new chapter 74A. With the exception of a few sections in new chapter 62, the act is made effective January 1, 1964. Chapter 74A is a recodification of former chapter 60, article 10, which consisted of §§ 60-82 to 60-87.

Former § 60-83, corresponding to new § 74A-1, was amended by Session Laws 1963, cc. 988 and 1254, and former § 60-85, corresponding to new § 74A-3, was amended by Session Laws 1963, c. 988. It is believed that it was the intention of the legislature to include all such amendments in Session Laws 1963, c. 1165; however, apparently through oversight, the changes made by cc. 988 and 1254 were not incorporated in new chapter 74A. Former § 60-83 as amended by Session Laws 1963, cc. 988 and 1254, reads as follows:

“Any corporation operating a railroad on which steam or electricity is used as the motive power or any electric or water-power company or construction company or manufacturing company or motor vehicle carrier or railway express agencies or auction companies or incorporated security patrols or corporations engaged in providing security or protective services for persons or property or educational in-

stitution, whether State or private, or any other State institution, may apply to the Governor to commission such persons as the corporation or company may designate to act as policemen for it. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company from any civil liability now existing by statute or under the common law for the act or acts of such policemen, in exercising or attempting to exercise the powers conferred by this section.”

The first 1963 amendment to former § 60-83 inserted the words “or incorporated security patrols or corporations engaged in providing security or protective services for persons or property or educational institution, whether State or private, or any other State institution” in the first sentence. The amendatory act further provides: “Wherever the word ‘company’ is used in article 10 of chapter 60 of the General Statutes the same shall be deemed to include any above referred to institution. Notwithstanding the provisions of G. S. 60-85, any person commissioned pursuant to this act shall wear such badge as the institution may designate and direct.” The second 1963 amendment to former § 60-83 made the section applicable to auction companies.

For former § 60-85 as amended by Session Laws 1963, c. 988, see Editor's Note to § 74A-3.

A railroad policeman appointed pursuant to this section, is prima facie a public officer, but the question of whether a particular act is done as an employee of the railroad company or as a public officer is a

question to be determined from the nature of the act, whether it relates to vindication and enforcement of public justice or whether it is in the scope of duties owed to the company by reason of employment. *Tate v. Southern Ry. Co.*, 205 N. C. 51, 169 S. E. 816 (1933), decided under former § 60-83.

§ 74A-2. 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 public utility 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 chapter 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; 1963, c. 1165, s. 2.)

Cross Reference. — As to oath required, see § 11-11.

§ 74A-3. Company police to wear badges.—Such policemen shall, when on duty, severally wear a shield with the words "Railway Police" or "Company Police" and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives. (1871-2, c. 138, s. 54; Code, s. 1991; Rev., s. 2608; C. S., s. 3486; 1963, c. 1165, s. 2.)

Cross Reference. — As to badges of conductor and certain other railroad employees, see § 62-244.

Editor's Note.—Former § 60-85, corresponding to this section, was amended by Session Laws 1963, c. 988, to read as follows:

"Such railroad police shall, when on duty, severally wear a metallic shield with the words 'Railway Police' or other appro-

priate police identification and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives."

The 1963 amendment to former § 60-85 inserted the words "or other appropriate police identification" near the middle of the section.

See Editor's Note to § 74A-1.

§ 74A-4. Compensation of company police.—The compensation of such police shall be paid by the companies for which the policemen are respectively appointed, as may be agreed on between them. (1871-2, c. 138, s. 55; Code, s. 1992; Rev., s. 2609; C. S., s. 3487; 1963, c. 1165, s. 2.)

§ 74A-5. 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; 1963, c. 1165, s. 2.)

§ 74A-6. Railway conductors and station agents declared special police.—All passenger conductors of railroad trains and station or depot agents are hereby declared to be special police of the State of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall have such power only on their respective trains or their railroad right of way, and the agents at their respective stations; and such conductors and agents may cause any person so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability for the acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred. (1907, c. 470, ss. 3, 4; C. S., s. 3483; 1963, c. 1165, s. 2.)

Cross Reference.—See Editor's Note to § 74A-1.

Editor's Note. — For article discussing arrest without a warrant, see 15 N. C. Law Rev. 101.

Conductor Has Power of Peace Officer.
—A conductor on a railroad passenger

train is held to a high degree of care in looking after and protecting passengers on his train, and he is clothed, to some extent, with the powers of a peace officer. *Brown v. Atlantic Coast Line R. Co.*, 161 N. C. 573, 77 S. E. 777 (1913), decided under former § 60-82.

Chapter 75. Monopolies and Trusts.

Sec.	Sec.
75-1. Combinations in restraint of trade illegal.	75-9. Duty of Attorney General to investigate.
75-2. Any restraint in violation of common law included.	75-10. Power to compel examination.
75-3. [Repealed.]	75-11. Person examined exempt from prosecution.
75-4. Contracts to be in writing.	75-12. Refusal to furnish information; false swearing.
75-5. Particular acts prohibited.	75-13. Criminal prosecution; solicitors to assist; expenses.
75-6. Violation a misdemeanor; punishment.	75-14. Action to obtain mandatory order.
75-7. Persons encouraging violation guilty.	75-15. Actions prosecuted by Attorney General.
75-8. Continuous violations separate offenses.	75-16. Civil action by person injured; treble damages.

§ 75-1. **Combinations in restraint of trade illegal.** — Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy, shall be guilty of a misdemeanor, and upon conviction thereof such person shall be fined or imprisoned, or both, in the discretion of the court, whether such person entered into such contract individually or as an agent representing a corporation, and such corporation shall be fined in the discretion of the court not less than one thousand dollars. (1913, c. 41, s. 1; C. S., s. 2559.)

Cross References.—As to civil action for damages and injunction against violation of this chapter, see note to § 75-5. For provision declaring certain agreements between employers and labor organizations to be illegal combinations in restraint of trade, see § 95-79.

History of Chapter.—See *Shute v. Shute*, 176 N. C. 462, 97 S. E. 392 (1918).

Monopoly Defined.—“A monopoly consists in the ownership or control of so large a part of the market supply or output of a given commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices.” *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412 (1936), quoting *Black's Law Dictionary* (3rd Ed.), p. 1202.

In the modern and wider sense monopoly denotes a combination, organization, or entity so extensive and unified that its tendency is to suppress competition, to acquire a dominance in the market, and to secure the power to control prices to the public harm with respect to any commodity which people are under a practical compulsion to buy.

State v. Atlantic Ice, etc., Co., 210 N. C. 742, 188 S. E. 412 (1936).

Agreement Not to Compete May Be Forbidden. — Persons and corporations cannot be ordered to compete, but they properly can be forbidden to give directions, or make agreements, not to compete. *State v. Craft*, 168 N. C. 208, 83 S. E. 772 (1914).

Agreement Not to Sell to Particular Individual. — A complainant alleging that defendants conspired and agreed not to sell plaintiff ice, and that as a result thereof plaintiff's business was ruined, fails to state a cause of action, this and the following sections not being applicable. *Lineberger v. Colonial Ice Co.*, 220 N. C. 444, 17 S. E. (2d) 502 (1941).

Agreements in partial restraint of trade will be upheld when they are founded on valuable considerations, are reasonably necessary to protect the interests of the parties in whose favor they are imposed, and do not unduly prejudice the public interest. *Waldron Buick Co. v. General Motors Corp.*, 254 N. C. 117, 118 S. E. (2d) 559 (1961).

A contract between public utilities. and

proved by the Utilities Commission, is not violative of this section, if the Commission could have lawfully made an order to the same effect upon application and after hearing in an adverse proceeding. *State v. Carolina Coach Co.*, 260 N. C. 43, 132 S. E. (2d) 249 (1963).

Reduction of Prices to Consuming Public No Defense. — Plaintiff, a carrier by truck, instituted this action against certain railroad companies, to recover damages to his business, which he alleged resulted from an unlawful conspiracy between defendants to reduce transportation rates in order to eliminate plaintiff as a competitor, with the purpose of raising rates after competition had been removed. Defendants alleged that the reduction in rates resulted in lower prices to the consuming public on the products on which the

rates had been reduced. Held: The matter alleged does not constitute a defense to the action, since the express policy of the State is against both the raising and lowering of prices by unlawful means for an unlawful purpose, and since the law is interested in preserving competition rather than obtaining for the public temporary benefits from price wars in which competition is extinguished. *Patterson v. Southern Ry. Co.*, 214 N. C. 38, 198 S. E. 364 (1938).

A general averment without allegation of specific facts is insufficient to constitute a cause of action, under this and the following sections. *State v. Standard Oil Co.*, 205 N. C. 123, 170 S. E. 134 (1933).

Stated in *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240 (1937).

Cited in *Patterson v. Southern Ry. Co.*, 219 N. C. 23, 12 S. E. (2d) 652 (1941).

§ 75-2. **Any restraint in violation of common law included.**—Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of § 75-1. (1913, c. 41, s. 2; C. S., s. 2560.)

Distinction between Common-Law and Modern Rules. — Originally at common law, agreements in restraint of trade were held void as being against public policy. The position, however, has been more and more modified by the decisions of the courts until it has come to be the very generally accepted principle that agreements in partial restraint of trade will be upheld when they are “founded on valu-

able considerations, are reasonably necessary to protect the interests of the parties in whose favor they are imposed, and do not unduly prejudice the public interest.” *Mar-Hof Co. v. Rosenbacker*, 176 N. C. 330, 331, 97 S. E. 169 (1918). The distinction may now be made between “general restraint” and “partial restraint.” *Morehead Sea Food Co. v. Way & Co.*, 169 N. C. 679, 86 S. E. 603 (1915).

§ 75-3: Repealed by Session Laws 1961, c. 1153.

§ 75-4. **Contracts to be in writing.**—No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the State of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: Provided, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the State of North Carolina, or at any point in the State of North Carolina, which contract is now illegal, or which contract is made illegal by any other section of this chapter. (1913, c. 41, s. 4; C. S., s. 2562.)

What Contracts Enforceable. — Where affidavits disclose that defendants in the course of their employment acquired knowledge which would give them an unfair advantage over plaintiff in a competitive business, under such circumstances equity will enforce a covenant not to compete if it is: (1) In writing, (2) entered into at the time and as a part of the contract of employment, (3) based on valuable considerations, (4) reasonable both as to time and territory embraced in the restrictions, (5) fair to the parties, and (6) not

against public policy. *Orkin Exterminating Co. of Raleigh, Inc. v. Griffin*, 258 N. C. 179, 128 S. E. (2d) 139 (1962).

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 *Sonotone Corp. v. Baldwin, Co.*, 238 N. C. 317, 77 S. E. (2d) 910
 227 N. C. 387, 42 S. E. (2d) 352 (1947); (1953).
Maola Ice Cream Co. v. Maola Milk, etc.,

§ 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.
- (7) Except as may be otherwise provided by article 10 of chapter 66, entitled "Fair Trade", while engaged in buying or selling any goods in this State to make, enter into, execute or carry out any contract, obligation or agreement of any kind by which the parties thereto or any two or more of them bind themselves not to sell or dispose of any goods or any article of trade, use or consumption, below a common standard figure, or fixed value, or establish or settle the price of such goods between them, or between themselves and others, at a fixed or graduated figure, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale of such goods.

(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; 1961, c. 407, s. 1.)

Editor's Note.—The 1953 amendment rewrote this section.

The 1961 amendment added subdivision (7) of subsection (b). Section 2 of the amendatory act provides that the provisions of this subsection shall not apply to any act which is done in compliance with the rules and regulations of any State regulatory agency.

For note on "requirements contracts" as violations of this section, see 29 N. C. Law Rev. 316.

Restrictive Stipulations in Sale.—Transactions involving the sale and disposition of a business, trade or profession between individuals with stipulations restrictive of competition on the part of the vendor do not, as a rule, tend to unduly harm the public and are ordinarily sustained to the extent required to afford reasonable protection to the vendee in the enjoyment of property or proprietary rights he has bought and paid for, and to enable a vendor to dispose of his property at its full and fair value. *Mar-Hof Co. v. Rosenbacker*, 178 N. C. 330, 97 S. E. 169 (1918).

A limitation or restriction upon a person's right to engage in a lawful occupation or business is deemed detrimental to the public interest, unless the restraint imposed is reasonable under the proper tests. *Waldron Buick Co. v. General Motors Corp.*, 254 N. C. 117, 118 S. E. (2d) 559 (1961).

Test as to Reasonableness.—A valid contract in partial restraint of trade, while primarily for the advantage of the purchaser of a business, inures to the benefit of the seller by enhancing the value of the good will and enabling him to obtain a better price for the sale of his business, the test as to territory being whether the restraint agreed upon is such as to afford a fair protection to the interest of the party in whose favor it is given, and not so large as to interfere with the interest of the public; and such will not be held to be unreasonable when they do not affect the public and go no further than to remove the danger to the purchaser of competition with the seller. *Morehead Sea Food Co. v. Way & Co.*, 169 N. C. 679, 86 S. E. 603 (1915).

In connection with the sale of a business, including good will, the validity of a covenant providing that the seller will not

engage in business in competition with the buyer is determinable by these tests:

(1) Is it reasonably necessary to protect the legitimate interests of the purchaser?

(2) Is the limitation or restriction reasonable in respect of both time and territory? *Waldron Buick Co. v. General Motors Corp.*, 254 N. C. 117, 118 S. E. (2d) 559 (1961).

Contract Not to Engage in Competing Business.—A provision of an agreement for the sale of a partner's interest that he would not again engage in the mercantile business in a certain town or near enough thereto to interfere with plaintiff's business was not in violation of this section. *Wooten v. Harris*, 153 N. C. 43, 68 S. E. 898 (1910).

An exchange of the defendant's fish business for stock in the plaintiff company, with an agreement not to engage in similar business for ten years within 100 miles is valid, and not in violation of this section. *Morehead Sea Food Co. v. Way & Co.*, 169 N. C. 679, 86 S. E. 603 (1915).

Same—By Employee.—The validity of a covenant in a contract of employment providing that, upon termination of the employer-employee relationship, the employee will not engage in a business in competition with the employer, is determinable by these tests: (1) Is it founded on a valuable consideration? (2) Is it reasonably necessary to protect the legitimate interests of the employer? (3) Is the limitation or restriction reasonable in respect of both time and territory? *Waldron Buick Co. v. General Motors Corp.*, 254 N. C. 117, 118 S. E. (2d) 559 (1961).

An exclusive dealership in one make of automobile in a particular city, while it necessarily involves a limited monopoly to sell this product of the manufacturer in the area covered thereby, is not invalid as an unreasonable restraint on trade, the agreement not being between competitors but imposing restraint upon a manufacturer and in favor of its dealer. *Waldron Buick Co. v. General Motors Corp.*, 254 N. C. 117, 118 S. E. (2d) 559 (1961).

Combination of Railroads to Eliminate Motor Truck Competition.—A combination of railroads for the purpose of reducing rates on gasoline transportation within a certain area with the intent to eliminate motor truck competition and with the fur-

ther purpose of raising and fixing a higher rate on the same commodity after the elimination of competition is a violation of this section. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240 (1937).

Reasonableness of Agreement to Raise Price Immaterial.—An agreement among dealers in a necessary article of food, to raise its price, is an indictable offense at the common law, and evidence that dealers controlling a large part of the supply of milk in a town having by agreement raised its price, testimony is irrelevant that a dealer not a party to the agreement had also raised the price of his milk to his customers, or whether the agreement was reasonable or necessary for the article to yield a profit in its sale. *State v. Craft*, 168 N. C. 208, 83 S. E. 772 (1914).

Same—Intent Immaterial. — The intent of milk dealers combining to raise the price of milk is immaterial. *State v. Craft*, 168 N. C. 208, 83 S. E. 772 (1914).

Illegal Division of Territory.—Under a contract dividing a county into separate territory, within which each of the respective parties was not to interfere with the business of the other in operating cotton gins, etc., the plaintiff sold the defendant a cotton ginning plant, the latter agreeing to remove the plant and not to again operate one there, the intent of the agreement was a division of territory, with the object to eliminate competition therein, and the agreement will not be enforced. *Shute v. Shute*, 176 N. C. 462, 97 S. E. 392 (1918).

Exclusive Sale for Specified Period.—A contract made in good faith between a vendor and purchaser of a certain particular make or character of a manufactured product that restricts the former from selling articles of the same make or kind to other dealers within the town wherein the purchaser conducts his mercantile business, and which requires the expenditure of large sums of money and much time in advertising the goods and popularizing them on the local market, does not come within the intent and meaning of this chapter; and in vendor's action for the purchase price the seller may recover damages as a counterclaim for breach of the seller's contract in that respect. *Mar-Hof Co. v. Rosenbacker*, 176 N. C. 330, 97 S. E. 169 (1918).

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).

An agreement that a retailer should handle a certain product upon condition that he should not sell like products of other manufacturers within the same price range is held prohibited by this section, and unenforceable in our courts, and does not fall within subdivision (b) (6), permitting, in the absence of an intent to stifle competition, a contract granting the seller an exclusive agency for a product within a certain territory. *Florsheim Shoe Co. v. Leader Dept. Store*, 212 N. C. 75, 193 S. E. 9 (1937).

Covenant Not to Sell Products Other than Those of Lessor. — Lessee alleged that lessor covenanted not to sell any petroleum products other than those of lessee within a radius of 2,000 feet of the demised premises or from the demised premises. Held: There being no allegation that lessor agreed to purchase petroleum products from anyone, the provisions of subdivision (b) (2) of this section are not applicable. Such a covenant apparently runs afoul of no statute. *Grubb Oil Co. v. Garner*, 230 N. C. 499, 53 S. E. (2d) 441 (1949).

Contract to Sell at Label Price.—A contract of sale of merchandise for resale by the buyer, which stipulates that the buyer will not sell the merchandise except at label prices and will not sell or permit the sale of any other similar merchandise, is violative of this section. *Standard Fashion Co. v. Grant*, 165 N. C. 453, 81 S. E. 606 (1914).

A contract for sale of cafe and good will for a period of five years does not affect the interest of the public or fall within the terms of subdivision (b) (6) of this section. *Hill v. Davenport*, 195 N. C. 271, 141 S. E. 752 (1928).

Discrimination Not Allowed.—Where a public service corporation has acquired the exclusive right to furnish hydroelectric power and light to municipalities, and to other public service corporations, for distribution to consumers, including subsidiary companies that it controls, it may not discriminate among its patrons under the same or substantially similar conditions as to the rate charged, or select its customers.

North Carolina Public Serv. Co. v. Southern Power Co., 179 N. C. 18, 101 S. E. 593 (1919).

Attempt to Drive Competitor out of Business. — An indictment charging that the employees of a rival company in the sale of lawful commodities had combined together to break up their competitor's business by systematically following its salesmen from house to house and place to place and to so abuse, vilify and harass them as to deter them in their lawful business and to break up their sales: that they falsely represented that their rival company was composed of a set of thieves and liars, endeavoring to cheat and defraud the people, etc., charges a conspiracy indictable at common law. *State v. Dalton*, 168 N. C. 204, 83 S. E. 693 (1914).

Grant of Municipal Franchise.—A private sale of public utilities by the city authorities to an electrical power plant with a grant of a municipal franchise does not create or tend towards a monopoly. *Allen v. Reidsville*, 178 N. C. 513, 101 S. E. 267 (1919).

Ordinance Restricting Sale of Commodity. — A municipal ordinance prohibiting the sale of milk within the city without a permit, is not invalid as tending to create a monopoly although the permit "may be suspended or revoked at any time for cause." *State v. Kirkpatrick*, 179 N. C. 747, 103 S. E. 65 (1920).

Contract in Violation of Section Unenforceable.—A contract made in violation of the terms of this section will not be enforced. *Standard Fashion Co. v. Grant*, 165 N. C. 453, 81 S. E. 606 (1914); *Shute v. Shute*, 176 N. C. 462, 97 S. E. 392 (1918); *Radio Electronics Co. v. Radio Corp.*, 244 N. C. 114, 92 S. E. (2d) 664 (1956).

Threats to Retaliate unless Competition Withdrawn.—Threats by one ice company that it would sell ice in the town of a second ice company, if that company continued to supply ice to a rival of the first company are not prohibited by this section. *Smith v. Morganton Ice Co.*, 159 N. C. 151, 74 S. E. 961 (1912).

The refusal by wholesalers of ice to sell a retailer on the same terms as those offered to other retailers in the city is not a violation of this section, it not appearing that the parties were business competitors. *Rice v. Asheville Ice, etc., Co.*, 204 N. C. 768, 169 S. E. 707 (1933).

The violation of this section is made criminal by § 75-6, and as ordinarily the violation of a criminal statute may not be enjoined, individuals who apprehend injury by such violation are afforded a remedy by indictment and prosecution under § 1-5. *Carolina Motor Service v. Atlantic Coast Line R. Co.*, 210 N. C. 36, 185 S. E. 479, 104 A. L. R. 1165 (1936).

The provisions of the monopoly statutes apply to railroads just as they do to individuals and other corporations. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240 (1937).

Subdivision (b) (3) Constitutional. — Subdivision (b) (3) sufficiently defines the offense therein prohibited and is constitutional. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412 (1936).

"Willful" Defined.—"Willful" means the wrongful doing of an act without justification or excuse. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412 (1936).

Coal Dealers Held to Be Competent Witnesses.—Where in the prosecution for violation of subdivision (b) (3) of this section the State was allowed to introduce the testimony of coal dealers in the same city as to the cost of handling coal, the opinion testimony being based upon complicated and detailed facts relating to costs of buying, shipping, trucking, handling, shrinkage, labor, repairs, etc., the witnesses having had years of experience in operating their respective businesses in the city, it was held that the witnesses were experts and their opinion testimony was competent and was properly received in evidence. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412 (1936).

Proper Instruction as to Injuring or Destroying Competitors.—In a prosecution for violating this section relating to monopolies, an instruction that a person violates this section if he lowers the price of the product in question for the purpose of injuring or destroying competitors, and then, after competition is removed, he sells at a higher price to the detriment of the public, was held without error. *State v. Atlantic Ice, etc., Co.*, 210 N. C. 742, 188 S. E. 412 (1936).

Cited in *Lewis v. Archbell*, 199 N. C. 205, 154 S. E. 11 (1930); *Brown v. Norfolk So. R. Co.*, 208 N. C. 423, 181 S. E. 279 (1935).

§ 75-6. Violation a misdemeanor; punishment. — Any corporation, either as agent or principal, violating any of the provisions of § 75-5 shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person, whether acting for himself or as officer of any corporation or as agent of any corpo-

ration or persons violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 41, s. 5; C. S., s. 2564.)

Cross Reference.—See note to § 75-5.

Cited in Bennett v. Southern Ry. Co.,

Applied in State v. Atlantic Ice, etc., Co., 211 N. C. 474, 191 S. E. 240 (1937).
210 N. C. 742, 188 S. E. 412 (1936).

§ 75-7. Persons encouraging violation guilty.—Any person, being either within or without the State, who encourages or willfully allows or permits any agent or associates in business in this State, to violate any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in § 75-6. (1913, c. 41, s. 6; C. S., s. 2565.)

§ 75-8. Continuous violations separate offenses. — Where the things prohibited in this chapter are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense. (1913, c. 41, s. 7; C. S., s. 2566.)

Quoted in State v. Atlantic Ice, etc., Co.,

210 N. C. 742, 188 S. E. 412 (1937).

§ 75-9. Duty of Attorney General to investigate.—The Attorney General of the State of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations in North Carolina doing business in violation of law; and all other corporations of every character engaged in this State in the business of transporting property or passengers, or transmitting messages, and all other public service corporations of any kind or nature whatever which are doing business in the State for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the Utilities Commission or Commission of Banks is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted. (1913, c. 41, s. 8; C. S., s. 2567; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97, s. 5.)

Editor's Note.—It would seem that the second sentence of this section were intended words "Commission of Banks" in the second sentence to read "Commissioner of Banks."

§ 75-10. Power to compel examination.—In performing the duty required in § 75-9, the Attorney General shall have power, at any and all times, to require the officers, agents or employees of any such corporation, and all other persons having knowledge with respect to the matters and affairs of such corporations, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations, or which are in any way connected with the business thereof; and the Attorney General is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any judge of the supreme or superior court, after five days' notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge. (1913, c. 41, s. 9; C. S., s. 2568.)

§ 75-11. Person examined exempt from prosecution. — No person examined, as provided in § 75-10 shall be subject to indictment, prosecution,

punishment or penalty by reason or on account of anything disclosed by him upon such examination, and full immunity from prosecution and punishment by reason or on account of anything so disclosed is hereby extended to all persons so examined. (1913, c. 41, s. 9; C. S., s. 2569.)

§ 75-12. Refusal to furnish information; false swearing.—Any corporation unlawfully refusing or willfully neglecting to furnish the information required by this chapter, when it is demanded as herein provided, shall be guilty of a misdemeanor and fined not less than one thousand dollars: Provided, that if any corporation shall in writing notify the Attorney General that it objects to the time or place designated by him for the examination or inspection provided for in this chapter, it shall be his duty to apply to a judge of the supreme or superior court, who shall fix an appropriate time and place for such examination or inspection, and such corporation shall, in such event, be guilty under this section only in the event of its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish the information required by this chapter. False swearing by any person examined under the provisions of this chapter shall constitute perjury, and the person guilty of it shall be punishable as in other cases of perjury. (1913, c. 41, s. 10; C. S., s. 2570.)

§ 75-13. Criminal prosecution; solicitors to assist; expenses.—The Attorney General in carrying out the provisions of this chapter shall have a right to send bills of indictment before any grand jury in any county in which it is alleged this chapter has been violated or in any adjoining county, and may take charge of and prosecute all cases coming within the purview of this chapter, and shall have the power to call to his assistance in the performance of any of these duties of his office which he may assign to them any of the solicitors in the State, who shall, upon being required to do so by the Attorney General, send bills of indictment and assist him in the performance of the duties of his office. (1913, c. 41, s. 13; C. S., s. 2571.)

§ 75-14. Action to obtain mandatory order.—If it shall become necessary to do so, the Attorney General may prosecute civil actions in the name of the State on relation of the Attorney General to obtain a mandatory order to carry out the provisions of this chapter, and the venue shall be in any county as selected by the Attorney General. (1913, c. 41, s. 11; C. S., s. 2572.)

§ 75-15. Actions prosecuted by Attorney General.—It shall be the duty of the Attorney General, upon his ascertaining that the laws have been violated by any trust or public service corporation, so as to render it liable to prosecution in a civil action, to prosecute such action in the name of the State, or any officer or department thereof, as provided by law, or in the name of the State on relation of the Attorney General, and to prosecute all officers or agents or employees of such corporations, whenever in his opinion the interests of the public require it. (1913, c. 41, s. 12; C. S., s. 2573.)

§ 75-16. Civil action by person injured; treble damages.—If the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed by a jury in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C. S., s. 2574.)

Civil Action for Damages and Injunctive Relief.—While conspiracies in restraint of trade, and undertakings to destroy or injure the business of a competitor, with the purpose of attempting to fix the price when

competition is removed, are made unlawful, these provisions do not prevent one whose business as a common carrier has been injured and threatened by any of the acts thus denounced from pursuing a

remedy by civil action for damages and seeking the interposition of equity, if necessary to restrain wrongful acts which threaten irreparable loss. *Burke Transit Co. v. Queen City Coach Co.*, 228 N. C. 768, 47 S. E. (2d) 297 (1948).

Causal Relation between Violation and Injury Must Be Shown.—Section 75-5 condemns a contract of sale only when such sale is made “upon the condition” that the purchaser shall not deal in the goods or merchandise of a competitor of the seller, and in order for a party to recover damages for a breach of the statute under the provisions of this section, he must show a violation of the statute and a causal relation between the violation and injury to his

business. *Lewis v. Archbell*, 199 N. C. 205, 154 S. E. 11 (1930). See *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240 (1937).

Who May Bring Action.—The contention that an action for the violation of this chapter resulting in injury to a party’s business can only be brought by the Attorney General is contrary to the provisions of this section. *Bennett v. Southern Ry. Co.*, 211 N. C. 474, 191 S. E. 240 (1937).

Cited in *Waldron Buick Co. v. General Motors Corp.*, 254 N. C. 117, 118 S. E. (2d) 559 (1961); *Ramsey v. Camp*, 254 N. C. 443, 119 S. E. (2d) 209 (1961).

Chapter 75A.

Motorboats.

Sec.	Sec.
75A-1. Declaration of policy.	75A-7. Exemption from numbering requirements.
75A-2. Definitions.	75A-8. Boat liveries.
75A-3. Wildlife Resources Commission to administer chapter; Motorboat Committee; funds for administration.	75A-9. Muffling devices.
75A-4. Identification numbers required.	75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.
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.	75A-11. Duty of operator involved in collision, accident or other casualty.
75A-5.1. Commercial fishing boats; renewal of number.	75A-12. Furnishing information to agency of United States.
75A-6. Classification and required lights and equipment; rules and regulations.	75A-13. Water skis, surfboards, etc.
	75A-14. Regattas, races, marine parades, tournaments or exhibitions.
	75A-15. Local regulation.
	75A-16. Filing and publication of rules and regulations; furnishing copies to owners.
	75A-17. Enforcement of chapter.
	75A-18. Penalties.
	75A-19. Operation of watercraft by manufacturers, dealers, etc.

§ 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.)

Cross Reference.—As to service of process upon nonresident operator of watercraft, see § 1-107.2.

Quoted in *Grindstaff v. Watts*, 254 N. C. 568, 119 S. E. (2d) 784 (1961).

§ 75A-2. **Definitions.**—As used in this chapter, unless the context clearly requires a different meaning:

- (1) "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.
- (2) "Operate" means to navigate or otherwise use a motorboat or a vessel.
- (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) "Person" means an individual, partnership, firm, corporation, association, or other entity.
- (5) "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.
- (6) "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. (1959, c. 1064, s. 2.)

Cross Reference. — As to motorboats used primarily for commercial fishing operations, see § 113-174.7.

§ 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 from the funds collected pursuant to the numbering provisions of this chapter in four equal installments, the first installment in the amount of twenty-five thousand dollars (\$25,000.00) to be remitted on or before September 1, 1961, and a like sum to become due and payable on the first day of September during each of the years 1962, 1963 and 1964. 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 acquisition of land and provision of facilities for access to waters of this State 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; 1961, c. 644; 1963, c. 1003.)

Editor's Note. — The 1961 amendment rewrote the latter part of the first sentence of subsection (c).
The 1963 amendment inserted near the end of the third sentence of subsection (c) "and for acquisition of land and provision of facilities for access to waters of this State."

§ 75A-4. Identification numbers required. — Every motorboat on the waters of this State shall be numbered. No person shall operate or give per-

mission 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. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest.

(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 therein 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 con-

formity 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); provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing boats as defined in G. S. 75A-5.1, upon compliance with all of the requirements of that section.

(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; 1961, c. 469, s. 1; 1963, c. 470.)

Editor's Note.—The 1961 amendment, effective July 1, 1961, added the proviso to subsection (h). The 1963 amendment added the proviso to subsection (a).

§ 75A-5.1. Commercial fishing boats; renewal of number.—(a) The owner or operator of any commercial fishing boat which is currently licensed for the use of commercial fishing gear under the provisions of G. S. 113-174.7, shall be entitled to renewal of the certificate of number of such boat when such owner has complied with all of the conditions of this section.

(b) For the purpose of this section, commercial fishing boats are defined as motorboats which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the boat shall submit, and the Wildlife Resources Commission shall require:

- (1) The regular application for renewal of the certificate of number of such boat, as provided by G. S. 75A-5;
- (2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the boat for which the application for renewal is made is a commercial fishing boat as herein defined; and

- (3) A receipt, signed by an authorized agent of the Department of Conservation and Development, and bearing the number awarded to the boat under the provisions of this chapter, showing that the commercial fishing boat license tax imposed by G. S. 113-174.7 has been paid for such boat for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall wilfully give false information upon the application or the statement required by the preceding paragraph, or who shall falsify any tax receipt thereby required, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine or imprisonment, or both, in the discretion of the court. (1961, c. 469, s. 2.)

Editor's Note.—The act inserting this section became effective as of July 1, 1961.

Section 3 of the act inserting this section provides that nothing in the act shall be construed to change the fee for the

original registration of any motorboat under the provisions of this chapter, or for the renumbering of any motorboat the number of which has lapsed by reason of nonrenewal.

§ 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 flash light 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 subdivision, 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.

(n) All boats propelled by machinery of 10 hp or less, which are operated on the public waters of this State, 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, and from sunset to sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. Provided, that the provisions of this subsection shall not be construed so as to conflict with or repeal any of the requirements or provisions set forth elsewhere in this chapter; provided further, that the provisions of this subsection shall not apply to Brunswick, Carteret, Chatham, Columbus, Duplin, Lee, New Hanover, Onslow, Pender and Rockingham counties. (1959, c. 1064, s. 6; 1963, c. 396.)

Editor's Note. — The 1963 amendment, effective June 1, 1963, added subsection (n).

§ 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 liveries 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.)

Stated in *Grindstaff v. Watts*, 254 N. C. 568, 119 S. E. (2d) 784 (1961).

§ 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.)

Cross Reference.—As to service of process upon nonresident operator of watercraft, see § 1-107.2.

§ 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 water of this State for towing a person or persons on water skis, or a surfboard, or similar device unless there is in such a 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; furnish 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.

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ARTICLE 1.

Cape Fear River.

§ 76-1. **Board of commissioners of navigation and pilotage.**—A board of commissioners of navigation and pilotage for the Cape Fear River and bar, to consist of five members, at least four of whom shall be residents of New Hanover County, and none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the Governor and their terms of office shall begin on the fifteenth day of April of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of section seven, article fourteen, of the Constitution of North Carolina. It shall be the duty of the Governor to appoint, on or before the fifth day of April, one thousand nine hundred and twenty-one, and on or before the fifth day of April of every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all matters that may concern the navigation of waters from seven miles above Negrohead Point downwards, and out of the bar and inlets. They shall annually, on the first Monday in May, appoint a harbor master for the port of Wilmington. (1921, c. 79, s. 1; C. S., s. 6943(a).)

Editor's Note. — The cases cited below were decided under former § 6943 of the Consolidated Statutes, which contained substantially the same provisions.

Constitutionality. — This article is constitutional as it is an exercise of the State's right to regulate pilotage, and should be construed liberally as a part of the maritime law. It does not create a monopoly or grant special privileges, but only regulates for the protection of the public. *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908); *St. George v. Hanson*, 239 N. C. 259, 78 S. E. (2d) 885 (1954).

Cruising Grounds for Pilot Boats.—The legislature may confer upon a local board of commissioners of navigation and pilotage authority to mark out cruising grounds for pilot boats. *McRae v. Heide*, 152 N. C. 625, 68 S. E. 173 (1910).

Time of Appointment of Commissioners.—The time of making the appointment of commissioners is merely directory, and if appointment is made after the fifth day of April, but before the fifteenth day of April, it is valid *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908).

§ 76-2. **Rules to regulate pilotage service.**—The board shall from time to time make and establish such rules and regulations respecting the qualifications, arrangements, and station of pilots as to them shall seem most advisable, and shall impose such reasonable fines, forfeitures and penalties as may be prescribed for the purpose of enforcing the execution of such rules and regulations.

The board shall also have power and authority to prescribe, reduce, and limit the number of pilots necessary to maintain an efficient pilotage service for the Cape Fear River and bar, as in its discretion may be necessary: Provided, that the present number of eleven pilots now actively engaged in the service shall not be reduced except for cause or by resignation, disability, or death. When, in the opinion of a majority of the board, the best interests of the port of Wilmington, the State of North Carolina, and the pilotage service shall require it, the board shall have power and authority to organize all pilots licensed by it into a mutual association, under such reasonable rules and regulations as the board may prescribe; any licensed pilot refusing to become a member of such association shall be subject to suspension, or to have his licensed revoked, at the discretion of the board. (1921, c. 79, s. 2; C. S., s. 6943(b); 1927, c. 158, s. 1.)

Editor's Note. — The 1927 amendment inserted the second sentence.

Reasonable Regulations. — A rule and regulation of the board to the effect that pilots shall not cruise beyond certain territory and that no pilot, except under certain unusual circumstances, shall be entitled to his fee for such services if they be tendered beyond the cruising ground they had laid off, is valid and reasonable. *Morse v. Heide*, 152 N. C. 625, 68 S. E. 173 (1910).

Limiting Number of Pilots. — The limiting of the number of pilots is a valid exercise of the police power, and is not such a grant of special privileges to certain persons as is provided against by the Constitution. *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908).

Providing for the qualifications of pilots is a valid exercise of the police power. *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908).

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).

§ 76-3. 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 the Cape Fear River and Bar, and shall give to such as are approved commissions under their hands and the seal of the board, to act as pilots for the river and bar; and the number of pilots so commissioned, not exceeding fifteen at any one time, shall be left to the discretion of the board, but the limitation as to number herein shall not deprive the board of the power to issue license to any person who is a duly licensed pilot at the time of the passage of this article. (1921, c. 79, s. 3; C. S., s. 6943(c); 1927, c. 158, s. 2.)

Editor's Note.—The 1927 amendment substituted "may" for "shall" near the beginning of this section.

Providing for examinations is a valid exercise of the police power. *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908).

§ 76-4. Appointment and regulation of pilots' apprentices.—The board, when it deems necessary for the best interests of the port, 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 feet, and one year thereafter for a license to pilot vessels of a draught of more than fifteen feet. No one shall be entered as an apprentice who is of the age of more than twenty-five years. (1921, c. 79, s. 4; C. S., s. 6943(d); 1927, c. 158, s. 3.)

Editor's Note. — The 1927 amendment tices, and to" appearing in the first sentence inserted "appoint in its discretion appren- tence.

§ 76-5. **Classes of licenses issued.**—The board shall have authority to issue two classes of licenses as follows:

- (1) A license to pilot vessels whose draught of water does not exceed eighteen feet, to such applicants above the age of twenty-one years who have served as apprentices for such length of time as is required by the rules and regulations of the board to entitle such applicant to such license;
- (2) An unlimited or full license to those who have served at least one year under a license of the first class: Provided, that the board shall have power to appoint pilots without reference to apprenticeship record as in its judgment the service may require. (1921, c. 79, s. 5; C. S., s. 6943(e); 1927, c. 158, s. 4.)

Editor's Note. — The 1927 amendment division (1) and added the proviso in substituted "eighteen" for "fifteen" in sub- division (2).

§ 76-6. **Renewal of license; license fee.**—All licenses shall be renewed annually upon payment of a fee of five dollars (\$5): Provided, the holder of such license shall have, during the year preceding the date for such renewal, complied with the provisions of this article and the reasonable rules and regulations prescribed by the board under authority hereof. (1921, c. 79, s. 6; C. S., s. 6943(f).)

§ 76-7. **Expenses of the board.**—Each pilot, or the association of pilots, when organized as in this article provided, shall pay over to the board under such reasonable rules as the board shall prescribe two per cent (2%) of each and every pilotage fee received, for the purpose of providing funds to defray the necessary expenses of the board. In the event that the total of the sums so paid over in any one year shall exceed the expenses of the board, the excess, upon being duly ascertained, shall be paid over to the fund for the benefit of widows and orphans of the deceased pilots, as said fund is now constituted and provided for by law. (1921, c. 79, s. 7; C. S., s. 6943(g).)

§ 76-8. **Pilots to give bond.**—Every person before being commissioned as a pilot shall give bond for the faithful performance of his duties, with two or more sureties, payable to the State of North Carolina in the sum of five hundred dollars (\$500); the board may, from time to time, and as often as it may deem necessary, enlarge the penalty of the bond, or require new or additional bonds to be given in a sum or sums not to exceed in all, one thousand dollars (\$1,000). Every bond taken of a pilot shall be filed with and preserved by the board, in trust for every person, firm, or corporation, who shall be injured by the neglect or misconduct of such pilots, and any person, firm, or corporation, so injured may severally bring suit for the damage by each one sustained. (1921, c. 79, s. 8; C. S., s. 6943(h).)

§ 76-9. **Permission to run as pilots on steamers; other ports.**—The board shall have power to grant permission in writing to any pilot in good standing and authorized to pilot vessels, to run regularly as pilots on steamers running between the port of Wilmington and other ports of the United States, under such rules and regulations as the board shall prescribe. (1921, c. 79, s. 9; C. S., s. 6943(i).)

Editor's Note. — For dictum questioning and determine disputes between pilots and the validity of the provisions of this section allowing members of the board to hear masters of vessels, etc., see *St. George v. Hardie*, 147 N. C. 88, 66 S. E. 920 (1908).

§ 76-10. **Cancellation of licenses.**—The board shall have the power to call in and cancel the license of any pilot who has refused or neglected, except in case of sickness, his duty as a pilot for a period of six months in succession, and any pilot who has been absent from the State for a longer period than six months in succession shall, upon his return, surrender his license to the board, or the board may declare the same void, except when such absence has been under permission from the board as provided in § 76-9. (1921, c. 79, s. 10; C. S., s. 6943(j).)

§ 76-11. **Jurisdiction over disputes as to pilotage.**—Each member of the board shall have power and authority to hear and determine any matter of dispute between any pilot and any master of a vessel, or between pilots themselves, respecting the pilotage of any vessel and any one of them may issue a warrant against any pilot for the recovery of any demand which one pilot may have against another, relative to pilotage, and for the recovery of any forfeiture or penalty provided by law, relating to pilotage on Cape Fear River and Bar, or provided by any bylaw or rule or regulation enacted by the board by virtue of any such law, which warrant the sheriff or any constable in New Hanover or Brunswick counties, shall execute together with any other process authorized by this article. On any warrant issued as herein provided any one of said commissioners may give judgment for any sum not exceeding five hundred dollars (\$500), and may issue execution thereon, in like manner as is provided for the issuing of execution on judgments rendered by justices of the peace, which writ of execution shall be executed agreeably to the law regulating the levy and sale under executions issuing from courts of justices of the peace. Any member of the board shall have authority to issue summons for witnesses and to administer oaths, and hearings before any member of the board of any matters as provided in this section shall conform as nearly as may be to procedure provided by law in courts of justices of the peace. From any judgment rendered by any member of the board, either party shall have the right of appeal to the superior court of New Hanover or Brunswick counties, in like manner as is provided for appeals on judgments of justices of the peace. (1921, c. 79, s. 11; C. S., s. 6943(k).)

§ 76-12. **Retirement of pilots from active service.**—The board shall have and is hereby given authority in its discretion, and under such reasonable rules and regulations as it may prescribe, to retire from active service any pilot who shall become physically or mentally unfit to perform his duties as pilot, and to provide for such pilot or pilots so retired such compensation as the board shall deem proper: Provided, however, that no pilot shall be retired, except with his consent, for physical or mental disability, unless and until such pilot shall have first been examined by the public health officers or county physicians of New Hanover or Brunswick counties, and such public health officers or physicians shall have certified, either separately or jointly, to the board the fact of such physical or mental disability. (1921, c. 79, s. 12; C. S., s. 6943(1).)

§ 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."

<i>Draft</i> Feet and under	COLUMN No. 1 <i>From Sea to South- port or Vice Versa</i>	COLUMN No. 2 <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 1927 amendment changed a majority of the pilotage rates as fixed by this section.

The 1959 amendment rewrote this section.

Pilot Entitled to Pilotage. — The first pilot speaking a vessel shall be entitled to the pilotage fees over the bar to Southport and out to sea again, provided said pilot

shall be ready and willing to serve as a pilot, etc. *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908)

A barge of over sixty gross tons having a United States licensed pilot on board is subject to pilotage, tender and refusal under this section upon entering North Carolina waters. *Craig v. Gulf Barge, etc., Co.*, 201 N. C. 250, 159 S. E. 424 (1931).

§ 76-14. **Pay for detention of pilots.**—Every master of a vessel who shall detain a pilot at the time appointed so that he cannot proceed to sea, though wind and weather permit, shall pay such pilot ten dollars (\$10) per day during the time of his actual detention, the pilot to have due notice from the master or agent of said vessel. (1921, c. 79, s. 14; C. S., s. 6943(n).)

§ 76-15. **Vessels not liable for pilotage.**—Any vessel coming into Southport from sea without the assistance of a pilot, the wind and weather being such that such assistance or service could have been reasonably given, shall not be liable for pilotage inward from sea, and shall be at liberty to depart without payment of any pilotage, unless the services of a pilot be secured. (1921, c. 79, s. 15; C. S., s. 6943(o).)

Validity. — This section is valid, when construed with the other sections, being an incentive to render pilots vigilant. *St. George v. Hardie*, 147 N. C. 88, 60 S. E. 920 (1908).

§ 76-16. **First pilot to speak vessel to get fees.**—The first pilot speaking a vessel from a regularly numbered and licensed boat of this board shall be entitled to the pilotage fees over the bar to Southport, and out to sea again: Provided, said pilot shall be ready and willing to serve as pilot when the vessel is ready to depart, due notice having been given by the master or agent to said pilot. (1921, c. 79, s. 16; C. S., s. 6943(p).)

§ 76-17. **Vessels entering for harborage exempt.**—Any vessel coming in from sea for harbor shall not be required to take a pilot either from sea inward or back to sea. (1921, c. 79, s. 17; C. S., s. 6943(q).)

§ 76-18. **Harbor master of Wilmington; duties.** — The harbor master appointed for the port of Wilmington shall hold his office for one year next ensuing and until his successor is appointed. The harbor master shall have power and is required:

- (1) To keep the channel way of the Cape Fear River and the track of vessels clear; to berth vessels at appropriate wharves or docks; to change the berth of any vessel at request of the owner of the wharf or dock; to move such vessels to some other wharf or to a safe anchorage in the stream; and he is further authorized and required to determine in all cases how far and in what instances it is the duty of masters and others having charge of vessels, flats, rafts, or crafts to accommodate each other in their respective berths and situations.
- (2) To arrest any person violating this chapter, and to immediately bring such offender before some justice of the peace of the county in which such offense may be committed, for trial.
- (3) Whenever in his judgment it shall be necessary to cast loose from any wharf or dock any raft, flat, vessel, or other craft by untying or cutting the lines by which it is made fast, if the owner after notice refuses to remove such vessel.
- (4) Whenever any of the public docks of the city of Wilmington are obstructed by any vessels, flats, barges, logs, hulks, trash, or garbage, and the owner thereof cannot be found or fails to remove the same from said docks, to take the most speedy method to clear the docks.
- (5) To appoint in writing some competent person to act in his place and stead during his temporary absence, or at such times as he is unable to attend to the duties of his office, and such person shall, while acting for such harbor master, have all the power and authority conferred upon and vested in the harbor master by law.
- (6) To collect from all vessels arriving in the port of Wilmington the following fees and no others, to wit: If over one hundred tons and under three hundred tons, three dollars; if over three hundred tons and under five hundred tons, five dollars; if over five hundred tons and under seven hundred tons, seven dollars; if over seven hundred tons, ten dollars. (Code, s. 3482; 1903, c. 662; 1905, c. 321; Rev., s. 4958; C. S., s. 690.)

§ 76-19. **Port wardens of Wilmington; election; oath.**—There shall be three competent persons at the port of Wilmington, to be known as port wardens. The persons so elected shall at once take and subscribe before the clerk of the superior court of New Hanover County the following oath:

I, A. B., do solemnly and sincerely swear that I will faithfully, honestly, and impartially execute and discharge the duty of port warden for the port of Wilmington, by duly appraising and estimating the damage sustained on any vessel or goods arriving in or stranded within the bounds of said port, and will make a true and fair estimate and report of and regarding the seaworthiness of any vessel by me surveyed. (1889, c. 437; 1905, c. 321; Rev., s. 4959; C. S., s. 6961.)

§ 76-20. **Port wardens of Wilmington; duties; fees.**—The port wardens of Wilmington shall, on request made by the master, owner, freighter, or supercargo of any vessel arriving in said port, or stranded within the bounds thereof, survey and make report of her situation and condition, and the causes thereof, and whether she should be repaired or condemned; inspect the conditions of vessels which may arrive in distress or may have suffered by gales of wind or otherwise at sea; the situation and condition of goods, wares, and merchandise which may arrive in said vessels or may have received damage at sea, and report thereon and the probable causes thereof; inspect the storage of cargoes of vessels arriving as aforesaid, or having received damage as aforesaid, before the same shall be dis-

charged, except where vessels may be stranded, in which cases their cargoes may be inspected after the same are removed, and report thereon, whether faulty or not, in which report shall be stated the probable cause of the damage; make surveys of goods, wares, and merchandise, and the cargoes of vessels damaged as aforesaid, and make and report estimates of the amount of the damage sustained as aforesaid; and make and report, if required, surveys of vessels outward bound, and report whether they are seaworthy or not, and fit for the voyage intended. All goods which shall be sold by reason of their having received damage as aforesaid, and shall have been surveyed or inspected by the said port wardens, shall be sold under their inspection and direction; and the said port wardens shall respectively receive for their services: For a survey at the town of Wilmington, the sum of ten dollars; for a survey at the Flats, the sum of twelve dollars; and for a survey at Fort Johnson, the sum of fifteen dollars, to be paid by the party at whose request the same is made, and recovered before any court of competent jurisdiction. (1889, c. 437, ss. 2, 3; Rev., s. 4960; C. S., s. 6962.)

§ 76-21. **Repairing boats in street docks at Wilmington forbidden.**—If any person shall, for the purpose of repair, put any flat, steamboat, or other craft, in any of the street docks of the city of Wilmington, or shall, for the purpose of repair, ground any such flat, steamboat, or other craft in any of the public docks of such city on the east side of the Cape Fear River between Church Street dock and Red Cross Street dock, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1903, c. 662, s. 2; Rev., s. 3554; C. S., s. 6963.)

§ 76-22. **Obstructing docks by flats and barges at Wilmington forbidden.**—The owner of any rafts, flats, vessels, or other craft lying alongside any wharf or wharves or before the entrance of any public dock, his or their agents or servants, shall, upon notice from the harbor master, immediately remove the same, and upon his or their refusal so to do, it shall be the duty of the harbor master, and he is hereby authorized and directed, after notice as aforesaid to the owner or owners thereof, their agents or servants, forthwith to cause all such rafts, flats, vessels, or other craft to be removed at the cost and expense of such owner or owners or their agent or agents, and the owner shall be guilty of a misdemeanor. (1903, c. 662, s. 3; Rev., s. 3549; C. S., s. 6964.)

§ 76-23. **Obstructing harbor master of Wilmington forbidden.**—If any person shall hinder, delay, obstruct, or in any manner willfully interfere with the harbor master of Wilmington in the discharge of his duty he shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days. (1903, c. 662, s. 8; Rev., s. 3552; C. S., s. 6965.)

§ 76-24. **Encumbering docks at Wilmington forbidden.**— If any person shall encumber any of the public docks of the city of Wilmington with logs, hulks, flats, or barges, trash or garbage, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars; and if the encumbrance be not removed immediately upon notice from the harbor master, he shall be fined ten dollars for each and every day thereafter such nuisance shall remain. (1903, c. 662, s. 9; Rev., s. 3547; C. S., s. 6966.)

ARTICLE 2.

Beaufort Harbor.

§ 76-25. **Commissioners of navigation; election.**— The commissioners of navigation for Old Topsail Inlet and Beaufort Harbor shall be composed of three persons, to be elected as follows: The board of commissioners of Carteret County shall elect one, the commissioners of the town of Beaufort shall elect one, and the commissioners of the town of Morehead City shall elect one. They shall

be elected at the regular meeting of such boards in June, one thousand nine hundred and five, and every two years thereafter, and shall qualify by taking the oath required by law before the clerk of the superior court or some justice of the peace of Carteret County, and enter upon the discharge of their duties on the first Monday in July following their election. (1899, c. 9, ss. 1, 2; Rev., s. 4964; C. S., s. 6967.)

§ 76-26. **Authority of commissioners.**—They shall have authority in all matters that may concern the navigation of the harbor, Old Topsail Inlet, and all the waters of the sound and rivers within ten miles of the town of Beaufort, and in the construction of wharves, and when there is no harbor master, the commissioners aforesaid shall decide all disputes about the moving of vessels and other matters which properly fall within the Department of Harbor Master. (1868-9, c. 208, s. 3; Code, s. 3528; Rev., s. 4965; C. S., s. 6968.)

§ 76-27. **Harbor master for Beaufort.** — The said commissioners immediately after their election shall appoint a harbor master for the port of Beaufort, who shall hold his office for the term of one year, unless sooner removed by the commissioners for neglect of duty. He shall be entitled to receive of the master of each vessel that shall enter said port, and for other services, such fees as the commissioners may prescribe. (1868-9, c. 208, s. 4; Code, s. 3529; Rev., s. 4966; C. S., s. 6969.)

§ 76-28. **Pilots; how appointed and licensed.** — Such commissioners shall elect the pilots for said inlet and harbor, and may make such rules and regulations for their government as the commissioners may deem right and proper, not inconsistent with the Constitution and laws of this State or of the United States: Provided, that all persons who may be licensed as pilots shall have had at least two years' practical experience as apprentices under some regular licensed pilot of Beaufort Harbor and Old Topsail Inlet, and shall secure two pilots in good standing to endorse in writing each application for license. Application for pilot licenses or branches shall be made to the commissioners in writing, giving the name, age, and occupation of applicants for two years next preceding the date of application. The Commissioners shall examine all applicants for pilot's licenses, and may also examine other persons as to qualification of applicants to perform the duties of pilot, and may in their discretion reject any applicant whom they may deem incompetent. (1899, c. 9, ss. 3, 4, 5; Rev., s. 4967; C. S., s. 6970; 1921, c. 74, s. 6.)

§ 76-29. **Fees for issuing pilot's license.**—The said commissioners shall give to every pilot elected by them a license or branch under their hands and seals, which shall be and remain in force for one year unless, for good cause to said commissioners appearing, the same shall be sooner revoked by them. They shall charge for each license or branch, fifteen dollars, which they may retain for their expenses and services. (1899, c. 9, s. 6; Rev., s. 4968; C. S., s. 6971; 1921, c. 74, s. 5.)

§ 76-30. **Expiration of pilot's license; reinstatement.** — Each pilot shall forfeit his branch after fifteen days' expiration of the same; however, such pilot may be reinstated by securing two pilots in good standing to sign his branch. (1915, c. 142, s. 3; C. S., s. 6972.)

§ 76-31. **Pilot boats to be numbered.**—Each and every pilot vessel in Carteret County shall be numbered; and any pilot piloting a vessel or barge in or out of the territory as set out in this article, without a number, shall be guilty of a misdemeanor and be subject to a fine of not more than fifty dollars or imprisoned not more than thirty days, or both, in the discretion of the court. The commissioners of navigation of Beaufort Harbor shall make provision for numbering of pilot vessels as required by this section. All said fines collected under this ar

ticle to be applied to the public school fund of Carteret County. (1915, c. 142, ss. 2, 3; C. S., s. 6973.)

§ 76-32. **Rates of pilotage.**—The pilotage for Old Topsail Inlet and Beaufort Harbor shall be as follows: For vessels drawing eight feet and under, two dollars and fifty cents per foot; ten feet and over eight, three dollars per foot; twelve feet and over ten, four dollars per foot; all over twelve feet, four dollars and fifty cents per foot. The above fees to be collectible in Beaufort Harbor from Middle marsh to Lewis thoroughfare, and from the Neuse River side of the inland waterway through the said waterway and out of Beaufort Inlet. For every vessel piloted without these bounds an additional charge of fifty cents per foot may be charged. The commissioners shall have the rates of pilotage printed or written on every license or branch issued by them, and every pilot shall exhibit his license to the master of every vessel he has in charge, when demanded by said master. The rates of pilotage as set out in this section shall apply to all vessels entering or leaving "Old Topsail Inlet" and "Beaufort Harbor." (1899, c. 9, ss. 7, 8; 1901, c. 639; Rev., s. 4969; 1909, c. 250, s. 1; 1915, c. 142, s. 1; C. S., s. 6974; 1921, c. 74, ss. 1-3.)

§ 76-33. **Vessels required to take pilots.**—All vessels, coastwise or foreign, over sixty gross tons shall take a State-licensed pilot from sea to Pier One, Morehead City, North Carolina, and from Pier One, Morehead City, North Carolina, to sea, and the rates of pilotage shall be the rates as are set out in § 76-32. (1921, c. 74, s. 4; C. S., s. 6974(a).)

Applied in *United States v. Tug Parris Island*, 215 F. Supp. 144 (1963).

§ 76-34. **Vessel under sixty tons not liable for pilotage.** — No pilot acting under the authority of the commissioners of navigation for Old Topsail Inlet, shall be entitled to pilotage for any vessel under sixty tons burden, unless such vessel shall have given a signal for a pilot, or otherwise shall have required the assistance of a pilot. (1801, c. 600, s. 3; 1806, c. 711, s. 1; R. C., c. 85, s. 33; Code, s. 3523; Rev., s. 4970; C. S., s. 6975.)

ARTICLE 3.

Bogue Inlet.

§ 76-35. **Commissioners of navigation for Bogue Inlet.**—The board of commissioners of the county of Onslow shall appoint five commissioners of navigation for Bogue Inlet and its waters. When vacancies occur in said board, by refusal to act, by resignation, or otherwise, the remaining members of such board shall fill the same until the same be supplied by the appointing board, which is directed to be done at the first meeting after the vacancy occurs. And the said board shall have the same powers and authority as to pilots and pilotage as the commissioners for Old Topsail Inlet and Beaufort Harbor. (1783, c. 194; 1784, c. 208, s. 2; R. C., c. 85, s. 25; 1879, c. 216, s. 4; Code, s. 3515; Rev., s. 4971; C. S., s. 6976.)

§ 76-36. **Rates of pilotage.**—The branch pilots for Bogue Inlet shall be entitled to receive of the commander of such vessel as they may have charge of the following pilotage, namely: For bringing any vessel into the said inlet, drawing less than seven feet, from the outside of the bar to the anchorage before the town, or the customary place in Hill's Channel, one dollar per foot; for a vessel drawing more than seven feet, one dollar and fifty cents per foot; and the same fees for pilotage outward as inward. (Code, s. 3535; 1889, c. 121; Rev., s. 4972; C. S., s. 6977.)

ARTICLE 4.

Hatteras and Ocracoke.

§ 76-37. **Board of commissioners of navigation; organization; oath; pilots' licenses.**—John W. Rolinson, R. R. Quidley, George L. Styron, William Balance, and Charles L. Odine shall constitute a board of commissioners of navigation for the port of Hatteras Inlet, of the county of Dare; William E. Howard, Christopher O. Neal, Sr., and Gilbert O. Neal, of the county of Hyde; D. R. Roberts and J. W. Gilgo, of the county of Carteret, shall constitute a board of navigation for the port of Ocracoke Inlet, whose duty it shall be to meet at Hatteras and Ocracoke respectively three times in each year, or a majority of the respective board, after giving at least twenty days' notice of each meeting, and when any person is desirous of becoming a pilot at Hatteras or Ocracoke Inlet, over the swashes through Pamlico and Albemarle Sounds, he shall be examined by said board, and when found competent to take charge of any ship or vessel as a pilot the board shall issue to him a branch and take the bond authorized by law, and no person shall be authorized to act as a bar or swash pilot unless he shall have a branch from said boards. The said boards shall have their offices at Hatteras and Ocracoke respectively, in which shall be filed the bonds of the pilots, and every pilot receiving a branch from said boards shall pay to the board from which he receives such branch two dollars and fifty cents, of which sum the commissioners of Ocracoke who live in Carteret County shall receive ten cents per mile traveling to and from the meeting of said board, and the residue shall be divided between all the members of said board, and the commissioners shall belong to each board respectively. When a vacancy shall occur in either board by death, resignation, or refusal to act, a majority thereof of each board shall appoint some suitable person thereto, whose residence shall be at the same place where the vacancy occurred; said commissioners shall keep a regular journal of their proceedings, and before entering on the duties of their office they shall take and subscribe before any justice of the peace of the counties of Dare, Carteret, or Hyde the following oath:

I do solemnly swear that I will truly and faithfully and impartially examine every person who shall apply to me for a branch, to the best of my ability: So help me, God.

The branch shall expire in three years from the date thereof. (R. C., c. 85, s. 24; 1871-2, c. 134; 1879, c. 216; Code, s. 3512; 1897, c. 211; Rev., s. 4961; C. S., s. 6978.)

§ 76-38. **Rates of pilotage.**—Branch pilots of Ocracoke or Hatteras shall be entitled to receive of the commander of such vessel as they may have in charge the following pilotage, namely: For every vessel of sixty and not over one hundred and forty tons burden, from the other side of the bar, at any place within the limits of the pilot ground, to Beacon Island Road, or Wallace's Channel, ten cents for each ton, and the further sum of two and a half cents for each ton over one hundred and forty, and two dollars for each vessel over either of the swashes (that is, over said swashes either to or from Beacon Island Road, or Wallace's Channel, or over any shoal lying intermediate between either of said swashes and Beacon Island Road or Wallace's Channel); for every ship or vessel from the mouth of the swash to either of the ports of New Bern or Washington, one dollar per foot, and for every ship or vessel from the same place to the port of Edenton, twelve dollars; and to the port of Elizabeth City, ten dollars; and the same allowance down as up, and outward as inward. (1794, c. 426; 1806, c. 711; 1846, c. 49, ss. 1, 2, 3; R. C., c. 85, s. 34; Code, s. 3524; Rev., s. 4962; C. S., s. 6979.)

§ 76-39. **Who may be pilots for Hatteras or Ocracoke Inlet.**—The said boards shall not issue or grant any branch to pilot vessels through Hatteras Inlet to any person who does not reside in Hatteras precinct, which precinct extends from Cape Hatteras lighthouse to Hatteras Inlet. And the said boards shall

not issue or grant a branch to pilot vessels through or over Ocracoke Inlet to any person who does not reside upon the island of Ocracoke or in the precinct of Portsmouth. (1856-7, c. 29; 1879, c. 216, s. 3; Code, s. 3514; Rev., s. 4963; C. S., s. 6980.)

ARTICLE 5.

General Provisions.

§ 76-40. Obstructing navigable waters; removing beacons; penalty; pilot's liability. — If any person shall cast or throw from any vessel, into the navigable water of Carteret or Onslow counties, of Tar or Pamlico rivers, or into the navigable waters of the Cape Fear, or any other river in the State, or into any channel of navigable water elsewhere than in a river, any ballast, stone, shells, earth, trash, or other substance likely to be injurious to the navigation of such waters, rivers, or channel; or if any person shall willfully pull down any beacon, stake, or other mark, erected or placed by virtue of any bylaw, order, or regulation passed or ordained by any commissioners of navigation, he shall be guilty of a misdemeanor and shall forfeit and pay two hundred dollars, to be recovered for the use of the commissioners in whose waters the offense was committed. If any pilot shall knowingly suffer any such unlawful act to be done, and shall not within ten days thereafter give to the said commissioners, or one of them, information thereof, such pilot shall likewise be guilty of a misdemeanor; and, besides the usual punishment of such offense, on conviction, shall be forever incapable of acting as a pilot in the State. (1784, c. 206, s. 11; 1811, c. 839; 1833, c. 146; R. S., c. 88, ss. 23, 24, 45; 1842, c. 65, s. 4; 1846, c. 60, s. 3; R. C., c. 85, ss. 40, 41; Code, ss. 3537, 3538; Rev., s. 3560; C. S., s. 6981.)

Cited in *State v. Eason*, 114 N. C. 787, 19 S. E. 88 (1894).

§ 76-41. Obstructing waters of Currituck Sound.—It shall be unlawful for any person to obstruct navigation in the waters of Currituck Sound and tributaries, and all persons, corporations, companies, or clubs, who have heretofore placed or caused to be placed any hedging across the mouth of a bay, creek, strait, or lead of water in Currituck Sound or tributaries, made of iron, wire, or wood or other material, for the purpose of preventing the free passage of boats or vessels of any size or class, or to stop the public use of such bay, creek, strait, or lead of water, are required to forthwith remove the same. Any person, corporation, or club violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than ten dollars, or imprisoned not more than thirty days, at the discretion of the court. (1897, c. 277; Rev., s. 3553; C. S., s. 6982.)

§ 76-42. Lumbermen to remove obstructions in Albemarle Sound.—If any lumberman shall fail to remove all obstructions placed by him in the waters of Albemarle Sound and its tributaries, as soon as practicable, after they have ceased to use them for the purpose for which they were placed in said waters, from all places where the water is not less than two feet deep, and also from all landing places on both sides, for the space of sixty feet from the shore outward, he shall be guilty of a misdemeanor, and fined not less than one dollar nor more than fifty dollars, at the discretion of the court. (1880, c. 37, ss. 1, 2; Code, s. 3303; Rev., s. 3551; C. S., s. 6983.)

§ 76-43. Anchorage in range of lighthouses. — If the master of any vessel shall anchor on the range line of any range of lights established by the United States lighthouse board, unless such anchorage is unavoidable, he shall be guilty of a misdemeanor, and punished by a fine not to exceed fifty dollars. (1883, c. 165, s. 2; Code, s. 3086; Rev., s. 3550; C. S., s. 6984.)

§ 76-44. Vessels on inland waterways exempt from pilot laws; proviso as to steam vessels.—All vessels, barges, schooners, or other craft

passing through the inland waterway of this State, when bound to a port or ports in this or any other state, be and the same are hereby exempt from the operations of the pilot laws of North Carolina and are not compelled to take a State licensed pilot: Provided, that steam vessels not having a United States licensed pilot for the waters navigated on board shall be subject to the State pilot laws. (1917, c. 33, s. 2; C. S., s. 6985.)

Under the Federal Law.—Vessels passing through the inland waterways of the State are exempt from the pilot laws by the State statutes, subject to the proviso of this section; and, under the federal statutes, whether a vessel has a gross tonnage of more than fifteen tons should be determined by the method prescribed by the federal statutes requiring a pilot; and in an

action for damages alleged to have been caused by defendant's negligence in a collision, it is reversible error for the trial judge to direct an affirmative answer to the issue of contributory negligence in navigating without a pilot upon plaintiff's assertion that his vessel would carry thirty tons. *Harris v. Slater*, 187 N. C. 163, 121 S. E. 437 (1924).

§ 76-45. Bond of pilot.—Every person, before he obtains a commission or a branch to be a pilot, shall give bond with two sufficient sureties payable to the State of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his duties, and the duties of his apprentices; and the body appointing such pilot may, from time to time, and as often as they may deem it necessary, enlarge the penalty of the bond, or require new and additional bonds to be given; and every bond taken of a pilot shall be filed with, and preserved by, the said body appointing such pilot in trust for every person that shall be injured by the neglect or misconduct of such pilot, or his apprentices; who may severally bring suit thereon for the damage by each one sustained. (1784, c. 207, s. 3; R. C., c. 85, s. 6; Code, s. 3487; Rev., s. 307; C. S., s. 6986.)

§ 76-46. Pilots to have spyglasses.—Every pilot, within such convenient time as the commissioners may direct, who has control over the waters within which he acts, shall furnish himself with a good telescope or spyglass, under the penalty of fifty dollars, to be paid to the commissioners. (1790, c. 320, s. 3; R. C., c. 85, s. 27; Code, s. 3517; Rev., s. 4973; C. S., s. 6987.)

§ 76-47. Acting as pilot without license.—If any person shall act as a pilot, who is not qualified and licensed in the manner prescribed in this chapter, he shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$50.00 and not less than \$25.00, or imprisoned not more than thirty days at the discretion of the court: Provided, that should there be no licensed pilot in attendance, any person may conduct into port any vessel in danger from stress of weather or in a leaky condition. (1783, c. 194, s. 3; 1784, c. 208, s. 4; R. C., c. 85, s. 29; Code, s. 3519; Rev., s. 4974; C. S., s. 6988; 1933, c. 325.)

Editor's Note.—The 1933 amendment re-wrote this section.

§ 76-48. Penalty on pilot neglecting to go to vessel having signal set.—When any pilot shall see any vessel on the coast, having a signal for a pilot, or shall hear a gun of distress fired off the coast, and shall neglect or refuse to go to the assistance of such vessel, such pilot shall forfeit and pay one hundred dollars, to be recovered in the name of the State, one half to the use of the informer and the other half to the master of the vessel, unless such pilot is then actually in charge of another vessel. (1783, c. 194, s. 6; 1784, c. 207, s. 10; 1790, c. 320, s. 2; R. C., c. 85, s. 31; Code, s. 3521; Rev., s. 4975; C. S., s. 6989.)

§ 76-49. Pilots may be removed.—Unless otherwise provided in the first article of this chapter for the Cape Fear River, whenever any pilot appointed, as authorized in this chapter, shall, on trial, be found incompetent, or shall be guilty of improper conduct by intoxication or otherwise, or of any misbehavior in his office, or shall absent himself from the State for a period of six months, the pilot

so offending may be removed from his office by the board of commissioners under whose authority he is acting, by a notice to him in writing; and if after such removal he shall attempt to take charge of any vessel, he shall forfeit and pay two hundred dollars for the use of said board. And it shall be the duty of the board to put up a written notice of the removal, in the public places within the port, or publish it in some convenient newspaper. But no pilot for the navigation of Hatteras Inlet shall be required to surrender or forfeit his branch by reason of absence from the State for a period of less than six months. (1784, c. 207, s. 4; 1800, c. 565; 1819, c. 1025, s. 4; R. S., c. 88, ss. 7, 31, 35; R. C., c. 85, s. 28; 1869-70, c. 235, s. 7; 1876-7, c. 22; 1881, c. 261, ss. 1, 2; Code, ss. 3490, 3518; Rev., s. 4976; C. S., s. 6990.)

Entitled to Fees Until Removed. — A duly licensed pilot may recover charges for his services, and while his failure to have his boat registered and numbered will cause a forfeiture of his license, the lawful pilotage charges for the service of such

boat is recoverable by him until the commissioners of navigation and pilotage have acted thereon and revoked his license. *Davis v. Heide & Co.*, 161 N. C. 476, 77 S. E. 691 (1913).

§ 76-50. **Pilots refused, entitled to pay.**—If a branch pilot shall go off to any vessel bound in, and offer to pilot her over the bar, the master or commander of such vessel, if he refuses to take such pilot, shall pay to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in, to be recovered before a justice of the peace, if the sum be within his jurisdiction: Provided, that the first pilot, and no other, who shall speak such vessel so bound in shall be entitled to the pay provided for in this section. (R. C., c. 85, s. 32; 1871-2, c. 117; Code, s. 3522; Rev., s. 4978; C. S., s. 6991.)

§ 76-51. **Pay of pilots when detained by vessel.**—Every master of a vessel who shall detain a pilot at the time appointed, so that he cannot proceed to sea, though wind and weather should permit, shall pay to such pilot three dollars per day during the time of his actual detention. (1858-9, c. 23, s. 7; Code, s. 3495; Rev., s. 4979; C. S., s. 6992.)

§ 76-52. **Rates of pilotage annexed to commission.**—The commissioners of navigation for the several ports of this State shall annex to the branch or commission, by them given to each pilot, a copy of the fees to which such pilot is entitled. (1784, c. 208, s. 4; 1796, c. 470, s. 5; R. C., c. 85, ss. 9, 38; Code, ss. 3497, 3536; Rev., s. 4980; C. S., s. 6993.)

§ 76-53. **Harbor masters; how appointed.**—The several boards of commissioners of navigation may appoint a harbor master for their respective ports. They shall appoint a clerk to keep books, in which shall be recorded all their proceedings. (R. C., c. 85, s. 35; Code, s. 3525; Rev., s. 4981; C. S., s. 6994.)

§ 76-54. **Commissioners of navigation may hold another office.**—A commissioner of navigation and pilotage shall be deemed a commissioner for a special purpose within the meaning of section seven of article fourteen of the Constitution of North Carolina, so as not to be prohibited from holding at the same time with his commissionership another office under the national or State governments. (Ex. Sess., 1913, c. 76; C. S., s. 6995.)

§ 76-55. **Commissioners of navigation to designate place for trash.**—The several boards of commissioners established by this chapter may, subject to such regulations as the United States may make, designate the places whereat, within the waters under their several and respective control, may be cast and thrown ballast, trash, stone, and like matter. (1833, c. 146, ss. 1, 2, 3; R. S., c. 88, ss. 23, 24, 45; 1846, c. 60, s. 3; R. C., c. 85, s. 40; Code, s. 3537; Rev., s. 4982; C. S., s. 6996.)

Cited in *State v. Eason*, 114 N. C. 787, 19 S. E. 88 (1894).

§ 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 watercourses 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.

§ 76-57. **Rafts to exercise care in passing buoys, etc., penalty.**—If any person having charge of any raft passing any buoy, beacon, or day mark, shall not exercise due diligence in keeping clear of it, or, if unavoidably fouling it, shall not exercise due diligence in clearing it, without dragging from its position such buoy, beacon, or day mark, he shall be guilty of a misdemeanor, and punished by fine not to exceed fifty dollars. (1883, c. 165, s. 3; Code, s. 3087; Rev., s. 3545; C. S., s. 6998.)

§ 76-58. **Interfering with buoys, beacons, and day marks.** — If any person shall moor any kind of vessel, or any raft or any part of a raft, to any buoy, beacon, or day mark placed in the waters of North Carolina by the authority of the United States lighthouse board, or shall in any manner hang on with any vessel or raft, or part of a raft, to any such buoy, beacon, or day mark, or shall willfully remove, damage, or destroy any such buoy, beacon, or day mark, or shall cut down, remove, damage, or destroy any beacon erected on land in this State by the authority of the said United States lighthouse board, or through unavoidable accident run down, drag from its position, or in any way injure any buoy, beacon, or day mark, as aforesaid, and shall fail to give notice as soon as practicable of having done so, to the lighthouse inspector of the district in which said buoy, beacon, or day mark may be located, or to the collector of the port, or, if in charge of a pilot, to the collector of the port from which he comes, he shall for every such offense be guilty of a misdemeanor and shall be punished by a fine not to exceed two hundred dollars, or imprisoned not to exceed three months, or both, at the discretion of the court. (1858-9, c. 58, ss. 2, 3; 1883, c. 165, s. 1; Code, s. 3085; Rev., s. 3546; C. S., s. 6999.)

ARTICLE 6.

Morehead City Navigation and Pilotage Commission.

§ 76-59. **Board of commissioners of navigation and pilotage.** — A board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar to consist of three members, none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the Morehead City port commission, and their terms of office shall begin on the 15th day of July of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of section 7, article 14 of the Constitution of North Carolina. It shall be the duty of the Morehead City port commission to appoint on or before the 1st day of July, 1947, and on or before the 1st day of July every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all mat-

ters that may concern the navigation of waters from the Beaufort Sea Buoy to Morehead City, and out of the bar and inlet. (1947, c. 748.)

§ 76-60. **Rules to regulate pilotage service.**—The board shall from time to time make and establish such rules and regulations respecting the qualifications, arrangements, and station of pilots as to them shall seem most advisable, and shall impose such reasonable fines, forfeitures and penalties as may be prescribed for the purpose of enforcing the execution of such rules and regulations. The board shall also have power and authority to prescribe, reduce and limit the number of pilots necessary to maintain an efficient pilotage service for Old Topsail Inlet and Beaufort Bar, as in its discretion may be necessary: Provided, that the present number of two pilots now actively engaged in the service shall not be reduced except for cause or by resignation, disability, or death. The board shall have power and authority to organize all pilots licensed by it into a mutual association, under such reasonable rules and regulations as the board may prescribe; any licensed pilot refusing to become a member of such association shall be subject to suspension, or to have his license revoked, at the discretion of the board. (1947, c. 748.)

§ 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 deleted the former provision limiting the number of pilots commissioned at one 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 deleted "nor shall the board license a pilot except upon written approval of two licensed pilots," formerly appearing at the end of this section.

§ 76-62.1. **Renewal of license; license fee.** — All licenses shall be renewed annually upon payment of a fee of five dollars (\$5.00); provided, the holder of such license shall have during the year preceding the date of such renewal, complied with the provisions of this article and the reasonable rules and regulations prescribed by the board under authority hereof. (1947, c. 748.)

§ 76-63. **Expenses of the board.**—Each pilot, or the association of pilots, when organized as in this article provided, shall pay over to the board under such reasonable rules as the board shall prescribe two per cent (2%) of each and every pilotage fee received, for the purpose of providing funds to defray the necessary expenses of the board. (1947, c. 748.)

§ 76-64. **Pilots to give bond.**—Every person before being commissioned as a pilot shall give bond for the faithful performance of his duties, with two or more personal sureties or a bond in some surety company licensed to do business in North Carolina payable to the State of North Carolina in the sum of five hundred (\$500.00) dollars; the board may, from time to time, and as often as it may deem necessary, enlarge the penalty of the bond, or require new or additional

bonds to be given in a sum or sums not to exceed in all, one thousand (\$1,000.00) dollars. Every bond taken of a pilot shall be filed with and preserved by the board in trust for every person, firm, or corporation, who shall be injured by the neglect or misconduct of such pilots, and any person, firm, or corporation so injured may severally bring suit for the damage by each one sustained. (1947, c. 748.)

§ 76-65. **Permission to run as pilots on steamers; other ports.**—The board shall have power to grant permission in writing to any pilot in good standing and authorized to pilot vessels, to run regularly as pilots on steamers running between Old Topsail Inlet and Beaufort Bar, and the port of Morehead City, and other ports of the United States, under such rules and regulations as the board shall prescribe. (1947, c. 748.)

§ 76-66. **Cancellation of licenses.**—The board shall have the power to call in and cancel the license of any pilot who has refused or neglected, except in case of sickness, his duty as a pilot. Any pilot who has been absent from the State for a longer period than six months in succession shall, upon his return, surrender his license to the board, or the board may declare the same void, except when such absence has been under permission from the board as provided above. (1947, c. 748.)

§ 76-67. **Jurisdiction over disputes as to pilotage.**—Each member of the board shall have power and authority to hear and determine any matter of dispute between any pilot and any master of a vessel, or between pilots themselves, respecting the pilotage of any vessel and any one of them may issue a warrant against any pilot for the recovery of any demand which one pilot may have against another, relative to pilotage, and for the recovery of any forfeiture or penalty provided by law, relating to pilotage in Old Topsail Inlet and Beaufort Bar, or provided by any bylaw or rule or regulation enacted by the board by virtue of any such law, which warrant the sheriff or any constable in Carteret County, shall execute together with any other process authorized by this article. On any warrant issued as herein provided any one of said commissioners may give judgment for any sum not exceeding five hundred (\$500.00) dollars, and may issue execution thereon, in like manner as is provided for the issuing of execution of judgments rendered by justices of the peace, which writ of execution shall be executed agreeably to the law regulating the levy and sale under executions issuing from courts of justices of the peace. Any member of the board shall have authority to issue summons for witnesses and to administer oaths, and hearings before any member of the board and any matters as provided in this section shall conform as nearly as may be to procedure provided by law in the courts of justices of the peace. From any judgment rendered by any member of the board, either party shall have the right of appeal to the Superior Court of Carteret County, in like manner as is provided for appeals on judgments of justices of the peace. (1947, c. 748.)

§ 76-68. **Retirement of pilots from active service.** — The board shall have and is hereby given authority in its discretion, and under such reasonable rules and regulations as it may prescribe, to retire from active service any pilot who shall become physically or mentally unfit to perform his duties as pilot, and to provide for such pilot or pilots so retired such compensation as the board shall deem proper: Provided, however, that no pilot shall be retired, for physical or mental disability, unless and until such pilot shall have first been examined by the public health officer or county physician of Carteret County, and such public health officer or physician shall have certified, either separately or jointly, to the board the fact of such physical or mental disability. (1947, c. 748.)

§ 76-69. **When employment compulsory; rates of pilotage.**—All vessels, coastwise or foreign, over 60 gross tons, shall on and after the 1st day of August, 1947, take a State licensed pilot from Beaufort Sea Buoy to Morehead

City and from Morehead City to sea, and the rates of pilotage shall be such as may be prescribed from time to time by the board of commissioners.

Vessels calling at the port solely for the purpose of obtaining bunkers shall pay one half of the fees prescribed by the said board. (1947, c. 748.)

§ 76-70. Pay for detention of pilots.—Every master of a vessel who shall detain a pilot at the time appointed so that he cannot proceed to sea, though wind and weather permit, shall pay such pilot ten dollars (\$10.00) per day during the time of his actual detention, the pilot shall have due notice from the master or agent of said vessel. (1947, c. 748.)

§ 76-71. Vessels not liable for pilotage. — Any vessel coming into Morehead City from sea without assistance of a pilot, the wind and weather being such that such assistance or service could not have been reasonably given, shall not be liable for pilotage inward from sea, and shall be at liberty to depart without payment of any pilotage, unless the service of a pilot be secured. (1947, c. 748.)

§ 76-72. First pilot to speak vessel to get fees. — The first licensed pilot speaking a vessel from a regularly numbered pilot boat of this board shall be entitled to the pilotage fees over Old Topsail Inlet and Beaufort Bar to Morehead City, and out to sea again. Provided, said pilot shall be ready and willing to serve as pilot when the vessel is ready to depart, due notice having been given by the master or agent to said pilot. (1947, c. 748.)

§ 76-73. Vessels entering for harborage exempt.—Any vessel coming in from sea for harbor shall not be required to take a pilot either from sea inward or back to sea. (1947, c. 748.)

Chapter 77.
Rivers and Creeks.

Article 1.

Commissioners for Opening and Clearing Streams.

Sec.

- 77-1. County commissioners to appoint commissioners.
- 77-2. Flats and appurtenances procured.
- 77-3. Laid off in districts; passage for fish.
- 77-4. Gates and slopes on milldams.
- 77-5. Owner to maintain gate and slope.
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Sec.

- 77-8. Repairing breaks.
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Article 2.

Obstructions in Streams.

- 77-12. Obstructing passage of boats.
- 77-13. Obstructing streams a misdemeanor.
- 77-14. Obstructions in streams and drainage ditches.

ARTICLE 1.

Commissioners for Opening and Clearing Streams.

§ 77-1. **County commissioners to appoint commissioners.**—Where any inland river or stream runs through the county, or is a line of their county, the boards of commissioners of the several counties may appoint commissioners to view such river or stream, and make out a scale of the expense of labor with which the opening and clearing thereof will be attended; and if the same is deemed within the ability of the county, and to be expedient, they may appoint and authorize the commissioners to proceed in the most expeditious manner in opening and clearing the same. (Code, s. 3706; 1887, c. 370; Rev., s. 5297; C. S., s. 7363.)

Cross Reference. — As to building bridges, see § 136-72 et seq.

§ 77-2. **Flats and appurtenances procured.** — The board of county commissioners appointing the commissioners may direct them to purchase or hire a flat with a windlass and the appurtenances necessary to remove loose rock and other things, which may by such means be more easily removed, and allow the same to be paid for out of the county funds. (1785, c. 242, s. 2; R. C., c. 100, s. 3; Code, s. 3708; Rev., s. 5299; C. S., s. 7365.)

§ 77-3. **Laid off in districts; passage for fish.** — The board of county commissioners may appoint commissioners to examine and lay off the rivers and creeks in their county; and where the stream is a boundary between two counties, may lay off the same on their side; in doing so they shall allow three fourths for the owners of the streams for erecting slopes, dams and stands; and one-fourth part, including the deepest part, they shall leave open for the passage of fish, marking and designating the same in the best manner they can; and if mills are built across such stream, and slopes may be necessary, the commissioners shall lay off such slopes, and determine the length of time they shall be kept open; and such commissioners shall return to their respective boards of county commissioners a plan of such slopes, dams, and other parts of streams viewed and surveyed. (1787, c. 272, s. 1; R. C., c. 100, s. 5; Code, s. 3710; Rev., s. 5301; C. S., s. 7367.)

Cross References. — See note to § 77-4. As to obstructing passage of fish in streams, see §§ 113-251 and 113-252. As to erecting artificial islands or lumps in public waters, see § 14-133. As to injuries to dams and water channels of mills and factories, see § 14-142.

Cited in *Gwaltney v. Scottish Carolina Timber, etc., Co.*, 111 N. C. 547, 16 S. E. 692 (1892); *Hutton v. Webb*, 124 N. C. 749, 33 S. E. 169 (1899).

§ 77-4. **Gates and slopes on milldams.** — The commissioners appointed by the board of county commissioners to examine and lay off the rivers and creeks within the county, or where the stream is a boundary between counties, shall have power to lay off gates, with slopes attached thereto, upon any milldam built across such stream, of such dimensions and construction as shall be sufficient for the convenient passage of floating logs and other timber, in cases where it may be deemed necessary by the said board of county commissioners; and they shall return to the board of county commissioners appointing them a plan of such gates, slopes, and dams in writing. (1858-9, c. 26, s. 1; Code, s. 3712; Rev., s. 5302; C. S., s. 7368.)

Only Applicable to Floatable Streams. — It would seem that the statute was passed entirely with reference to floatable streams because without condemnation the commissioners would have no right to enter upon and clean out beds of streams which were not natural highways. *Commissioners v. Catawba Lumber Co.*, 116 N. C. 731, 21 S. E. 941 (1895).

Dams Built under Permit. — Authority over streams, conferred upon county commissioners while it stands and is unim-

peached by allegations of fraud or other illegal conduct, is a bar to the remedy by injunction. Therefore, a defendant will not be restrained from erecting a dam across a stream, when he is proceeding under the permit and direction of the commissioners. *McLaughlin v. Hope Mfg. Co.*, 103 N. C. 100, 9 S. E. 307 (1889).

Cited in *Gwaltney v. Scottish Carolina Timber, etc., Co.*, 111 N. C., 547, 16 S. E. 692 (1892).

§ 77-5. **Owner to maintain gate and slope.**—Upon the confirmation of the report made by the commissioners, and notice thereof given to the owner or keeper of said mill, it shall be his duty forthwith to construct, and thereafter to keep and maintain, at his expense, such gate and slope, for the use of persons floating logs and other timber as aforesaid, so long as said dam shall be kept up, or until otherwise ordered by the board of county commissioners. (1858-9, c. 26, s. 2; Code, s. 3713; Rev., s. 5303; C. S., s. 7369.)

§ 77-6. **Gates and slopes discontinued.**— The commissioners appointed as aforesaid, at any time that they may deem such gate and slope no longer necessary, may report the fact to their respective boards of county commissioners, and said boards of county commissioners may order the same to be discontinued. (1858-9, c. 26, s. 3; Code, s. 3714; Rev., s. 5304; C. S., s. 7370.)

§ 77-7. **Failure of owner of dam to keep gates, etc.**—If any owner or keeper of a mill, whose dam is across any stream, shall fail to build a gate and slope therein, or thereafter to keep and maintain the same as required by commissioners to lay off rivers and creeks, he shall be guilty of a misdemeanor. (1858-9, c. 26, s. 4; Code, s. 3715; Rev., s. 3383; C. S., s. 7371.)

Cited in *Letterman v. Micr Co.*, 249 N. C. 769, 107 S. E. (2d) 753 (1959).

§ 77-8. **Repairing breaks.** — Wherever any stream of water which is used to propel machinery shall be by freshet or otherwise diverted from its usual channel so as to impair its power as used by any person, such person shall have power to repair the banks of such streams at the place where the break occurs, so as to cause the stream to return to its former channel. (1879, c. 53, s. 1; Code, s. 3716; Rev., s. 5305; C. S., s. 7372.)

§ 77-9. **Entry upon lands of another to make repairs.** — In case the break occurs on the lands of a different person from the one utilizing the stream, the person utilizing the stream shall have power to enter upon the lands of such other person to repair the same, and in case such person objects, the clerk of the superior court of the county in which the break occurs shall, upon application of the party utilizing the stream, appoint three disinterested freeholders, neither of whom shall be related to either party, who after being duly sworn shall lay off a road, if necessary, by which said person may pass over the lands of such other

person to the break and repair said break from time to time as often as may be necessary, so as to cause the stream to return to its original channel, and assess any damage which may thereby be occasioned: Provided, the party upon whose land the work is proposed to be done shall have five days' notice in writing served on him or left at his place of residence: Provided further, that it shall be the duty of said commissioners to assess the damage of anyone on whose land the road shall be laid off to be paid by the applicant for said road: Provided, also, that either party shall have the right of appeal to the superior court. (1879, c. 53, s. 2; Code, s. 3717; Rev., s. 5306; C. S., s. 7373.)

§ 77-10. **Draws in bridges.** — Whenever the navigation of any river or creek which, in the strict construction of law, might not be considered a navigable stream, shall be obstructed by any bridge across said stream, it shall be lawful for any person owning any boat plying on said stream to make a draw in such bridge sufficient for the passage of such boat; and the party owning such boat shall construct and maintain such draw at his own expense, and shall use the same in such manner as to delay travel as little as possible. (1879, c. 279, ss. 1, 2; Code, s. 3719; Rev., s. 5307; C. S., s. 7374.)

Cited in *Staton v. Wimberly*, 122 N. C. 107, 29 S. E. 63 (1898).

§ 77-11. **Public landings.**—The board of county commissioners may establish public landings on any navigable stream or watercourse in the county upon petition in writing. Unless it shall appear to the board that the person owning the lands sought to be used for a public landing shall have had twenty days' notice of the intention to file such petition, the same shall be filed in the office of the clerk of the board until the succeeding meeting of the board, and notice thereof shall be posted during the same period at the courthouse door. At said meeting of the board, the allegations of the petition shall be heard, and if sufficient reason be shown, the board shall order the establishment of the public landing.

The board is authorized to enter upon any land and locate a public landing after service of notice on the landowner that a landing is to be established under the authority of this section. If the board and landowner cannot agree on the damages, if any, the board shall, on the expiration of sixty days from the completion of the landing, cause to be summoned three disinterested freeholders of the county, who shall go upon the land and assess the damages and benefits according to the general law. All damages assessed shall be a county charge. In assessing damages, the jury shall take into consideration any special benefits accruing to the landowner, and if such benefits exceed the damages, the amount of such excess of benefits shall be assessed against the landowner and constitute a lien on the land adjoining the landing, and shall be collected in the same manner as county taxes. The board shall order how the costs shall be paid.

No suit shall be instituted by a landowner for damages for the location of the landing earlier than sixty days, not later than six months, after the completion of the landing. Either party may appeal to the superior court for the assessment of damages and benefits, where the matter shall be heard de novo by the court and jury. No cost shall be awarded against the county upon appeals when the recovery awarded on appeal is not more favorable to the appellant than the award of the referees. All places heretofore established as public landings shall remain such. (1784, c. 206, s. 4; 1789, c. 303; 1790, c. 331, s. 3; 1793, c. 386; 1813, c. 862, s. 1; 1822, c. 1139, s. 2; R. C., c. 60, s. 1; c. 101, ss. 2, 4; 1869, c. 20, s. 8, subsec. 29; 1872-3, c. 189, s. 3; 1879, c. 82, s. 9; Code, ss. 2038, 2040, 2982; Rev., ss. 2684, 2685; 5308; 1917, c. 284, s. 33; 1919, c. 68; C. S., ss. 3667, 3762, 3763, 7375.)

ARTICLE 2.

Obstructions in Streams.

§ 77-12. **Obstructing passage of boats.**—If any person shall obstruct the free passage of boats along any river or creek, by felling trees, or by any other means whatever, he shall be guilty of a misdemeanor. (1796, c. 460, s. 2; R. C., c. 100, s. 6; Code, s. 3711; Rev., s. 3561; C. S., s. 7376.)

Cross Reference.—See note to § 77-13.

Cited in *Hutton v. Webb*, 124 N. C. 749, 33 S. E. 169 (1899).

§ 77-13. **Obstructing streams a misdemeanor.** — If any person shall willfully fell any tree, or willfully put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, and whereby the navigation of such stream by any raft or flat may be impeded, delayed, or prevented, the person so offending shall be guilty of a misdemeanor, and fined not to exceed fifty dollars, or imprisoned not to exceed thirty days. Nothing in this section shall prevent the erection of fish dams or hedges which do not extend across more than two thirds of the width of any stream where erected, but if extending over more than two thirds of the width of any stream, the said penalties shall attach. (1872-3, c. 107, ss. 1, 2; Code, s. 1123; Rev., s. 3559; C. S., s. 7377.)

Compared with Common-Law Offense. — At common law it was an offense to obstruct any navigable stream, but by this section, unless the act is willful and not for the purpose of utilizing the water as a motive power the offense is not indictable. *State v. Narrows Island Club*, 100 N. C. 477, 5 S. E. 411 (1888); *State v. Baum*, 128 N. C. 600, 38 S. E. 900 (1901).

"Motive Power" Defined. — Water used in "sluicing" is not used as a "motive power" within the meaning of this section. The section has obvious reference to the use of the energies of water dammed, as a moving force, and not to the operation of the current in motion. *State v. Duplin Canal Co.*, 91 N. C. 637 (1884).

"Or" Construed to Read "And". — The word "and" between the words "retarded" and "whereby" formerly read "or," and the court in *State v. Pool*, 74 N. C. 402 (1876), held that the word "or" should read "and."

Section Applicable to Navigable Streams. — If a creek is not navigable an obstruction cannot "impede, delay, or prevent" navigation, and so there is no violation of the statute by cutting trees so as to obstruct a nonnavigable stream. *State v. Pool*, 74 N. C. 402 (1876).

Section Applicable Though Stream Is Private Property. — The bed of a lake or watercourse may be private property, but if the waters are navigable in their natural

state the public have an easement of navigation in them, which easement the owner of the soil cannot obstruct. *State v. Narrows Island Club*, 100 N. C. 477, 5 S. E. 411 (1888).

Indictment.—The indictment under this section must charge that the obstruction was not "for the purpose of utilizing." Such a charge is not necessary in an indictment for obstructing waters, at common law. *State v. Narrows Island Club*, 100 N. C. 477, 5 S. E. 411 (1888).

Railroad Bridges. — A railroad bridge built over a navigable stream if obstructing passage of vessels is a nuisance, and tearing a portion of it down so that vessels may pass is not indictable. *State v. Parrott*, 71 N. C. 311 (1874).

Action for Damages. — In an action wherein actual damages were claimed, with punitive damages, for damming a navigable stream, made a misdemeanor by this section, it was held that to recover punitive damages it was insufficient to show merely that the stream was obstructed to plaintiff's damage, it being necessary to prove, in such cases, malice, fraud, wanton or willful disregard of the plaintiff's rights, or other circumstances of recklessness or aggravation. *Warren v. Coharie Lumber Co.*, 154 N. C. 34, 69 S. E. 685 (1910).

Cited in *Gwaltney v. Scottish Carolina Timber, etc., Co.*, 111 N. C. 547, 16 S. E. 692 (1892).

§ 77-14. **Obstructions in streams and drainage ditches.**—If any person, firm or corporation shall fell any tree or put any slabs, stumpage, 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 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 and Lee. (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507.)

Editor's Note. — The 1957 amendment rewrote and greatly extended the first paragraph and added the second paragraph.

The first 1959 amendment deleted "Edgecombe" from the list of counties at the end of the section and the second

1959 amendment substituted near the middle of the first sentence "any land whatsoever" for the words "farm or agricultural lands."

The 1961 amendment deleted Halifax from the last sentence, thereby making this section applicable to Halifax County.

Chapter 78. Securities Law.

Sec.	Sec.
78-1. Title.	78-14. Report to Secretary of State.
78-2. Definitions.	78-15. Examination and examiners.
78-3. Exempted securities.	78-16. Complaints, investigations, findings of facts.
78-4. Transactions exempted from operation of this chapter.	78-17. Certain information and records open to inspection by public.
78-5. Burden of proof as to such transactions.	78-18. Appeal.
78-6. Registration of securities.	78-19. Dealers and salesmen; registration.
78-7. Advertisement of securities.	78-20. Assistants, clerks, etc., employment of.
78-8. Registration by notification.	78-21. Fee paid into State treasury; expenses of administration.
78-9. Registration by qualification.	78-22. Remedies.
78-10. Consideration of application by Secretary of State.	78-23. Violation of chapter; punishment.
78-11. Hearing before Secretary of State.	78-24. Foreign corporations to name process officer within State.
78-12. No representation to be made of endorsement.	
78-13. Register of qualified securities.	

§ 78-1. **Title.** — This chapter may be cited and shall be known as the “Securities Law” of the State of North Carolina. (1925, c. 190, s. 1; 1927, c. 149, s. 1; 1943, c. 104, s. 1.)

I. In General.

II. Note to § 6363, Consolidated Statutes.

III. Note to § 6367, Consolidated Statutes.

IV. Note to § 6372, Consolidated Statutes.

I. IN GENERAL.

Editor’s Note. — The 1927 amendment repealed the law of 1925 and substituted new provisions therefor. See *Durham Citizens Hotel Corp. v. Dennis*, 195 N. C. 420, 142 S. E. 578 (1928).

The 1943 amendment substituted “Securities Law” for “Capital Issues Law.”

The following note includes cases decided under the present statutes—placed under the analysis line “I. In General.”—and cases decided under §§ 6363 to 6375, Consolidated Statutes, prior to their repeal by Laws 1925, c. 190 and Laws 1927, c. 149, s. 26—placed under appropriate analysis lines. Said §§ 6363 to 6375 pertained to similar subject matter, and it is believed the decisions construing those provisions will be of value in considering the present chapter.

An article discussing the history of blue sky laws and summarizing the various statutes will be found in 3 N. C. Law Rev. 150 et seq. The North Carolina cases are also discussed.

Chapter Is within Police Power.—The regulation of the sale of securities for the protection of the public is within the police power of the State. *State v. Allen*, 216 N. C. 621, 5 S. E. (2d) 844 (1939).

Application of Chapter. — This chapter applies where money is invested in stock, securities, profit-sharing agreements, etc., with the purpose of securing an income from the employment of the money, and a contract whereby the owner of a copy-right system gives the exclusive right to another to operate the system in certain counties, and in return is to receive a percentage of the gross receipts from the operation of the system, with further provision for a division of net profit from sales or contracts written by either party, does not contemplate the placing of money in a way to secure an income from its employment, but the earning of a portion of the gross receipts in return for individual services, and the agreement is not a profit-sharing scheme or investment contract within the intent and meaning of the statute. *State v. Heath*, 199 N. C. 135, 153 S. E. 855 (1930).

II. NOTE TO § 6363, CONSOLIDATED STATUTES.

Constitutionality.—It is within the police power of the State to pass a statute for the protection of its citizens against the sale to them of worthless shares of stock in speculative companies in the exercise of a power in the State reserved from that grant to the federal government, and such

a statute does not contravene either the State or federal Constitution. *State v. Fidelity, etc., Co.*, 191 N. C. 634, 132 S. E. 792 (1926).

The purpose of "Blue Sky Laws" is to protect the general public from "wildcat" organizers, promoters and their agents, whether foreign or domestic, preying upon an unsuspecting and confiding public by selling "blue sky stock," without obtaining license and giving bond. *State v. Fidelity, etc., Co.*, 191 N. C. 634, 132 S. E. 792 (1926).

The object of the "Blue Sky Laws" is not only to keep worthless stock off the market but to make actual values and par values correspond. Thus, if the par value of a share of stock is one hundred dollars, the part of the assets of the corporation represented by a share of stock must be worth one hundred dollars. 1 N. C. Law Rev. 27.

Scope of Section.—A corporation was an "investment company" offering to the public an investment in lands and fig orchards in Georgia. It was also offering the "obligation of said corporation" to cultivate said land, and giving its contract to make title in compliance with certain terms; and, lastly, it was offering for sale "evidences of property." Under all three of these provisions it was within the scope of § 6363. *State v. Agey*, 171 N. C. 831, 88 S. E. 726 (1916).

Limitations of Suit.—Contracts of indemnity against loss, or surety bonds, for the faithful performance of a building contract were regarded in the nature of contracts of insurance coming under the provisions of § 6363 and any conflicting restriction in such a contract as to the time of bringing an action to recover damages for the breach of the contract was void. *Guilford Lumber Mfg. Co. v. Johnson*, 177 N. C. 44, 97 S. E. 732 (1919).

Process and Service.—Section 6363 did not require service of process upon the Insurance Commissioner, in cases of bonding companies, although licensed by the Insurance Commissioner; service on a local agent was sufficient. *Pardue v. Absher*, 174 N. C. 676, 94 S. E. 414 (1917).

Agent's Liability for Violation.—The failure or refusal of the corporation to comply with the requirements of our statutes to obtain a license made the defendant, its agent, guilty of the offense charged. *State v. Agey*, 171 N. C. 831, 88 S. E. 726 (1916).

One who sold certificates of shares of stock in a corporation upon a commission basis without having obtained a license to

do so came within the inhibition of § 6363, though the sale might have been effected by another acting through such solicitor without compensation. *Burlington Hotel Corp. v. Bell*, 192 N. C. 620, 135 S. E. 616 (1926).

Enforcement of Contract.—Where a subscription contract for purchase of shares of stock in a corporation was procured by one who had not obtained a license from the Commissioner of Insurance, the contract was not enforceable against the subscriber. *Burlington Hotel Corp. v. Bell*, 192 N. C. 620, 135 S. E. 616 (1926).

Contract to Be Performed in Another State.—Where a foreign corporation had issued a bond indemnifying a North Carolina concern against loss under a contract with an agency, located in another state, established to collect moneys, etc., for insurance premiums, which bond was delivered to the agent to be sent to the indemnified here for approval and acceptance, the contract of indemnity was to be construed and enforced in accordance with our own laws. *Dixie Fire Ins. Co. v. American Bonding Co.*, 162 N. C. 384, 78 S. E. 430 (1913).

Domestic Corporations.—Section 6363 applied to sales of stock in a domestic corporation as well as a foreign one, irrespective of whether the same was either fraudulently procured or fell within the intent and meaning of the "Blue Sky Law." *Burlington Hotel Corp. v. Bell*, 192 N. C. 620, 135 S. E. 616 (1926).

Notes given for the purchase of shares of stock in a corporation being organized were not void for noncompliance with the provisions of §§ 6363 and 6367, when the shares were not put upon the market by agents, or commissions paid to anyone for procuring subscriptions thereto. *Durham Citizens Hotel Corp. v. Dennis*, 195 N. C. 420, 142 S. E. 578 (1928), citing and distinguishing *Burlington Hotel Corporation v. Bell*, 192 N. C. 620, 135 S. E. 616 (1926).

Cited in *Hotel Corporation v. Dixon*, 196 N. C. 265, 145 S. E. 244 (1928).

III. NOTE TO § 6367, CONSOLIDATED STATUTES.

Fraudulent Representations.—If the agent selling the stock represented to the plaintiff that certain parties would devote their time to the business, and that the statute had been complied with, and that the stock would not be sold below a certain price, such representation if false within the knowledge of the defendant constituted actionable fraud. *McNair v.*

Southern States Finance Co., 191 N. C. 710, 133 S. E. 85 (1926).

Knowledge of the Plaintiff.—When plaintiff did not know, and was not in a position to know of the falsity of the representations as made to him the parties would not be considered in *pari delicto*. *McNair v. Southern States Finance Co.*, 191 N. C. 710, 133 S. E. 85 (1926).

Recovery of Damages.—A purchaser of shares of stock could recover damages upon the false representations of the seller that all of the provisions of the blue sky law, § 6367, had been complied with, with the burden of proof on the purchaser, the plaintiff in the action, to show his damages arising therefrom. *McNair v. Southern States Finance Co.*, 191 N. C. 710, 133 S. E. 85 (1926).

Domestic Corporations.—The law was at first applied only to foreign corporations, but by Laws 1919, c. 121, it was made to apply as well to domestic corporations. The law appeared in toto in §§ 6363-6375, and the provision which in itself was known as the "Blue Sky Law," was § 6367. 3 N. C. Law Rev. 151.

The requirements of § 6367 as to soliciting the purpose of shares of stock in a certain corporation in accordance with

certain conditions applied by statutory amendment of 1919 not only to corporations formed in other states, but also to domestic corporations. *Seminole Phosphate Co. v. Johnson*, 188 N. C. 419, 124 S. E. 859 (1924). See also *Burlington Hotel Corp. v. Bell*, 192 N. C. 620, 135 S. E. 616 (1926).

Notes Given for Stock.—Where a negotiable note was given for shares of stock in a corporation, solicited in violation of the blue sky law, the note was voidable against a holder who had acquired it with notice of the illegality or fraud in the procurement of the instrument. *Planters Bank, etc., Co. v. Felton*, 188 N. C. 384, 124 S. E. 849 (1924).

IV. NOTE TO § 6372, CONSOLIDATED STATUTES.

Liability for Principal's Act.—The State has a right to require evidence of good faith, of assets, and of responsibility from nonresidence parties offering to sell our people "investments" or "evidences of property" on contracts. An agent of a company who fails to do this, in defiance of our laws, is properly found guilty. *State v. Agey*, 171 N. C. 831, 88 S. E. 726 (1916).

§ 78-2. **Definitions.**—(a) **Intangible Assets.**—The term "intangible assets" shall mean and include patents, formulae, good will, promotions, trade brands, franchises, evidences of indebtedness or corporate securities, titles or rights in and to intangible property, and all other like assets.

(b) **Issuer.**—The term "issuer" shall include every person who proposes to issue or who issues or who has issued or shall hereafter issue any security (sold or to be sold, offered or to be offered for sale).

(c) **Mortgage.**—"Mortgage" shall be deemed to include a deed of trust to secure a debt.

(d) **Offer to Sell, etc.**—"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.

(e) **Person.**—The term "person" shall mean and include a natural person, firm, partnership, association, syndicate, joint-stock company, unincorporated company or organization, trust, incorporated or unincorporated, and any corporation organized under the laws of the District of Columbia, or of any state or territory of the United States, or of any foreign government. As used herein, the term "trust" shall be deemed to include a common-law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.

(f) **Sale, etc.**—"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.

(g) Securities, etc.—The term “securities” or “security” shall include any note, stock certificate, stock, treasury stock, bond, debenture, whiskey warehouse receipt, evidence of indebtedness, transferable certificate of interest or participation, certificate of interest in a profit-sharing agreement, any instrument representing any interest or right in or under any oil, gas or mining lease, fee or title, or rights or interests in land from which petroleum or minerals are, or are intended to be produced, certificate of interest in an oil, gas or mining lease, collateral trust certificate, any transferable share, investment contract, or beneficial interest in or title to property or profits or any contract or agreement in the promotion of a plan or scheme whereby one party undertakes to purchase the increase or production of the other party from the article or thing sold under the plan or scheme, or whereby one party is to receive the profits arising from the increase or production of the article or thing sold under the plan or scheme, or any other instrument commonly known as security.

(h) Tangible Assets.—“Tangible assets” shall mean all assets other than intangible assets, as above defined. (1925, c. 190, s. 2; 1927, c. 149, s. 2; 1933, c. 432; 1943, c. 104, ss. 2, 3; 1955, c. 436, s. 1.)

Editor's Note.—The enforcement and administration of this chapter was formerly intrusted, under Laws 1925, c. 190, s. 2, and Laws 1927, c. 149, s. 2, to a member of the Corporation Commission, to be designated by the Governor. With the abolition of the Corporation Commission and the creation of the office of Utilities Commissioner, the administration of the chapter was transferred to that officer. See Laws 1933, c. 134, s. 8. However, Laws 1937, c. 194, provided for the transfer of the powers, duties, functions, and authority of the Utilities Commissioner with reference to the Capital Issues Law to the Secretary of State, who now administers this chapter.

The 1943 amendment inserted “whiskey warehouse receipt” in subsection (g). It also inserted in said subsection “any instrument representing any interest or right in or under any oil, gas or mining lease, fee or title, or rights or interests in land from which petroleum or minerals are, or are intended to be produced.”

§ 78-3. **Exempted securities.**—Except as hereinafter provided, the provisions of this chapter shall not apply to any security which, at the time of sale thereof, is within any of the following classes of securities:

- (1) Any security issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state or municipal corporation or political subdivision or agency thereof.
- (2) Any security issued or guaranteed by any foreign government, or by any state, province or political subdivision thereof, having the power of taxation or assessment, with which the United States is maintaining diplomatic relations and which security is recognized at the time it is offered for sale in this State as a valid obligation for its face value by such foreign government, or by the State, province or political subdivision thereof issuing same.

The 1955 amendment rewrote subsection (f).

Value of Property Does Not Affect Definition as a Security.—In a prosecution for violation of the Capital Issues Law the fact that the property sold is of little value is irrelevant to the question of whether the property is a security as defined by the statute. *State v. Allen*, 216 N. C. 621, 5 S. E. (2d) 844 (1939).

Certificate of Interest in Oil, etc., Lease.—Before the passage of the 1943 amendment to this section, it was held that an oil lease which by its terms amounted to a conveyance of real estate was not a certificate of interest in an oil, gas or mining lease or any other security as that term was defined in this section. *State v. Allen*, 216, N. C. 621, 5 S. E. (2d) 844 (1939).

Cited in *State v. Carolina Tel. & Tel. Co.*, 243 N. C. 46, 89 S. E. (2d) 802 (1955).

- (3) Any security issued by a national bank, or by any federal land bank, or joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July seventeen, nineteen hundred and sixteen, or any amendments thereof, or by the War Finance Corporation, or by any corporation created or acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States, provided, that such corporation is subject to supervision of regulation by the government of the United States.
- (4) Any security issued or guaranteed as to principal, interest or dividend, by a corporation, domestic, or foreign, owning or operating a railroad, or any other public service utility: Provided, that such corporation is subject to regulation or supervision, either as to its rates and charges or as to the issue of its own securities by a public commission, board or officer, or by any governmental, legislative or regulatory body of this State, or of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment securities based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock or equipment mortgaged, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, or equipment securities where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, or of the Dominion of Canada, to secure payment of such equipment securities; also bonds, notes or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any of the securities hereinabove in this subdivision (4) described: Provided, that such collateral securities equal in fair value at least one hundred and twenty-five (125%) per cent of the par value of the bonds, notes or other evidences of indebtedness, so secured.
- (5) 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.

- (6) Any security issued by, and representing an interest in, or a direct contract obligation of a bank, trust company or savings institution, which bank, trust company or savings institution is incorporated under the laws of, and subject to the examination, supervision and control of the United States, or of any state or territory of the United States, or of any insular possession thereof: Provided, this section shall not apply to any security based upon mortgages on real estate nor to saving institutions and trust companies not approved by the Commissioner of Banks of the State of North Carolina.
- (7) Negotiable promissory notes or commercial paper if such issue of negotiable notes or commercial paper mature in not more than fifteen months from the date of issue and shall be issued within three months after date of sale.
- (8) Securities issued by building and loan associations incorporated under the laws of the State of North Carolina.
- (9) Securities issued by insurance companies in North Carolina, subject to State supervision.
- (10) Securities issued by any corporation organized not for pecuniary profit or organized exclusively for educational, benevolent, fraternal, charitable or reformatory purposes.
- (11) Securities evidencing indebtedness due under any contract made in pursuance to the provisions of any statute of any state of the United States providing for the acquisition of personal property under conditional sale contract.
- (12) Bonds or notes secured by lien on vessels shown by policies of marine insurance taken out in responsible companies to be of value, after deducting any and all other indebtedness secured by prior lien, of not less than one hundred and twenty-five (125%) per cent of the par amount of such bonds or notes.
- (13) Any security other than common stock outstanding and in the hands of the public for a period of not less than five years upon which no default in payment of principal, interest or dividend exists and upon which no such default has occurred for a continuous immediately preceding period of five years.
- (14) Any security which, under the laws of this State, is a legal investment for savings banks of trust funds.
- (15) Securities issued by a domestic corporation, partnership, association, company, syndicate or trust owning a property, business or industry which has been in continuous operation for not less than three years prior thereto, and which has shown during a period of not less than two years nor more than five years 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 or prior securities to be retired out of the proceeds of such sale, as follows:
 - a. In the case of interest bearing securities, not less than one and one-half times the annual interest charges 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 the total of the proposed issue of such preferred stock and on all other outstanding stock of equal rank.

- c. In the case of common stock with par value not less than six per cent upon all outstanding common stock of equal rank, or in the case of common stock without par value, not less than six per cent upon the amount charged to capital by reason of the issuance thereof: Provided, the tangible assets of such corporation, partnership, association, company, syndicate, or trust (not including any intangible assets), together with the proceeds of the sale of such securities accruing to the insurer shall equal or exceed:
1. In the case of evidence of indebtedness, one hundred twenty-five per centum of the par value of such evidence of indebtedness, and all other obligations of equal rank then outstanding and not to be retired out of the proceeds of the sale of such evidence of indebtedness.
 2. In the case of preferred stock one hundred twenty-five per centum of the par value of the aggregate amount of all outstanding preferred stock of equal and prior rank and the stock then offered for sale, after the deduction from such assets of all indebtedness which will be existing and of the par value of all stock of senior rank which will be outstanding after the application of the proceeds of the preferred stock offered for sale.
 3. In the case of common stock one hundred per centum of the aggregate of all outstanding stock of equal rank and the stock then offered for sale, reckoned at the price at which such stock is offered for sale or sold after the deduction from such assets of all indebtedness which will be existing and of the par value of all stock of senior rank which will be outstanding after the application of the proceeds of the common stock offered for sale: Provided, however, that in the case of preferred or common stock, without par value, computation hereunder shall be made upon the basis of the amount charged to capital by reason of the issuance thereof, instead of upon the basis of par value. (1925, c. 190, s. 3; 1927, c. 149, s. 3; 1931, c. 243, s. 5; 1955, c. 436, s. 2.)

Cross Reference.—See Editor's Note under preceding section.

Editor's Note.—The 1955 amendment

substituted "on" for "or" following "dealt in" near the beginning of subdivision (5).

§ 78-4. Transactions exempted from operation of this chapter. — Except as hereinafter provided, the provisions of this chapter shall not apply to the sale or the offering for sale of any security in any of the following transactions, viz.:

- (1) At any judicial, executor's, administrator's, or guardian's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy.
- (2) By or for the account of any pledge holder or mortgagee selling or offering for sale, in the ordinary course of business, to liquidate a bona fide debt, a security pledge in good faith as security for such debt.
- (3) In an isolated transaction in which any security is sold or offered for sale by the owner thereof, or by his representative for the owner's account in the usual and ordinary course of business and not for the direct or indirect promotion of any scheme or enterprise within the purview of this chapter, and when such sale or offer for sale is not made in the course of repeated and successive transactions of a like character by such owner or on his account by the representative of

- such owner, and neither such owner nor his representative is the maker or issuer or underwriter of such security.
- (4) The sale of, or offer to sell such security to any bank, savings institution, trust company, insurance company, or to any corporation.
 - (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.
 - (6) The transfer or exchange by or on account of one corporation to another corporation or to its stockholders of their or its own securities in connection with a proposed consolidation or merger of such corporations, or in connection with the change of par value of stock to non par value stock or the exchange of outstanding shares for a greater or smaller number of shares; the transfer or exchange by or on the account of one corporation of its own securities to the holders of the securities of another corporation, partnership, trust, person, firm or association, in any plan of distribution or exchange providing for the assumption or acquisition by the issuing corporation of the securities for which its own securities are issued or are to be issued, where the plan of distribution or exchange is contained in a registration statement which has been filed for more than twenty days with the securities and exchange commission of the United States government or like agency of the United States government, charged with the registration of securities.
 - (7) Subscriptions for shares or sales or negotiations for sales of shares of the capital stock in domestic corporations, provided that (i) such shares are not offered to more than twenty-five persons in this State and (ii) 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.
 - (8) The issue and delivery of any security in exchange for any other security of the same issued pursuant to a right of conversion entitling the holder of the security exchanged to make such conversion: Provided, that the security exchanged has been registered by notification under the law or was when sold exempt from the provisions of the law and that the security received in exchange if sold at the conversion price would at the time of such conversion fall within the class of securities entitled to registration by notification under the law. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities received in such exchange are sold.
 - (9) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof, when 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.

- (10) The sale of securities to a registered dealer.
- (11) Bonds or notes secured by mortgage upon real estate where the entire mortgage together with all of the bonds or notes secured thereby are sold to a single purchaser at a single sale.
- (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 purchasers thereof, he may revoke the exemption provided by this subdivision (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 (i) organized for the purpose of promoting community agricultural or industrial development of the area in which its principal office is located and (ii) 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 (iii) 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 1935 amendments added the part of subdivision (6) appearing after the semicolon.

The 1955 amendment rewrote the latter

part of subdivision (5), made changes in subdivision (7) and added subdivision (12). The 1959 amendment added subdivision (13).

§ 78-5. Burden of proof as to such transactions.—It shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment or proceeding laid or brought under this chapter in either a court of law or equity, or before the Secretary of State, in either a civil or a criminal action or suit. The sale, unless the transaction is exempted from the operation of this chapter, of any security not exempt from the provisions of this chapter as hereinbefore provided and not admitted to the record and recorded as hereinafter pro-

vided, shall be prima facie evidence of the violation of this chapter and the burden of proof of any such exemption shall be upon the party claiming the benefit thereof. (1925, c. 190, s. 5; 1927, c. 149, s. 5.)

§ 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 "offered for sale or" preceding "sold" in the first sentence and added the exception clause at the end of such 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 "and approved by the Secretary of State" formerly appearing at the end of subdivision (3) and substituted therefor "with the Secretary of State" and the exception clause.

§ 78-8. Registration by notification.—(a) 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 outstanding 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 subdivision (2) of subsection (a) of this section and/or
 - b. A principal amount of obligations secured as hereinafter in this subdivision 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 paragraph 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 subdivision (2) of subsection (a) 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 subdivisions (1), (2), or (3) of subsection (a), 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 subdivisions (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.

(b) 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:

- (1) Name of issuer.
- (2) A brief description of the security including amount of the issue.
- (3) Amount of securities to be offered in the State.
- (4) A brief statement of the facts which show that the security falls within one of the classes in this section defined.
- (5) The price at which the securities are to be offered for sale.

In the case of securities falling within the classes defined by subdivisions (1) and (4) of subsection (a), 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 subdivisions (2) and (3) of subsection (a) 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 subdivision (4) of subsection (a). In the sixth paragraph from the end of the section the amendment changed "class" to "classes," inserted the reference to subdivision (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 deleting

"by giving notice in the manner herein after provided in § 78-19" which formerly appeared after "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.—All securities required by this chapter to be registered before being sold in this State, and not entitled to registration by notification, shall be registered only by qualification in the manner provided by this section.

The Secretary of State shall receive and act upon applications to have securities registered by qualification and may prescribe forms on which he may re-

quire such applications to be submitted. Applications shall be in writing and shall be duly signed by the applicant and sworn to by a proper person, and filed in the office of the Secretary of State and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within this State.

The Secretary of State may require the applicant to submit to the Secretary of State the following information respecting the issuer and such other information as he may, in his judgment, deem necessary to enable him to ascertain whether such securities shall be registered pursuant to the provisions of this section:

- (1) The names and addresses of directors, trustees and officers, if the issuer be a corporation or association or trust organized or existing under the common law (as hereinbefore defined), of all partners, if the issuer be a partnership, and of the issuer if the issuer be an individual.
- (2) The location of the issuer's principal business office and of its principal office in this State, if any, and if not, the name of its process officer within this State.
- (3) The purposes of the business actually to be transacted by the issuer, and the purpose of the proposed issue.
- (4) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty (60) days prior to the date of filing such balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made; and a copy of all circulars, prospectuses, advertisements or other descriptions of such securities then prepared by or for such issuer, and/or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this State.
- (5) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.
- (6) A statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale, or offering for sale, of such securities.
- (7) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment.
- (8) The amount of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.
- (9) If the issuer is a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office of the Secretary of State of this State. If the issuer is a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership or an unincorporated association, or joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office of the Secretary of State of this State.

All of the statements, exhibits, and documents of every kind required by the Secretary of State under this section, except properly certified public documents, shall be verified in such manner and form as may be required by the Secretary of State.

With respect to securities required to be registered by qualification under the provisions of this section, the Secretary of State may by order duly entered fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise directly or indirectly, for or in connection with the sale or offering for sale of such securities which shall in no case exceed ten per cent of the actual sale price of the security.

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.

§ 78-10. Consideration of application by Secretary of State. — (a) As soon as practicable after the filing of an application, under § 78-9, the Secretary of State shall examine the application, statements and documents so filed; and if he deems it advisable, may make or cause to be made such inspection, examination, audit and investigation of the business and affairs of the issuer as he may deem necessary or advisable, which said inspection, examinations, audit and investigation, shall be at the expense of the applicant. As a part of the aforesaid inspection, examination, audit and investigation, the Secretary of State may, if he deems it necessary or advisable, cause an appraisal to be made of the property or assets of the issuer or parts thereof. Appraisals herein provided for may be made by three disinterested appraisers, and the Secretary of State is authorized to nominate and appoint such appraisers, who shall be paid not more than twenty-five dollars per day and their actual expenses while so employed, which compensation and expenses shall be paid by the applicant. The Secretary of State may require a bond sufficient to cover the expense of any such inspection, examination, audit or investigation as may be deemed necessary by the Secretary of State in connection with the application before, or after the granting of such application for registration.

(b) The Secretary of State shall make a complete report of the inspection, investigation, examination, etc., of the business and affairs of the applicant above provided for, which record shall include a copy of the appraisal aforesaid, provided such an appraisal be made. (1925, c. 190, s. 10; 1927, c. 149, s. 10.)

§ 78-11. Hearing before Secretary of State.—The Secretary of State shall, within fifteen days after the filing of the report of such investigation, give the applicant a hearing, if he so desires.

- (1) If the Secretary of State shall act favorably upon the application, he shall issue an order, directing that such securities be admitted to record in the register of qualified securities, hereinafter provided for. The Secretary of State shall keep a permanent record of all proceedings, findings, judgments and orders. In granting to an applicant the

privilege of offering securities to the public in the State of North Carolina the Secretary of State may impose such reasonable conditions, either precedent or concurrent thereto, as in his judgment may be necessary or advisable. If the statement containing information as to securities, as provided for in § 78-9, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, lease, formulae or good will, or for promotion fees or expenses or for other intangible assets, the amount and nature thereof shall be fully set forth and the Secretary of State may require that such securities so issued in payment of such patent right, copyright, trademark, process, lease, formulae or good will, or for promotion fees or expenses, or for other intangible assets shall be delivered in escrow to the Secretary of State or other depository satisfactory to the Secretary of State under an escrow agreement that the owners of such securities shall not be entitled to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend, or dividends aggregating not less than six per cent for three years, shown to the satisfaction of said Secretary of State to have been actually earned on the investment in any common stock so held, and in case of dissolution or insolvency during the time such securities are held in escrow, that the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full: Provided, that during the period such securities shall be held in escrow, the Secretary of State shall have the right to vote such stock in person, or by proxy as he shall deem advisable.

- (2) If, however, the Secretary of State shall, in any case, believe from all the evidence:
- a. That the sale of such securities would work a fraud, deception or imposition upon the purchaser thereof; or
 - b. That the articles of incorporation or association, declaration of trust, charter, constitution, bylaws, or other organization papers of the issuer are unfair, unjust, inequitable, illegal or oppressive; or
 - c. That the issuers or guarantors of such securities are insolvent, or are in failing circumstances, or are not trustworthy; or
 - d. That the issuer's plan of business is unfair, inequitable, dishonest or fraudulent; or
 - e. That the issuer's literature or advertising is misleading or calculated to deceive purchasers or investors; or
 - f. That the securities offered or to be offered, issued or to be issued in payment for property or assets, either tangible or intangible, are so in excess of the reasonable value thereof as to indicate fraud or bad faith; or
 - g. That the enterprise or business of either the issuers or of the applicant, is unlawful or against public policy; or
 - h. That the sale of such securities is a mere scheme of either the issuer or the applicant to dispose of worthless securities of no real intrinsic value, at the expense of the purchasers of said securities; or
 - i. That the sale of such securities is contrary to good business practices.

Then the Secretary of State shall refuse to admit said securities to record in the register of qualified securities, or if such securities are admitted to record, such action may at any time thereafter be revoked by the Secretary of State for

any of the reasons set out in this section, subdivision (2), and it shall thereafter be unlawful to sell such securities in this State or to circulate any advertisement thereof.

In any case the Secretary of State either before granting or after granting any application for registration by qualification under § 78-9, shall have the right to require of the applicant a bond, the form whereof shall be prescribed and the surety approved by the Secretary of State, penalty whereof shall be fixed by the Secretary of State at not more than twenty per centum of the sales price of the securities issued or proposed or authorized to be issued. The said bond shall be with surety and payable to the State of North Carolina, conditioned that the facts set forth in the application for such permit and in all other documents required by this chapter to be filed with the Secretary of State are true, and that the provisions of this chapter shall be strictly complied with, and that all moneys from the sale of such securities will be used for the proper purpose or purposes as set forth in the security sold and in the papers filed with the Secretary of State; and that the contract of the promoter as set forth in the securities issued will be complied with and also that all statements set forth in all literature or advertising matter used or circulated in connection with the sale, or offer of sale, of such securities shall be the truth; and that the contract of the promoter shall be fulfilled. Except when the surety offered is a surety company authorized to do business in this State, it shall be the duty of the Secretary of State to satisfy himself that such surety is amply solvent before accepting the same.

Any person who shall be induced to purchase any securities covered by such bond by reason of any misrepresentation of any material fact concerning such securities, contained in said application or other documents submitted in connection therewith or furnished to the Secretary of State, upon its request or any other written or printed matter issued or used by the person making such sale or its, or his, agents in making such sale, or shall have suffered loss by reason of the fact that moneys paid by him to the said seller of such securities or the seller's agent, have not been applied to the proper purpose set forth in the security sold or the papers filed with the Secretary of State, or that the seller has failed or refused to comply with his contract, as set forth in the security issued, shall have the right to bring suit upon the bond above provided for, and such bond shall be security for such person for his losses; but such person shall not be entitled to recover more than the money paid, or the actual value of the property given, or the labor performed, in exchange for such securities, with legal interest from the date of payment or the performance of the services or the transfer of property. One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect, but no recoveries upon such bond shall ever exceed the full amount of same, and upon suits being commenced in excess of the amount of same, the Secretary of State may require a new bond, and, if the same is not given within thirty days the Secretary of State may revoke the registration herein provided for: Provided, however, that any suit or action instituted under this section shall be commenced within one year from the date of any such sale. During the thirty days after notice to file a new bond, the securities shall not be sold or offered for sale. (1925, c. 190, s. 11; 1927, c. 149, s. 11.)

§ 78-12. No representation to be made of endorsement.—No person, dealer, or agent shall represent any securities sold under the provisions of this chapter as being endorsed or recommended by the State of North Carolina or any officer thereof, nor shall he make any mention whatever of their being recorded or admitted to record in the State of North Carolina. (1925, c. 190, s. 12; 1927, c. 149, s. 12.)

§ 78-13. Register of qualified securities.—The Secretary of State shall keep and maintain a permanent register of qualified securities and shall enter

therein the names and amounts of all securities, the privilege of offering which to the public in the State of North Carolina has been granted by the Secretary of State, and the date thereof, and such other data as the Secretary of State may deem proper. All securities admitted to record and recorded in such register shall be deemed, for the purpose of this chapter, to have been fully qualified for sale in the State of North Carolina and thereafter any person may lawfully sell or offer for sale any part of such issue as recorded; subject, however, to the provisions of this chapter. Such register shall be open to inspection by the public. (1925, c. 190, s. 13; 1927, c. 149, s. 13.)

§ 78-14. Report to Secretary of State.—Every issuer whose securities have been admitted to record and recorded as herein provided, may be required during the offering of such securities to file within thirty days after the close of business on December thirty-first, March thirty-first, June thirtieth, and September thirtieth, of each year, and at such other times as may be required by the Secretary of State, a statement, verified under oath by some person having actual knowledge of the facts therein stated, setting forth, in such form as may be prescribed by the Secretary of State, the financial condition, the amount of assets and liabilities, of such issuer on the above dates and such other information as said Secretary of State may require. It shall be unlawful for any issuer subject to the provisions of this chapter, who refuses or fails to comply with the provisions of this section, or for his agent or agents, to thereafter sell such securities in this State. (1925, c. 190, s. 14; 1927, c. 149, s. 14.)

§ 78-15. Examination and examiners. — The records and the business affairs of every company or person, whose securities have been admitted to record in the register of qualified securities shall be subject to examination and inspection by the Secretary of State or upon his direction by his assistants, accountants, or examiners, at any time said Secretary of State may deem it advisable; and such company or person shall pay a fee for each of such examinations of not to exceed twenty-five dollars (\$25) for each day or fraction thereof, plus the actual traveling and hotel expenses of said Secretary of State, his assistant, accountant or examiner, that he is absent from the capital of the State for the purpose of making such examination. (1925, c. 190, s. 15; 1927, c. 149, s. 15.)

§ 78-16. Complaints, investigations, findings of facts.—The Secretary of State may, upon his own initiative or upon the complaint of any reasonable person, hold such public hearings or make or have made such special inspection, examination or investigation as he may deem necessary, in connection with the promotion, sale or disposal in this State of any security or securities, to determine whether the same constitutes a violation of law; and the said Secretary of State, his assistant or deputy shall have power and authority:

- (1) To issue subpoenas and process compelling the attendance of any person and the production of any paper, records or books relating to any matter of which the Secretary of State has jurisdiction under this article, and
- (2) To administer an oath to any person whose testimony may be required on such inspection, examination, or investigation. Upon the conclusion of any such hearing, inspection, examination or investigation the Secretary of State may make findings of fact concerning the matter or matters investigated. Such findings of facts shall be admissible in evidence in any suit or action, at law or in equity, instituted under any of the laws of this State, and shall be prima facie evidence of the truth of the matters therein found by said Secretary of State, and,
- (3) To maintain by injunction or other remedy and action in any court of competent jurisdiction in this State for the purpose of enforcing this chapter, or making investigations. (1925, c. 190, s. 16; 1927, c. 149, s. 16.)

§ 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" near the beginning of the last sentence.

§ 78-18. Appeal.—Any interested person being dissatisfied with any findings, rulings, or judgments of the Secretary of State if final and made after a formal hearing elsewhere provided for in this chapter, may, within thirty days after the making and issuance thereof, appeal to the superior court. Any interested person aggrieved by any other order or the failure of the Secretary of State to make an order under any of the provisions of this chapter shall, if a hearing is not otherwise provided for, upon written request to the Secretary of State and within thirty days after the filing of such request, be entitled to a hearing. The Secretary of State shall rule upon the subject matter of such hearing, and any interested person may, within thirty days after the making and issuance of his ruling or order, appeal to the superior court. In all cases of appeals from the Secretary of State to the superior court, the record made before such Secretary shall thereupon be certified to the superior court of the county in which such interested person may reside, or any county adjoining thereto in the discretion of said Secretary of State and thereafter the parties may plead and such procedure may be had as in other causes within the jurisdiction of said superior court, and after the issues shall have been determined by the court or jury, as the case may be, such judgment shall be rendered by the court as the findings may require. Appeals may be taken from the decision of the superior court to the Supreme Court by either party in the same manner as is provided by law in other civil cases, but the Secretary of State may appeal without bond. Pending any such appeal, the said findings, rulings, orders and judgments of the Secretary of State shall be prima facie evidence that they are just and reasonable and that the facts found are true, and shall remain in full force and effect, if no such suit be brought within said thirty days, said findings, ruling, order or judgment shall become final and binding. (1925, c. 190, s. 18; 1927, c. 149, s. 18.)

Cross Reference.—See Editor's Note under § 78-2.

§ 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 subdivision (1) 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 cancelled 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 quo-

tations 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 cancelled 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.)

Cross Reference.—See Editor's Note under § 78-2.

Editor's Note. — The 1955 amendment struck out the former last paragraph of this section.

The 1959 amendment inserted in the first paragraph the third, fourth and fifth sentences. It also inserted subdivisions (5) and (6).

§ 78-20. Assistants, clerks, etc., employment of.—It shall be the duty of the Secretary of State to administer and enforce the provisions of this chapter, and he may appoint such clerks and other assistants as may from time to time be needed. (1925, c. 190, s. 20; 1927, c. 149, s. 20.)

Cross Reference.—See Editor's Note under § 78-2.

§ 78-21. Fee paid into State treasury; expenses of administration.—All fees herein provided for shall be collected by the Secretary of State and shall be paid over to the State Treasurer to go into the general fund; as well as all fees, per diems, expenses, etc., of appraisers, assistants, and investigators as herein provided, and all other expenses and fees required by this chapter. (1925, c. 190, s. 21; 1927, c. 149, s. 21.)

§ 78-22. Remedies.—Every sale or contract for sale made in violation of any of the provisions of this chapter shall be voidable at the election of the purchaser and the person making such sale or contract for sale, and every director, officer or agent of or for such seller, if such director, officer or agent shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser in an action at law in any court of competent jurisdiction upon tender to the seller of the securities sold or of the contract made for the full amount paid by such purchaser; provided, that no action shall be brought for the recovery of the purchase price after two years from the date of such sale or contract for sale; and provided further, that no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within sixty days to accept the voluntary offer of the seller to take back the security in question and to refund the full amount paid by such purchaser and court costs, together with interest on such amount for the period from the date of

payment by such purchaser down to the date of repayment, such interest to be computed:

- (1) In case such securities consist of interest-bearing obligations at the same rate as provided in such obligations; and
- (2) In case such securities consist of other than interest-bearing obligations at the rate of six per centum per annum; less, in every case, the amount of any income from said securities that may have been received by such purchaser. (1925, c. 190, s. 22; 1927, c. 149, s. 22.)

§ 78-23. Violation of chapter; punishment.—(a) Whoever for the purpose of procuring the registration of any security by notification under this chapter, shall knowingly make or cause to be made any false representation of a material fact to the Secretary of State shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the State prison for not less than one year nor more than five years or fined in any sum not more than one thousand dollars (\$1,000) or both.

(b) Whoever shall sell or cause to be sold, or offer to sell or cause to be offered for sale, any security in this State, which is not exempt under any of the provisions of § 78-3, unless sold in any transaction exempt under any of the provisions of § 78-4, and which such securities so sold, or caused to be sold or so offered for sale or caused to be offered for sale shall not have been registered as provided in this chapter, shall be guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for a period of not less than one, nor more than five years, or fined in any sum not more than one thousand dollars (\$1,000), or both.

(c) Whoever shall, for the purpose of selling any security in this State, fraudulently represent to the purchaser or prospective purchaser thereof the amount of dividends, interest or earnings which such security will yield, shall be deemed guilty of a violation of the provisions of this chapter and upon conviction thereof shall be imprisoned in the State prison for not less than one year nor more than five years, or fined in any sum not more than one thousand dollars (\$1,000), or both.

(d) Whoever, for the purpose of securing the registration by qualification of any securities under this chapter, shall make any false representation concerning any material fact submitted to the Secretary of State 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.

(e) Whoever, for the purpose of procuring the registration by qualification of any security under this chapter, shall suppress or withhold any information from the Secretary of State which he possesses and which if submitted by him to the Secretary of State would render such security incompetent to be registered by qualification under and pursuant to the terms of this chapter, 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.

(f) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State after having been notified by the Secretary of State that the registration of such securities has been cancelled, 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.

(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.

(h) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State embraced and referred to in § 78-19, without first having registered under and pursuant to the terms of said section, shall be deemed guilty of a violation of said section, 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.

(i) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State after his registration as provided in § 78-19 has been canceled by the Secretary of State as provided by § 78-19, shall be deemed guilty of a violation of said § 78-19, 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.

(j) Whoever for the purpose of procuring the registration of any dealer or agent under this chapter, shall knowingly make or cause to be made any false representations of a material fact to the Secretary of State shall be guilty of a felony 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 of not more than one thousand dollars (\$1,000), or both.

(k) Whoever engages in this State in the making of fictitious or pretended sales or purchases, or who causes the making of fictitious or pretended sales or purchases, or who engages in the offer of fictitious or pretended sales or purchases of any securities within the meaning of this chapter, the actual delivery of which securities are not to follow such sales, shall be deemed guilty of a violation of the terms 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 five thousand dollars (\$5,000), or both.

(l) Whoever, without first having become registered under and pursuant to the terms of § 78-19, shall assist or attempt to assist, by recommendation or by personal solicitation, any salesman or agent in this State in the sale or disposition of any securities required to be registered under the provisions of this chapter to any purchaser or purchasers, except in transactions exempt under § 78-4, and who shall in consideration of such assistance or an effort to assist receive compensation in any form or gratuity from such dealer or agent, or anyone upon their behalf, or who shall render such assistance or make such effort upon the promise of such dealer or agent, express or implied, that he shall receive in consideration therefor compensation in any form or a gratuity for such assistance or effort to assist, 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.

(m) It is hereby expressly provided that the offenses herein created and the penalties herein imposed are to be deemed cumulative to the offenses and penalties heretofore created and now existing in the criminal code of this State, and that the conviction of any person for the violation of any offense created by this chapter shall not be deemed to have placed such person in jeopardy of trial and conviction for the violation of any offense heretofore created and now existing in the criminal code of this State. (1925, c. 190, s. 23; 1927, c. 149, s. 23; 1955, c. 436, s. 10.)

Cross Reference.—See Editor's Note under § 78-2.

Editor's Note. — The 1955 amendment substituted in subsection (g) "Secretary of State" for "Commissioner."

Statute Strictly Construed.—The penal provision of this chapter, making the sale of securities in violation thereof a felony, must be strictly construed, and the terms of the statute cannot be extended beyond

the plain implication of words used. State v. Allen, 216 N. C. 621, 5 S. E. (2d) 844 (1939). **Applied in** State v. Pelley, 221 N. C. 487, 20 S. E. (2d) 850 (1942).

§ 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.

Sec.	Sec.
79-1. Notice to owner of stray, or to register of deeds.	79-3. When and how strays sold.
79-2. Owner may reclaim.	79-4. Failure to comply with stray law misdemeanor.

§ 79-1. **Notice to owner of stray, or to register of deeds.**—Any person who shall take up any stray horse, mare, colt, mule, ass or jennet, neat cattle, hog or sheep, shall within ten days after taking up such stray inform the owner, if to him known; if not, he shall inform the register of deeds of the supposed age, marks, brands and color of the stray, and that the same was taken up at his plantation or place of abode; whereupon the register of deeds shall record such information in a book kept by him for that purpose, for which service the taker-up of the stray shall pay a fee of twenty-five cents, except for hogs and sheep, for which the fee shall be ten cents. The register of deeds shall at once publish a notice of the taking up of such stray, by posting the same at the courthouse door, and if the cost does not exceed two dollars, then in some newspaper published in the county. Such notices shall be published for thirty days, and shall contain a full and complete description of the stray and of all marks or brands on the same, and when and where the same was taken up. The fees for publishing such notices shall be paid by the party taking up the stray. (1874-5, c. 258, s. 2; Code, s. 3768; Rev., s. 2833; C. S., s. 3951.)

Cross Reference.—As to license to look for strays upon the lands of another, see § 14-134.

§ 79-2. **Owner may reclaim.**—When any stray has been taken up, the owner may at any time before a sale reclaim such stray by proving his ownership and paying to the party capturing the same the actual costs paid the register of deeds as provided in § 79-1, together with the actual costs of keeping such stray, as fixed by the county commissioners. The board of commissioners of the several counties shall fix a scale of costs for keeping strays. (Rev., s. 2834; C. S., s. 3952.)

§ 79-3. **When and how strays sold.** — If the owner of any stray shall fail to claim the same within thirty days after the publication of the notice required by law, the person taking up the stray shall cause the stray to be appraised by the nearest magistrate and two freeholders, none of whom shall receive any fees for such services. Such appraisal shall give a full and accurate description of such stray and shall by the magistrate be returned to the register of deeds, and by him recorded in his book for strays; and the register of deeds shall issue an order to the sheriff directing him to sell such stray, and the sheriff shall sell such stray at public auction after ten days' public advertisement as for sales of personal property under execution; and out of the proceeds he shall pay the cost of publishing the notices as to strays, the costs of keeping and the cost of sale, and shall pay the surplus to the county treasurer for the benefit of the public school fund of the county. The county board of education shall at any time within twelve months after such funds have been paid to the county treasurer, upon due proof of ownership, issue an order commanding the county treasurer to pay to the owner of the stray the net amount paid the county treasurer as the proceeds of the sale of the stray. (Rev., s. 2835; C. S., s. 3953.)

Cited in *State v. Booker*, 250 N. C. 272, 108 S. E. (2d) 426 (1959).

§ 79-4. **Failure to comply with stray law misdemeanor.**—If any person shall fail to comply with any of the requirements of law as to strays, he shall be guilty of a misdemeanor and upon conviction be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3306; C. S., s. 3954.)

Cross Reference.—As to fences and stock law, see § 68-1 et seq.

Cited in State v. Booker 250 N. C. 272, 108 S. E. (2d) 426 (1959).

Chapter 80. Trademarks, Brands, etc.

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Trademarks.

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80-2. Property rights protected by filing for registry.
80-3. Filing to be with Secretary of State; contents of affidavits; fees.
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Article 7.

Recording of Cattle Brands and Marks with Commissioner of Agriculture.

- 80-46. "Stock growers" and "livestock" defined.
80-47. Stock growers limited to single mark or brand; registration not required; law compulsory upon registration.
80-48. Commissioner of Agriculture named recorder.
80-49. Recording with Commissioner.
80-50. Application; effect of recording; fee; no duplication allowed.
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<p>Sec. 80-52. Certified copy prima facie evidence of ownership.</p> <p>80-53. Records to be kept by those engaged in slaughtering.</p> <p>80-54. Purchaser of branded cattle to keep record of purchases.</p>	<p>Sec. 80-55. Defacing marks or brands made misdemeanor.</p> <p>80-56. Violation of article made misdemeanor.</p>
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ARTICLE 1.

Trademarks.

§ 80-1. **Adoption and filing for registry; "person" defined.**—It shall be lawful for any person to adopt for his protection and file for registry, as in this chapter provided, any label, trademark, term or design that has been used or is intended to be used for the purpose of designating, making known or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly made, manufactured, produced, prepared, packed or put on sale by any such person, or to or upon which any work or labor has been applied or expended by any such person, or by any member of any corporation, or association or union of workingmen, that has adopted and filed for registry any such label, trademark, term or design, or announcing or indicating that the same have been made in whole or in part by any such person or corporation, or association or union of workingmen, or by any member thereof.

The word "person" as used in this article includes associations or unions of workingmen, whether incorporated or unincorporated. Any duly authorized officer or agent of any such association or union may act in its behalf in securing for the association or union the benefits and protection of this article. (1903, c. 271; Rev., s. 3012; C. S., s. 3971; 1941. c. 255, s. 1.)

Editor's Note. — The 1941 amendment inserted "or association or union of workingmen" in the first paragraph and added the second paragraph.

As to the theory upon which is based the law dealing with trademarks, brands, etc., see *Blackwell v. Wright*, 73 N. C. 310 (1875).

Common Law Not Abrogated.—Nothing contained in this chapter indicates an intention of the General Assembly to abrogate the common law. *Allen v. Standard Crankshaft & Hydraulic Co., Inc.*, 210 F. Supp. 844 (1962).

State statutes providing for registration of trademarks are in affirmation of the common law. *Allen v. Standard Crankshaft & Hydraulic Co., Inc.*, 210 F. Supp. 844 (1962).

Chapter Does Not Deal with Trade Names.—This chapter deals with trademarks and service marks and not trade names. *Hot Shoppes, Inc. v. Hot Shoppe, Inc.*, 203 F. Supp. 777 (1962).

Remedies Are Either Declaratory or Cumulative.—The remedies given by statutes providing for registration of trademarks are either declaratory or are cumulative and additional to those recognized and applied by the common law. *Allen v.*

Standard Crankshaft & Hydraulic Co., Inc., 210 F. Supp. 844 (1962).

Name of Town or Locality.—It seems that the name of a town or locality cannot be exclusively appropriated as a trademark. *Tob. Co. v. McElwee*, 94 N. C. 425 (1886).

Use of Surname. — As a rule, a trademark cannot be taken in a surname, and any one named Bingham could start a school called the "Bingham School," in the absence of proof of intent to injure, or fraudulently attract the benefit of the good name and reputation acquired by a previously existing "Bingham School." And certainly there could be no confusion between a Bingham School at Asheville and a school even of the identically same name at Mebane. *N. C. Bingham School v. Gray*, 122 N. C. 699, 30 S. E. 304, 41 L. R. A. 243 (1898).

It is beyond the scope of the powers of the State legislature to establish a monopoly in a family name or to confer a patent right in its use. *Bingham School v. Gray*, 122 N. C. 699, 30 S. E. 304, 41 L. R. A. 243 (1898).

But one may, by contract, conclude himself from the use of his own name in a given business, and the agreement will be enforced by the courts. *Zagier v. Zagier*, 167 N. C. 616, 83 S. E. 913 (1914).

§ 80-2. **Property rights protected by filing for registry.** — Whenever any person shall adopt and file for registry any label, trademark, term or design pursuant to the provisions of this chapter, the property, privileges, rights, remedies and interests in and to any such label, trademark, term or design, and in and to the use of same, provided or given by this chapter to, or otherwise conferred upon or enjoyed by, the person filing the same for the registry, shall be fully and completely secured, preserved and protected as of the property of those entitled to the same before any such label, trademark, term or design has been actually applied to any goods, wares, merchandise, or product of labor, and put upon the market for sale or otherwise, and before any use or appropriation of any such label, trademark, term or design has been made in connection with any such goods, wares, merchandise or product of labor, as well as after the same has been used or applied to designate, make known or distinguish any such goods, wares, merchandise, or product of labor and they have been put upon the market. (1903, c. 271, s. 2; Rev., s. 3013; C. S., s. 3972.)

§ 80-3. **Filing to be with Secretary of State; contents of affidavits; fees.** — Any person who has heretofore adopted and used, or shall hereafter adopt and use any label, trademark, term or design, as in this chapter provided, may file the same for registry in the office of the Secretary of State, by leaving two copies, facsimiles or counterparts thereof, with the said Secretary, and filing therewith a statement in the form of an affidavit, subscribed and sworn to by any such person, or by any officer, agent or attorney, if a corporation or association or union of workingmen, specifying the person by whom any such label, trademark, term or design is filed, and the class or character of the goods, wares, merchandise or products of labor to which the same has been or is intended to be appropriated or applied, and that the person so filing the same has the right to the use of the said label, trademark, term or design, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, without the permission or authority of the person filing the same, and that the copies, facsimiles or counterparts filed therewith are true and correct copies, facsimiles or counterparts of the genuine label, trademark, term or design of the person filing the same; and there shall be paid for such registry a fee of five dollars to the Secretary of State for the use of the State, and the same recording fees required by law for recording certificate of organization of corporations. (1903, c. 271, s. 3; Rev., s. 3014; C. S., s. 3973; 1935, c. 60; 1941, c. 255, s. 2.)

Editor's Note. — The 1935 amendment five dollars. The 1941 amendment inserted increased the registry fee from one to "or association or union of workingmen."

§ 80-4. **Registration; certified copies evidence; fees.**—The Secretary of State, upon the filing of any such label, trademark, term or design that is not in conflict with § 80-6, shall register the same, and shall deliver to the person filing the same as many certified copies thereof, with his certificate of such registry, as any such person may request, and for every such copy and certificate there shall be paid to the Secretary of State, for the use of the State, a fee of one dollar; and any such certified copy and certificate shall be admissible in evidence and competent and sufficient proof of the adoption, filing and registry of any such label, trademark, term or design, by any such person in any action or judicial proceeding in any of the courts of this State, and of due compliance with the provisions of this chapter. (1903, c. 271, s. 4; Rev., s. 3015; C. S., s. 3974.)

§ 80-5. **Transfer of trademarks.** — The right to use any registered label, trademark, term or design shall be granted only by an instrument in writing, duly filed in the office of the Secretary of State. The fees for recording or filing such transfer and issuing copies thereof shall be the same as for filing such label, trademark, term or design. (Rev., s. 3016; C. S., s. 3975.)

§ 80-6. **Similar trademarks refused registration.** — It shall not be lawful for the Secretary of State to register for any person any label, trademark, term or design that is in the identical form of any other label, trademark, term or design theretofore filed by any other person, or that bears any such near resemblance thereto as may be calculated to deceive, or that would be liable to be mistaken therefor. (1903, c. 271, s. 5; Rev., s. 3017; C. S., s. 3976.)

§ 80-7. **Fraudulent registration; penalty.** — Any person who shall file or procure the filing and registry of any label, trademark, term or design in the office of the Secretary of State under the provisions of this chapter, by making any false or fraudulent representations or declarations, with fraudulent intent, shall be liable to pay any damages sustained in consequence of any such registry, to be recovered by or in behalf of the party injured thereby. (1903, c. 271, s. 5; Rev., s. 3018; C. S., s. 3977.)

§ 80-8. **Use of counterfeit trademarks unlawful.**—Whenever any person has adopted and filed for registry any label, trademark, term or design, as provided by law, and the same shall have been registered pursuant to law, it shall be unlawful for any other person to manufacture, use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term or design, or have in possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor to which or on which any counterfeit or imitation of any such label, trademark, term or design is attached, affixed, printed, stamped, impressed or displayed, or to sell or dispose of, or offer to sell or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, stamped, impressed or displayed. (1903, c. 271, s. 6; Rev., s. 3019; C. S., s. 3978.)

Cross Reference.—For relief against unlawful use, see note to § 80-10.

§ 80-9. **Unauthorized use unlawful; use under license.** — Whenever any person has adopted and registered any label, trademark, term or design, as provided by law, it shall be unlawful for any other person to make any use, sale, offer for sale or display of the genuine label, trademark, term or design of any such person filing the same, or to have any such genuine label, trademark, term or design in possession with intent that the same shall be used, sold, offered for sale, or displayed, or that the same shall be applied, attached or displayed in any manner whatever to or on any goods, wares or merchandise, or to sell, offer to sell, or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trademark, term or design of any such person is attached, affixed, or displayed, or to make any use whatever of any such genuine label, trademark, term or design, without first obtaining in every such case the license of the person adopting, filing and registering the same; and any such license may be revoked and terminated at any time upon notice, and thereafter any use thereof shall be unlawful. (1903, c. 271, s. 7; Rev., s. 3020; C. S., s. 3979.)

Cross Reference.—For relief against unauthorized use, see § 80-10 and note.

§ 80-10. **Remedies; damages; destruction of counterfeits.** — Any person who has registered any label, trademark, term or design under the provisions of this chapter shall have a right of action against any person for the unauthorized use of such label, trademark, term or design, and the courts shall by appropriate remedies prevent the unauthorized or unlawful use, manufacture or display of any label, trademark, term or design, or the imitation or counter-

feit thereof, or the sale, disposal or display of any articles of property on which any counterfeit or imitation of any registered label, trademark, term or design, or on which any genuine label, trademark, term or design may be used or displayed without proper authority; and shall further secure and protect all persons in all rights of property and interest which they may have in any label, trademark, term or design registered under this chapter; and the court shall award to the plaintiff any and all damages resulting from any such wrongful use of any such label, trademark, term or design; and any counterfeit or imitation of any labels, trademarks, terms or designs, and any die, engraving, mould or mechanical device or the manufacture of the same in the possession or under the control of the defendant, shall be delivered up to an officer of the court, to be destroyed, and any such genuine labels, trademarks, terms or designs in the possession or under the control of any such defendant shall be delivered to the plaintiff: Provided, however, no restraining order or injunction granted to any association or union of workmen to prevent violations of this article shall have the effect of impounding or preventing the free flow into the channels of commerce of any goods, wares, merchandise or products already manufactured or in the process of manufacture to which any label, trademark, term or design has been affixed at the time of the institution of the action in which the injunctive relief is sought, unless the owner or manufacturer of said goods, wares, merchandise or products has permitted the affixing of such label, trademark, term or design with the actual knowledge that it was being used or affixed in violation of the provisions of this article. (1903, c. 271, s. 8; Rev., s. 3021; C. S., s. 3980; 1941, c. 255, s. 3.)

Editor's Note. — The 1941 amendment added the proviso at the end of this section.

When Relief Granted. — Before the owner of a trademark can call upon the courts for relief, he must show not only that he has a clear legal right to the trademark, but that there has been a plain violation of it; and where a violation is alleged, the true inquiry is, whether the mark of the defendant is so assimilated to that of the plaintiff as to deceive purchasers. And it will make no difference whether the party designed to mislead the public or whether the symbol adopted was calculated to deceive. *Blackwell v. Wright*, 73 N. C. 310 (1875).

§ 80-11. Concurrent action for penalty. — In addition to any other rights, remedies or penalties provided by this chapter, and as concurrent therewith, any person who shall violate any of the provisions of this chapter shall be liable to a penalty of two hundred dollars, to be recovered by any person who has filed any such label, trademark, term or design. (1903, c. 271, s. 9; Rev., s. 3022; C. S., s. 3981.)

Applied in *Maola Ice Cream Co. v. Maola Milk, etc., Co.*, 238 N. C. 317, 77 S. E. (2d) 910 (1953).

§ 80-12. Use of private marks or labels to defraud; punishment. — If any person shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, the private marks, tokens, stamps or labels of any mechanic, manufacturer or other person, being a resident of the United States, with intent to deceive and defraud the purchasers, mechanics, or manufacturers of any goods, wares or merchandise whatsoever, upon conviction

thereof he shall be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment of not less than thirty days or more than five years, or both fine and imprisonment, at the discretion of the court. (1870-1, c. 253, s. 1; Code, s. 1038; Rev., s. 3852; C. S., s. 3982.)

§ 80-13. Selling goods with forged marks or labels, misdemeanor.—If any person shall vend any goods, wares or merchandise having thereon any forged or counterfeit marks, tokens, stamps or labels purporting to be the marks, tokens, stamps or labels of any person being a resident of the United States, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, he shall be guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both fine and imprisonment, at the discretion of the court. (1870-1, c. 253, s. 2; Code, s. 1039; Rev., s. 3850; C. S., s. 3983.)

§ 80-14. Misbranding sacks to defraud, misdemeanor.—If any person shall knowingly use the mark or brand of any other person on any sack, or shall knowingly impress on any sack the mark or brand of another person, with intent to defraud or for the purpose of enhancing the value of his own property, the person so offending shall be guilty of a misdemeanor. (1874-5, c. 225; Code, s. 1040; Rev., s. 3851; C. S., s. 3984; 1943, c. 543.)

Editor's Note. — The 1943 amendment of larceny" formerly appearing at the end struck out "and punished as if convicted of this section.

ARTICLE 2.

Timber Marks.

§ 80-15. Timber dealers may adopt.—Any person dealing in timber in any form shall be known as a timber dealer and as such may adopt a trademark, in the manner and with the effect in this article provided. (1903, c. 261, s. 1; Rev., s. 3023; C. S., s. 3985.)

§ 80-16. How adopted, registered and published.—Every such dealer desiring to adopt a trademark may do so by the execution of a writing in form and effect as follows:

Notice is hereby given that I (or we, etc., as the case may be) have adopted the following trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to wit: (Here insert the words, letters, figures, etc., constituting the trademark, or if it be any device other than words, letters or figures, insert a facsimile thereof).

Dated this day of, 19.... A B

Such writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be registered in the office of the register of deeds of the county in which the principal office or place of business of such timber dealer may be, in a book to be kept for that purpose marked Registry of Timber Marks, also in office of Secretary of State, and a copy thereof shall be published at least once in each week for four successive weeks in some newspaper printed in such county, or if there be no such newspaper printed therein, then in some newspaper of general circulation in such county. (1889, c. 142; 1903, c. 261, s. 2; Rev., s. 3024; C. S., s. 3986.)

§ 80-17. Property in and use of trademarks.—Every trademark so adopted shall, from the date thereof, be the exclusive property of the person adopting the same. The proprietor of such trademark shall, in using the same, cause it to be plainly stamped, branded or otherwise impressed upon each piece of timber upon which the same is placed. (1889, c. 142; 1903, c. 261, ss. 3, 4; Rev., s. 3025; C. S., s. 3987.)

§ 80-18. **Effect of branding timber purchased.**—When timber is purchased by the proprietor of any such trademark, and the said trademark is placed thereon as hereinbefore provided, such timber shall thenceforth be deemed the property of such purchaser, without any other or further delivery thereof, and such timber shall thereafter be at the risk of the purchaser, unless otherwise provided by contract in writing between the parties. (1889, c. 142; 1903, c. 261, s. 6; Rev., s. 3026; C. S., s. 3988.)

§ 80-19. **Trademark on timber evidence of ownership.**—In any action, suit or contest in which the title to any timber, upon which any trademark has been placed as aforesaid, shall come in question, it shall be presumed that such timber was the property of the proprietor of such trademark; in the absence of satisfactory proof to the contrary. (1903, c. 261, s. 7; Rev., s. 3027; C. S., s. 3989.)

§ 80-20. **Fraudulent use of timber trademark, misdemeanor.**—If any person shall use or attempt to use any timber trademark without the written consent of the proprietor thereof, or falsely and fraudulently place any trademark on timber not the property of the owner of such trademark without his written consent, or intentionally and without lawful authority remove, deface or destroy any timber trademark or the imprint thereof on any timber or intentionally put any such timber in such a position or place so remote from the stream from which it was taken or on which it was afloat as to render it inconvenient or unnecessarily expensive to replace the same in such stream, he shall be guilty of a misdemeanor. (1903, c. 261, ss. 3-5; Rev., s. 3854; C. S., s. 3990.)

§ 80-21. **Larceny of branded timber.**—If any person shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark is stamped, branded or otherwise impressed, or shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark has been intentionally and without lawful authority removed, defaced or destroyed, he shall be deemed guilty of larceny thereof and punished as in other cases of larceny. (1903, c. 261, s. 5; Rev., s. 3853; C. S., s. 3991.)

§ 80-22. **Altering timber trademark crime.**—If any person shall willfully change, alter, erase or destroy any registered timber mark or brand put or cut upon any logs, timber, lumber or boards, except by the consent of the owner thereof, with intent to steal the said logs or timber, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both. (1889, c. 142, s. 3; 1903, c. 41; Rev., s. 3855; C. S., s. 3992; 1943, c. 543.)

Editor's Note. — The 1943 amendment shall be guilty of larceny and punished as struck out "if the same shall have been for that offense."
done with a felonious intent, such person

§ 80-23. **Possession of branded logs without consent, misdemeanor.**—If any person shall knowingly and willfully take up or have in his possession any log, timber, lumber or board upon which a registered timber mark or brand has been put or cut, except by the consent of the owner thereof, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both. (1889, c. 142, s. 4; 1903, c. 42; Rev., s. 3856; C. S., s. 3993.)

ARTICLE 3.

Mineral Waters and Beverages.

§ 80-24. **Description of name, labels, or marks filed and published.**—Any person, partnership or corporation engaged in manufacturing, bottling,

selling or dealing in mineral, soda or aerated waters, beers, lager beer, milk or other beverages, in kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or other vessels, with his name or other marks or devices printed, impressed, or otherwise produced thereon, or upon labels pasted thereon, shall file with the clerk of the superior court of the county in which his principal office or place of business (or in case of a foreign corporation, its principal office or place of business or agency) is located, a description of the names, marks, or devices so used by him, and cause such description to be printed twice a week for two successive weeks in some daily newspaper published in said county, if there be a daily newspaper published therein, and if not, then in some newspaper published in said county once a week for two successive weeks. The description of the names, marks or devices, before being filed as aforesaid, shall be signed by the person filing the same, or in case of a partnership, by a partner, or in case of a corporation, by one of its officers or managers, and shall be acknowledged by the person signing the same as his act, or as the act of said partnership or corporation, before an officer competent to take acknowledgment of deeds. The publication hereby required need only be a brief description, sufficient for identification, of such names or marks, and need not contain a certified copy of the acknowledgment. The provisions of this article shall apply to all vessels enumerated above upon which said names or marks shall appear as aforesaid, whether or not any of the same shall be in existence at the time of said filing and publication. (1907. c. 901, s. 1; C. S., s. 3994.)

§ 80-25. Clerk to record description.—The several clerks of the superior courts mentioned in the preceding section shall record in some book of record in their custody all such descriptions filed with them, and also copies of the said advertisement in the newspaper, certified to by the publishers thereof, and shall furnish copies thereof, duly certified by them in the usual manner, to any person who may apply therefor, and shall receive for the recording of such copies a fee of fifty cents. Such certified copies shall be evidence that the provisions of the preceding section have been complied with, and shall be prima facie evidence of the title of the person, named therein, to the vessels upon which his name, marks, labels or devices appear as described in said description. (1907, c. 901, s. 2; C. S., s. 3995.)

§ 80-26. Refilling vessels and defacing marks forbidden; punishment.—After any person has filed and published his description of such names, marks or devices, in accordance with the preceding provisions of this article, it shall be unlawful for any persons to fill in any way the vessels upon which such names or other marks are printed, impressed or otherwise produced, with any water or beverage enumerated in this article, or to deface, remove or conceal such names or other marks, thereon, with intent to convert the same to his use, or to have on sale, offer for sale, traffic in, handle in the course of business, transport, or to take or collect from ash or garbage receptacles or from public or private premises, or to keep in stock, store or dispose of or deal or traffic in same, or any parts thereof, without the written consent of the person whose name or other marks are upon such vessels, or to willfully break, destroy or otherwise injure any of the articles mentioned in this section. Any person who shall do any of the acts declared to be unlawful by this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense by imprisonment of not less than ten days or more than one year, or by a fine of three dollars for each of such kegs, casks or barrels, and one dollar for each of such boxes, trays, crates, bottles, syphons, or any other vessels so unlawfully used; and for the second and subsequent offense by imprisonment for not less than twenty days or more than one year, or by a fine of not less than two dollars or more than five dollars for each vessel unlawfully used, or by both such fine and imprisonment, at the discretion of the court before whom

such offense is tried: Provided, this section shall not apply to such vessels as the bottler charges his customers for at the time of sale of the goods. (1907, c. 901, s. 3; C. S., s. 3996.)

§ 80-27. Possession of vessels as evidence of offense.—If any person shall be found to be in possession of any of the vessels mentioned above in this article, or any parts thereof, and the persons whose names, marks or devices have been placed thereon, as above provided, have complied with the provisions of this article, and the persons so found in possession thereof shall be charged with any of the offenses mentioned in the preceding section, then such possession shall be prima facie evidence that such person is guilty of the offenses so charged: Provided, this section shall not apply to bottlers who receive such vessels in the course of business and mixed and exchanged in shipment, when such bottler within a reasonable time notifies the owners thereof of the location thereof. (1907, c. 901, s. 4; C. S., s. 3998.)

§ 80-28. Search warrants. — If the owner of any vessel mentioned in § 80-24 who has complied with the provisions thereof, or the officer, agent or employee of such owner, shall make an affidavit before a justice of the peace asserting that he has reason to believe and does believe that any person is in actual or constructive possession of, or is making use of, any article above mentioned or any part thereof, or in any way declared to be unlawful by § 80-26, the justice may issue his search warrant to any sheriff, constable or other officer of the law to whom such warrant may be directed, and cause the premises designated in the warrant to be searched; and if article above mentioned or any part thereof shall be found upon the premises so designated, the officer executing such search warrant shall thereupon report the same, under his oath, to the justice, who shall thereupon, upon said report and upon the oath of any person or persons charging any violations of § 80-26, issue his warrant for the arrest of the person against whom the charge is made, and cause him, together with such articles, to be brought before him for trial. (1907, c. 901, s. 5; C. S., s. 3999.)

§ 80-29. Concurrent jurisdiction of superior courts and justices of the peace.—The justices of the peace in the counties of this State shall have concurrent jurisdiction with the superior courts of their respective counties in the case of persons arrested for violation of the above provisions of this article, and such justices of the peace shall proceed to hear and determine such cases when the parties arrested are brought before them, in all cases where the punishment fixed in this article is such as to give the justices jurisdiction under the Constitution and laws of this State. And if such person shall be found to be guilty of the violation of any of the provisions of this article, the court trying such person and imposing the punishment herein prescribed shall also award possession to the owner of all the property involved in such violation. (1907, c. 901, s. 6; C. S., s. 4000.)

§ 80-30. Accepting deposit not deemed sale. — The requiring, taking or accepting of any deposit for any purpose upon any vessel above enumerated shall not be deemed to constitute a sale of such property, either optional, conditional or otherwise, in any proceedings under this article. (1907, c. 901, s. 7; C. S., s. 4001.)

§ 80-31. When refiling description not required.—Any person, partnership, or corporation that has heretofore filed and published a description of his name, marks or devices for the purposes mentioned in § 80-1, in accordance with the law existing at the time of such filing and publication, shall not be required to again file such description but shall be entitled to all the benefits of this article as fully as if he had complied with all the provisions thereof. (1907, c. 901, s. 8; C. S., s. 4002.)

§ 80-32. **Application of the article.** — The provisions of this article do not apply to any person using the vessels enumerated above for the beverages placed therein by the owners, or who after consumption of the contents is in possession of the same, while awaiting the return to the owners, nor shall the provisions of this article apply to any garbage man collecting the same in the regular course of his business: Provided, this article shall not apply to beer and mineral water bottles shipped into this State from other states. (1907, c. 901, s. 9; C. S., s. 4003.)

ARTICLE 4.

Farm Names.

§ 80-33. **Registration of farm names authorized.** — Any owner of a farm in the State of North Carolina may have the name of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the register of deeds of the county in which the farm is located, and the register of deeds shall furnish to such landowner a proper certificate setting forth the name and description of the lands. (1915, c. 108, s. 1; C. S., s. 4004.)

Local Modification. — Sampson, Stokes, Surry: C. S., § 4011.

§ 80-34. **After registry, similar name not registered.**—When any name has been recorded as the name of any farm in such county, the name, or one so nearly like it as to produce confusion, shall not be recorded as the name of any other farm in the same county. (1915, c. 108, s. 1; C. S., s. 4005.)

§ 80-35. **Distinctive name required.**—No name shall be registered as the name of a farm where such proposed name or one so nearly like it as to produce confusion has been so used in connection with another farm in the same county as to become generally known prior to March 5, 1915, unless the name used has also prior to March 5, 1915, become well known as the name of the farm proposed to be registered; and in this event two or more farms in the same county may be registered with the same name with some prefix or suffix added to distinguish them. (1915, c. 108, s. 2; C. S., s. 4006.)

§ 80-36. **Application for registry; publication and hearing.**—Before a name shall be registered the clerk shall have publication made at least once a week for four weeks in some secular newspaper published in the county, if one is so published, and if one is not so published, then one having a general circulation in the county, giving the name of the applicant, the proposed name of registration and a sufficient description to identify the farm and the time of the return; and if the owner or clerk knows of another farm in the county of the same or very similar name, a summons shall be served on the owner thereof at least ten days before the return day. On the return day any person, firm or corporation may file claim to the name, and the clerk may pass upon the claim and award the name to any party, with the right to appeal by the aggrieved party to the superior court within ten days, as in other cases, and on such appeal the judge shall decide the matters unless a jury be demanded by some party. (1915, c. 108, s. 2; C. S., s. 4007.)

§ 80-37. **Fees for registration.**—Any person having the name of his farm recorded as provided in this article shall first pay to the register of deeds a fee of one dollar, which fee shall be paid to the county treasurer as other fees are to be paid to the county treasurer by such register of deeds: Provided, that in counties where the fee system obtains, the fees herein mentioned shall go to the register of deeds of such counties. (1915, c. 108, s. 3; C. S., s. 4008.)

§ 80-38. **When transfer of farm carries name.**—When any owner of a farm, the name of which has been recorded as provided in this article, transfers

by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then, in the event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed or conveyance. (1915, c. 108, s. 4; C. S., s. 4009.)

§ 80-39. **Cancellation of registry; fee.**—When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name the following: "This name is canceled and I hereby release all rights thereunder," which shall be signed by the person canceling such name, and attested by the register of deeds. For such latter service the register of deeds shall charge a fee of twenty-five cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him. (1915, c. 108, s. 5; C. S., s. 4010.)

ARTICLE 5.

Stamping of Gold and Silver Articles.

§ 80-40. **Marking gold articles regulated.** — It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any mark indicating or designed to indicate that the gold, or alloy of gold, therein is of a greater degree of fineness than its actual fineness, unless the actual fineness, in the case of flatware and watchcases, is not less by more than three one-thousandths parts, and in the case of all other articles is not less by more than one-half karat than the fineness indicated, according to the standards and subject to the qualifications hereinafter set forth.

In any test for ascertaining the fineness of gold or alloy in the articles, according to the required standards, the part of the gold or alloy taken for the test, analysis or assay shall be a part not containing or having attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of the articles. In addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned in this section (except watchcases), including all solder or alloy of inferior metal used for brazing or uniting the parts (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than one karat than the fineness indicated by the mark used as above indicated. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 1; C. S., s. 4012.)

§ 80-41. **Marking silver articles regulated.** — It shall be unlawful to make for sale or sell or offer to sell or dispose of or have in possession with intent to sell or dispose of—

- (1) Any article of merchandise made in whole or in part of silver of any alloy of silver, and having marked, stamped, branded or engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred and twenty-five one-thousandths of the component parts of the metal appearing or purporting to be silver, of which the article is manufactured, are pure silver, subject to the qualifications hereinafter set forth: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard.

- (2) Any article of merchandise made in whole or in part of silver or of any alloy of silver, and having marked, stamped, branded, engraved or imprinted thereon, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the words "coin" or "coin silver," or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver, of which the article is manufactured, are pure silver, subject to the qualifications hereinafter set forth: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.
- (3) Any article of merchandise made in whole or in part of silver or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any mark or word (other than the word "sterling" or the word "coin") indicating, or designed to indicate, that the silver or alloy of silver in the article is of a greater degree of fineness than its actual fineness, unless the actual fineness is not less by more than four one-thousandths parts than the actual fineness indicated by the use of such mark or word, subject to the qualifications hereinafter set forth.

In any test for ascertaining the fineness of the articles mentioned in this section, according to the foregoing standards, the part taken for test, analysis or assays shall be a part not containing or having attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article. In addition to the foregoing test and standards, the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in this section, including all solder or alloy of inferior fineness used for brazing or uniting the parts (all such silver, alloy or solder being assayed as one piece), shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark employed as above indicated. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 2; C. S., s. 4013.)

§ 80-42. Marking articles of gold plate regulated.—It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering or sheet of gold, or of any alloy of gold, which article is known in the market as "rolled gold plate," "gold plate," "gold-filled," or "gold electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless such word be accompanied by other words plainly indicating that such article or some part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold-filled, as the case may be. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 3; C. S., s. 4014.)

§ 80-43. Marking articles of silver plate regulated.—It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering or sheet of silver or of any alloy of silver, which article is known in the market as "silver plate" or "silver electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or

upon any box, package, cover or wrapper in which the article is enclosed, the word "sterling" or the word "coin," either alone or in conjunction with any other words or marks. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 4; C. S., s. 4015.)

§ 80-44. **Violation of article misdemeanor.**—Every person, firm, corporation or association guilty of a violation of any one of the preceding sections of this article, and every officer, manager, director or managing agent of any such person, firm, corporation or association directly participating in such violation or consenting thereto, shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, at the discretion of the court: Provided, that if the person charged with violation of this article shall prove that the article concerning which the charge was made was manufactured prior to the thirteenth day of June, one thousand nine hundred and seven, then the charge shall be dismissed. (1907, c. 331, s. 5; C. S., s. 4016.)

ARTICLE 6.

Cattle Brands.

§ 80-45. **Owners of stock to register brand or marks.**—Every person who has any horses, cattle, hogs or sheep may have an earmark or brand different from the earmark or brand of all other persons, which he shall record with the clerk of the board of commissioners of the county where his horses, cattle, hogs or sheep are; and he may brand all horses eighteen months old and upwards with the said brand, and earmark all his hogs and sheep six months old and upwards with the said earmark; and earmark or brand all his cattle twelve months old and upwards; and if any dispute shall arise about any earmark or brand, the same shall be decided by the record thereof. (R. C., c. 17, s. 1; Code, s. 2317; Rev., s. 3028; C. S., s. 4017.)

ARTICLE 7.

Recording of Cattle Brands and Marks with Commissioner of Agriculture.

§ 80-46. **"Stock growers" and "livestock" defined.**—Every person, firm, association or corporation who owns, raises, buys or sells cattle in this State, is deemed a stock grower, and all cattle are deemed livestock, within the meaning of this article. (1935, c. 232, s. 1.)

§ 80-47. **Stock growers limited to single mark or brand; registration not required; law compulsory upon registration.**—Every stock grower in this State must use one, and only one, mark or brand for said stock grower's cattle, which mark or brand shall be placed in some conspicuous place on said cattle, which place must be designated in the application for the recording of said mark or brand hereinafter provided for in this article: Provided, however, nothing in this section nor in any subsequent section of this article shall be construed to be compulsory upon any stock grower in this State to apply for or register his mark or brand of cattle; but when a stock grower does so, then this article and all provisions thereof shall be binding and compulsory upon said stock grower. (1935, c. 232, s. 2.)

Cited in *Gibbs v. Armstrong*, 233 N. C. 279, 63 S. E. (2d) 551 (1951).

§ 80-48. **Commissioner of Agriculture named recorder.** — The Commissioner of Agriculture of the State of North Carolina is hereby declared to be the State recorder of marks and brands of cattle growers in this State. (1935, c. 232, s. 3.)

§ 80-49. **Recording with Commissioner.**—All brands or marks shall be recorded with the State recorder. (1935, c. 232, s. 4.)

§ 80-50. **Application; effect of recording; fee; no duplication allowed.**—Any stock grower in the State of North Carolina, who desires to avail himself of the provisions of this article, shall make and sign an application, furnished by the State recorder, setting forth a facsimile and description of the brand or mark which said stock grower desires to use, and shall file the same with the State recorder, who shall record the same in a book kept by him for that purpose, and from and after the filing of the same, the stock grower filing the same shall have exclusive right to use said brand or mark within the State, and shall pay the State recorder a fee of one dollar; provided, that the State recorder shall not file or record such mark or brand if the same has been heretofore recorded by him in favor of some other grower. (1935, c. 232, s. 5.)

§ 80-51. **Certified copy of mark or brand; registration; fees and disposition thereof.**—Upon the recording of any such brand or mark with the State recorder, as herein provided, the owner thereof may procure from the State recorder a certified copy thereof, paying therefor the sum of fifty cents, and may cause the same to be recorded in the office of the register of deeds in the county where said stock grower resides, and shall pay said register of deeds a fee of fifty cents for recording same. It shall be unlawful for any register of deeds to record any such mark or brand, unless the same is certified to him by the State recorder. Application blanks and a book for recording said marks and brands shall be furnished each register of deeds of the county applying for same, and shall be paid for by the State recorder, if he has sufficient funds derived from the recording fees, and if not, then by the county so applying for same. All fees received by the State recorder shall be used in the administration of this article, and any surplus paid into the general fund of the Agriculture Department. In order to put the provisions of this article in force the Commissioner of Agriculture is hereby authorized to use any fund in his department not otherwise appropriated. (1935, c. 232, s. 6.)

§ 80-52. **Certified copy prima facie evidence of ownership.**—In all civil or criminal suits in any court in this State a duly certified copy, under the seal of the Department of Agriculture, of any brand or mark, duly recorded under the provisions of this article, shall be prima facie evidence of the ownership of the animal of said cattle grower. (1935, c. 232, s. 7.)

§ 80-53. **Records to be kept by those engaged in slaughtering.**—Any person, firm or corporation engaged in the business of slaughtering cattle shall keep at its place of business a book in which must be kept the name or names of the persons from whom any marked or branded cattle are purchased and the date of purchase and his address, and the mark or brand of such cattle. Said book must be kept ready at all times for inspection of any person who desires to examine the same. (1935, c. 232, s. 8.)

§ 80-54. **Purchaser of branded cattle to keep record of purchases.**—Any person purchasing any marked or branded cattle, the mark or brand of which has been duly recorded under the provisions of this article, shall keep the name and address of the person from whom said cattle are purchased, a description of the mark or brand and the date of the purchase, and exhibit same to any person desiring to examine same. (1935, c. 232, s. 9.)

§ 80-55. **Defacing marks or brands made misdemeanor.**—No stock grower or other person in this State must change, conceal, deface, disfigure or obliterate any brand or mark previously branded, impressed or marked on any head of cattle, or put his or any other brand or mark upon or over any part of any brand or mark previously branded or marked upon any head of cattle, and no person shall make or use any counterfeit of any mark or brand of any other person. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (1935, c. 232, s. 10.)

§ 80-56. **Violation of article made misdemeanor.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1935, c. 232, s. 11.)

Chapter 81.

Weights and Measures.

Article 1.

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ARTICLE 1.

Uniform Weights and Measures.

§ 81-1. **Office of Superintendent of Weights and Measures.** — In order to protect the purchasers or sellers of any commodity and to provide one standard of weight and of measure of length and surface throughout the State, which must be in conformity with the standard of measure of length, surface, weight and capacity established by Congress, the office of Superintendent of Weights and Measures for the State of North Carolina is hereby established as hereinafter provided. (1927, c. 261, s. 1; 1945, c. 280, s. 1.)

Editor's note. — The 1945 amendment inserted "or sellers" and "weight and of" near the beginning of the section.

§ 81-2. **Administration of article.**—The provisions of this article shall be administered by the State Department of Agriculture through a suitable person to be selected by the Commissioner of Agriculture and known as the Superintendent of Weights and Measures. For the purpose of administering and giving effect to the provisions of this article, the rules and codes of specifications and tolerances as adopted by the National Conference of Weights and Measures and recommended by the United States Bureau of Standards and approved by the North Carolina Department of Agriculture are hereby adopted; however, the Department of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this article, and to fix and prescribe reasonable charges and fees for examining, testing, adjusting and certifying the correct, or incorrect, equipment used in the buying or selling of any commodity or thing, or any equipment used for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight or measure, when a charge is made for such determination. Such rules and regulations and fees and charges shall be published thirty

days before such rules, regulations, fees and charges become effective. (1927, c. 261, s. 2; 1931, c. 150; 1943, c. 762, s. 1; 1949, c. 984.)

Editor's Note. — The 1931 amendment inserted in the second sentence the provision as to rules adopted by the National Conference of Weights and Measures, the 1943 amendment inserted therein "and approved by the North Carolina Department of Agriculture," and the 1949 amendment rewrote the sentence.

§ 81-2.1. Board of Agriculture authorized to establish standards of weights and measures for commodities having none. — The Board of Agriculture is authorized, directed and empowered to establish by order (after public notice as may be determined by it), standards of weights and measures on any commodity in any instance where no standard has been established by the Congress of the United States, or by the laws of the State of North Carolina, provided, however, that when a standard is established by Congress, or by the laws of the State of North Carolina, such standard shall supersede the standard or standards established by the Board of Agriculture. Provided that this section does not authorize the Board of Agriculture to establish a standard log rule measure. (1945, c. 280, s. 1; 1949, c. 984.)

Editor's Note. — The 1949 amendment inserted the comma after the phrase in parentheses and struck out in the next line "and" formerly appearing after "commodity." It also changed "act" to "section" in the proviso.

§ 81-3. Employment of Superintendent of Weights and Measures.—The Commissioner of Agriculture shall have authority to employ a Superintendent of Weights and Measures and necessary assistants, local inspectors and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties.

The person named as Superintendent of Weights and Measures shall give bond to the State of North Carolina in the sum of ten thousand dollars to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State and said bond to be approved as other bonds for the State officers. The Superintendent of Weights and Measures shall, to safeguard the interests of the buyer and seller, require bond from other employees authorized under the first paragraph of this section in the amounts of not less than one thousand dollars for each employee designated as a local inspector or sealer of weights and measures. (1927, c. 261, ss. 3, 4; 1949, c. 984.)

Editor's Note. — The 1949 amendment inserted "and said bond" in the first sentence of the second paragraph.

§ 81-4. Salaries and expenses.—All salaries and necessary expenses shall be paid as now provided for the other departments and agencies of the State government. (1927, c. 261, s. 5; 1931, c. 150; 1949, c. 984.)

Editor's Note.—Prior to the 1931 amendment this section provided for the payment of salaries, etc., from the fees collected under this article. The 1949 amendment substituted "paid" for "provided."

§ 81-5. Standard of work for local standard keepers. — When any town or county wishes to appoint a local standard keeper or inspector or sealer of weights and measures, the appointment and regulation of his work must be in keeping with the rules and regulations of the State Department of Agriculture and his work subject to supervision of the State Superintendent of Weights and Measures. (1927, c. 261, s. 6; 1949, c. 984.)

Editor's Note. — The 1949 amendment inserted the comma after "measures."

§ 81-6. Receipts for fees; approved standards to be marked. — The State Superintendent of Weights and Measures, or his deputies, or inspectors on

his direction, shall, after examining any standards of weights or measures or other equipment used for determining the weight or measure of anything, issue to the owner of such measuring device or equipment a receipt for any fees collected and, when such measuring device or equipment is found to be accurate, stamp upon, or tag, the measuring instrument with the letters "N.C." and two figures representing the year in which the inspection was made. (1927, c. 261, s. 7; 1949, c. 984.)

Editor's Note. — The 1949 amendment substituted "equipment" for "apparatus."

§ 81-7. Standard equipment.—There shall be issued to each deputy inspector, or local sealer of weights and measures, such standard equipment as may be necessary. (1927, c. 261, s. 8.)

§ 81-8. Standards of weights and measures. — The weights and measures received from the United States under joint resolution of Congress, approved June fourteenth, one thousand eight hundred and thirty-six, and July twenty-seventh, one thousand eight hundred and sixty-six, and such new weights and measures as shall be received from the United States as standards of weights and measures in addition thereto, or in renewal thereof, and such as shall be supplied by the State in conformity therewith and certified by the National Bureau of Standards shall be the State standards of weights and measures, and in addition thereto there shall be supplied from time to time such copies of these as may be deemed necessary. The Superintendent of Weights and Measures shall take charge of the standards adopted by this article as the standards of the State and cause them to be kept in a fireproof building belonging to the State, from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safekeeping. He shall maintain the State standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep complete record of the standards, balances and other apparatus belonging to the State and take a receipt for same from his successor in office. He shall annually, on the first day of July, make to the Commissioner of Agriculture a report of all work done in his office. (1927, c. 261, s. 9; 1943, c. 543; 1949, c. 984.)

Editor's Note. — The 1943 amendment substituted "July" for "December" in the last sentence of this section. And the 1949 amendment substituted "one thousand eight hundred and thirty-six" for "one thousand eight hundred and twenty-six" in the first sentence.

§ 81-8.1. Authority to prescribe standards of weight or measurement for sale of milk or milk products.—The Board of Agriculture is hereby authorized and empowered to adopt and promulgate, after due notice and hearing, rules and regulations prescribing standards or units of weight or measurement by which milk, cream or other fluids containing milk or milk products may be sold at retail in bottles or other capped or sealed containers, and the sale thereof by any other standards or units of weight or measurement shall be unlawful. (1949, c. 982.)

§ 81-9. Supervision of weights and measures and weighing or measuring devices.—The State Superintendent of Weights and Measures shall have and keep general supervision of the weights and measures and weighing or measuring devices offered for sale, sold, or in use in the State. He, or his deputies or inspectors at his direction, shall, upon written request of any citizen, firm, or corporation, or educational institution in the State, test or calibrate weights, measures and weighing or measuring devices used as standards in the State. (1927, c. 261, s. 10; 1949, c. 984.)

Editor's Note. — The 1949 amendment struck out the comma formerly appearing after "a" formerly appearing before "general" in the first sentence. It also struck out the comma formerly appearing after "deputies" in the second sentence.

§ 81-10. **Authority of deputy or local inspector.**—Each deputy or local inspector shall have the power, and it shall be his duty, under the direction of the State Superintendent of Weights and Measures, to inspect, test, try and ascertain if they are correct all weights and measures and weighing and measuring devices kept, offered, or exposed for sale, sold, or used or employed within the State by any proprietor, agent, lessee, or employee in providing the size, quantity, extent, area, or measurement of quantities, things produced, or articles for distribution or consumption, purchased or offered or submitted by any person or persons for sale, hire, or award, and he shall have the power, and shall, from time to time, weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered, or exposed for sale, or sold, or in the process of delivery, in order to determine whether the same contain the amount represented, or whether they be kept, offered or exposed for sale, or sold in a manner in accordance with law. He may, for the purpose above mentioned and in the general performance of his duties, enter and go into, or open, and without formal warrant, any stand, place, building, or premises, or stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any person whomsoever and require him, if necessary, to proceed to some place which the sealer may specify for the purpose of making the proper test. (1927, c. 261, s. 11.)

Stated in *Eastern Carolina Taste-Freez, Inc. v. Raleigh*, 256 N. C. 208, 123 S. E. (2d) 632 (1962).

§ 81-11. **Condemnation and destruction of incorrect weights, measures or devices.**—The deputy or local inspector shall condemn, seize, and may destroy incorrect weights and measures or weighing and measuring devices, which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect and yet in his best judgment may be repaired, he shall mark or tag as “Condemned for Repairs” in a manner prescribed by the State Superintendent of Weights and Measures. The owners or users of any weights, measures or weighing or measuring devices of which such disposition is made shall have the same repaired and corrected within ten days and they may neither use nor dispose of same in any way, but shall hold the same at the disposal of the sealer. Any weights, measures, or weighing or measuring devices which have been condemned for repairs and have not been repaired as required shall be confiscated by the sealer. (1927, c. 261, s. 12.)

§ 81-12. **Seizure of false weights and measures.**—The Superintendent of Weights and Measures, his deputies and inspectors are hereby made special policemen and are authorized and empowered to arrest without formal warrant, any violator of the statutes in relation to weights and measures and to seize as use for evidence without formal warrant any false or unsealed weights, measures, or weighing or measuring devices or package or amount of commodity found to be used, retained, or offered or exposed for sale or sold in violation of law. (1927, c. 261, s. 13.)

§ 81-13. **Obstruction to officers misdemeanor.** — Any person who shall hinder or obstruct in any way the Superintendent of Weights and Measures, his deputies or inspectors, in the performance of his official duties 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 ten dollars or more than two hundred dollars, or by imprisonment in the county jail for not more than three months, or by both fine and imprisonment. (1927, c. 261, s. 14.)

§ 81-14. **Impersonation of Superintendent of Weights and Measures or deputies misdemeanor.** — Any person who shall impersonate in any way the Superintendent of Weights and Measures, his deputies or inspectors, by the use of his seal or counterfeit of his seal or otherwise, shall be guilty of a mis-

demeanor and upon conviction therefor in any court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. (1927, c. 261, s. 15.)

§ 81-14.1. Weighing livestock sold at public livestock market; weight certificates. — Whenever livestock is offered or exposed for sale, or sold by weight at a public livestock market, the livestock shall be weighed by a public weighmaster and each individual sale shall be accompanied with a weight certificate in duplicate on which shall be expressed in ink or other indelible substance, the name and address of seller, the kind, number and weight of livestock being offered for sale, or sold, the time of day and date of weighing and the name of weighmaster. The information expressed on said certificate shall be announced or otherwise made known immediately preceding the sale, if said sale be by auction. (1943, c. 762, s. 1.)

§ 81-14.2. Commodities to be sold by weight, measure or numerical count.—It shall be unlawful to sell except for immediate consumption by the purchaser, on the premises of the seller, liquid commodities in any other manner than by weight or liquid measures, or commodities not liquid in any other manner than by measure of length, by weight, or by numerical count. When a commodity is sold by numerical count in excess of one unit, the units which constitute said numerical count shall be uniform in size and/or weight, and be so exposed as to be readily observed by the purchaser: Provided, however, that nothing in this section shall be construed to prevent the sale of fruits, vegetables, and other dry commodities in standard containers defined by acts of the United States Congress known as "Standard Container Acts," and the rules and regulations promulgated in accordance therewith; or of fruits and vegetables sold by the head, or bunch, or of any other commodity which is especially provided for by some other section of this chapter. (1945, c. 280, s. 1; 1949, c. 973.)

Editor's Note. — The 1949 amendment ~~ises~~ to read "consumption by the purchaser to read "consumption by the purchaser, on the premises of the seller." former words "consumption on the prem-

§ 81-14.3. Unlawful for package to mislead purchaser.—It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form when said package is so made, or formed, or filled, or wrapped, or exposed, or marked, or labeled as to mislead, or deceive the purchaser as to the quantity of its contents. (1945, c. 280, s. 1.)

§ 81-14.4. Standard weight packages of flour, meal, grits and hominy. — All flour and meal packed for sale, offered or exposed for sale, or sold in this State shall be in one of the following standard weight packages and no other, namely: five pounds, ten pounds, twenty-five pounds, fifty pounds, one hundred pounds, and multiples of one hundred pounds. However, nonstandard weight packages may be placed for sale, offered or exposed for sale, or sold in this State, weighing three pounds or less, if said nonstandard weight packages shall be plainly and conspicuously marked showing net contents in avoirdupois weight: Provided, that nothing in this section shall be construed to prevent the retail sale of any amount of flour or meal direct to the consumer from bulk, upon order and weight at time of delivery to the consumer.

The term "flour" as used herein shall be construed to mean any finely ground product of wheat, or other grain, corn, peas, beans, seeds or other substance, with or without added ingredients, intended for use as food for man.

The term "meal" as used herein shall be construed to mean any product of grain, corn, peas, beans, seed or other substance coarsely ground, with or without

added ingredients, either bolted, or unbolted, including grits and hominy, intended for use as food for man. (1945, c. 280, s. 1; 1949, c. 984.)

Editor's Note. — The 1949 amendment substituted "used" for "said" near the beginning of the second paragraph.

§ 81-14.5. **Weight and measure terms defined.** — (a) Barrel.—The term "barrel" when used in connection with beer, ale, porter, and other similar fermented liquor, shall be understood to mean a unit of thirty-one liquid gallons, and fractional parts of a barrel shall be understood to mean like fractional parts of thirty-one gallons.

(b) Bushel.—The term "bushel" when used in connection with dry measure and standard containers shall be understood to mean a unit of two thousand one hundred and fifty and forty-two one hundredths (2150.42) cubic inches, of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.

(c) Cord.—Whenever wood is solicited, bought or sold in this State on the basis of ricked or stacked measurement, as is customarily the case in transactions involving such forest products as, for example, pulp wood and fuel wood, the unit of said measurement shall be the cord and no other; except that until June first, one thousand nine hundred and forty-six, same may be purchased on the basis of a unit of one hundred and sixty cubic feet or of the cord of one hundred and twenty-eight cubic feet. The term "cord" when used in connection with such purchases of wood, shall be understood to mean a quantity of wood consisting of any number of sticks, bolts or pieces laid parallel and together so as to form a rick or stack occupying a space four feet wide, four feet high and eight feet long, or such other dimensions that will, when multiplied together equal one hundred and twenty-eight cubic feet by volume, construed as being seventy per cent solid and thirty per cent air space or ninety solid cubic feet.

(d) Gallon.—Whenever the term "gallon" is used in connection with liquid measure, it shall be understood to mean a unit of two hundred and thirty-one (231) cubic inches of which the liquid quart, liquid pint, and gill are respectively, the quarter, the one-eighth and the one-third-second parts.

(e) Pound.—Whenever the term "pound" is used in connection with weight, it shall be understood to be the avoirdupois pound as declared by act of the United States Congress, except in those cases where it is common practice to use the "troy" pound or "apothecaries" pound, and the "ounce" is one-sixteenth part of an avoirdupois pound.

(f) Ton.—The term "ton" shall be understood to mean a unit of two thousand (2000) pounds, avoirdupois weight. (1945, c. 280, s. 1.)

§ 81-14.6. **Sale of cement blocks, cinder blocks and other concrete masonry units.** — In order to protect the purchasers of concrete block, cinder block, and other concrete masonry units and to provide for a minimum load bearing strength, on and after July 1st, 1947, all concrete block, cinder block, and other concrete masonry units offered for sale or sold in this State shall have a load bearing strength of not less than 700 pounds per square inch of gross bearing area, or the minimum load bearing strength approved by the National Underwriters Laboratory or by the American Society of Testing Materials, whichever is less. The manufacturer shall furnish proof, acceptable to the Board of Agriculture, that the concrete block, cinder block, or other concrete masonry units being offered for sale or sold, complies with the minimum load bearing strength required by this section; and each and every sale shall be accompanied with a bill of sale or invoice on which shall be printed or stamped in ink or other indelible substance, a statement guaranteeing that the products covered by said bill of sale or invoice meet the minimum load bearing strength as required by this section signed by a duly authorized official or agent of the manufacturer; provided, how-

ever, that the provisions of this section shall not prohibit the sale or offer for sale of cement block, cinder block, or other concrete masonry units, known as "seconds" or "rejects," due to size, shape, or less than minimum load bearing requirement, if and when said sale is accompanied with a bill of sale or invoice on which is printed or stamped in ink or other indelible substance in bold letters a statement that the cement block, cinder block, or other concrete masonry units so billed or invoiced are inferior in quality and do not comply with minimum load bearing requirement signed by a duly authorized official or agent of the manufacturer. (1947, c. 788.)

§ 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 of approval and added the second and third paragraphs. Deleted the former second sentence relating to expense of obtaining label or seal

§ 81-14.8. **Sale of coal, coke and charcoal by weight.**—(a) All coal, coke or charcoal sold in this State shall be sold by weight only. The standard

unit of weight shall be the avoirdupois pound, and a ton shall be two thousand (2000) pounds.

(b) All coal, coke or charcoal sold or offered for sale in this State, or which is being transported on any public street or highway in North Carolina, shall be weighed on scales suitable for such weighing, which have been tested and sealed by a State Inspector of Weights and Measures. It shall not be unlawful to transport such coal, coke or charcoal to the nearest such scale for the purpose of having same weighed, but no sale or delivery of same shall take place until the load shall have been weighed.

(c) Each and every sale or delivery of coal, coke or charcoal to the consumer shall be accompanied by a weight certificate on which shall be expressed in ink or other indelible substance the name and address of the seller or dealer, name and address of purchaser or receiver, the kind and size of coal being delivered and the gross tare and net weights, the date of weighing, the signature of the weighmaster, a place for signature of receiver, the name of delivery man, and the number or license number of delivery vehicle. The weight certificate shall be made with an original and two (2) carbon copies, one (1) going to the purchaser or receiver, one to be held by the delivery man, and the third (3rd) to be held by the weighmaster: Provided, however, that when coal, coke or charcoal is delivered in this State in railway carload lots, the railway bill of lading may be used in lieu of the weight certificate required by this section. (1949, c. 860.)

§ 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, July 1, 1957, but was changed to January 1, 1958, by Session Laws 1957, c. 1069. substituted "13½" for "15" and "16½" for "15." The effective date was originally

§ 81-15. Weights of goods sold in packages to be stated on package.—It shall be unlawful to keep for the purpose of sale, or expose for sale, or sell any commodity in package form unless the net quantity of the contents are plainly or conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, that reasonable variations or tolerances shall be permitted and that these reasonable variations or tolerances, and also exemptions as to small packages shall be established by rules and regulations made by and published with other rules and regulations approved by the Department of Agriculture.

The words "in package form," as used in this section, shall be construed to include a commodity in a package, carton, case, can, box, bundle, barrel, bottle, phial, or other receptacle, on a spool or similar holder, in a container or band, or in a bolt or roll or in a ball, coil or skein or in coverings or wrappings of any kind, put up by the manufacturer, or when put up prior to the order of the commodity, by the vendor for either or both wholesale or retail, whether sealed or unsealed, closed or open. The words "plainly and conspicuously marked" as used in this section shall be construed to mean that the principal label shall indicate the net weight contents by legend as plain and conspicuous as any other legend thereon and as likely to be read as any other legend, and shall not be obscured

by crowding or by color or by other legend. (1927, c. 261, s. 16; 1945, c. 280, s. 1.)

Editor's Note. — The 1945 amendment added the second paragraph.

§ 81-15.1. **Statement to be furnished seller of pulp wood by purchaser.**—Upon delivery of pulp wood to a purchaser, from a seller in this State, the purchaser shall furnish the seller with a statement, showing the kind and amount of wood, the price paid, and the amount of wood refused, if any. (1945, c. 280, s. 3.)

§ 81-16: Repealed by Session Laws 1945, c. 280, s. 2.

§ 81-17. **Net weight basis of sales by weight.** — Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this article, it shall be understood and construed to mean the net weight of the commodity. (1927, c. 261, s. 18.)

Cited in State v. Presnell, 226 N. C. 160,
36 S. E. (2d) 927 (1946).

§ 81-18. **Acts and omissions declared misdemeanor.** — Any person who, by himself, or his servant or agent, or as the servant or agent of any other person, shall offer, or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight or measure, when a charge is made for such determination, or retain in his possession a false weight or measure or weighing or measuring device or any weight or measure or weighing or measuring device which has not been sealed by the State Superintendent, or his deputy, or inspectors, or by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law, or remove the tag placed thereon by the State Superintendent, or his deputy, or inspectors, or who shall sell or offer or expose for sale less than the quantity he represents on any commodity, thing or service, or shall take or attempt to take more than the quantity he represents, when as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of any commodity, thing, or service is determined; or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer; or who shall violate any provision, rule, regulation, code or order made and/or adopted as provided for by this article for which a specific penalty has not been provided; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using any device or instrument to be used to, or calculated to, falsify any weight or measure, shall be guilty of a misdemeanor, and shall be punished by fine of not less than ten dollars or more than two hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment, upon a first conviction in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment in the county jail for not more than one year,

or by both such fine and imprisonment. (1927, c. 261, s. 19; 1945, c. 280, s. 1; 1949, c. 984.)

Editor's Note. — The 1945 amendment inserted the provision relating to use of weighing or measuring device not so positioned that its indications and operation may be observed by a customer.

The 1949 amendment struck out "any provisions of this article" and inserted in lieu thereof "any provision, rule, regulation, code or order made and/or adopted as provided for by this article."

§ 81-19. "**Person**" construed.—The word "person" as used in this article shall be construed to impart both the plural and singular as the case demands and shall include corporations, companies, societies and associations. (1927, c. 261, s. 20.)

§ 81-20. "**Weights, measures, weighing or measuring devices**" construed.—The words "weights, measures, or (and) weighing or (and) measuring devices" as used in this article, shall be construed to include all weights, scales, beams, measures of every kind, instruments, mechanical devices for weighing or measuring any other appliances and accessories connected with any or all such instruments. The words "sale or sell" as used in this article shall be construed to include barter and exchange. (1927, c. 261, s. 21.)

§ 81-21: Repealed by Session Laws 1945, c. 280, s. 2.

§ 81-22. **Certain measures regulated.**—Whenever any commodity now named in § 81-23 shall be quoted or sold by the bushel, the bushel shall consist of the number of pounds stated in said section; and whenever quoted or sold in subdivisions of the bushel, the number of pounds shall consist of the fractional part of the number of pounds as set forth therein for the bushel; and when sold by the barrel shall consist of the number of pounds constituting 3.281 bushels. (1933, c. 523, s. 3; 1949, c. 984.)

Editor's Note. — The 1949 amendment substituted "§ 81-23" for "§ 81-24" near the beginning of the section.

ARTICLE 2.

Establishment and Use of Standards.

§ 81-23. **Standard weights and measures, exception; penalty.**—The standard weight of the following seeds and other articles named shall be as stated in this section, viz.:

Alfalfa shall be 60 lbs. per bu.; apples, dried, shall be 24 lbs. per bu.; apple seed shall be 40 lbs. per bu.; barley shall be 48 lbs. per bu.; beans, castor, shall be 46 lbs. per bu.; beans, dry, shall be 60 lbs. per bu.; beans, green in pod, shall be 30 lbs. per bu.; beans, soy, shall be 60 lbs. per bu.; beef, net, shall be 200 lbs. per bbl.; beets shall be 50 lbs. per bu.; blackberries shall be 48 lbs. per bu.; blackberries, dried, shall be 28 lbs. per bu.; bran shall be 20 lbs. per bu.; broomcorn shall be 44 lbs. per bu.; buckwheat shall be 50 lbs. per bu.; cabbage shall be 50 lbs. per bu.; canary seed shall be 60 lbs. per bu.; carrots shall be 50 lbs. per bu.; cherries, with stems, shall be 56 lbs. per bu.; cherries, without stems, shall be 64 lbs. per bu.; clover seed, red and white, shall be 60 lbs. per bu.; clover, burr, shall be 8 lbs. per bu.; clover, German, shall be 60 lbs. per bu.; clover, Japan, Lespedeza, shall be, in hull 25 lbs. per bu.; corn, shelled, shall be 56 lbs. per bu.; corn, Kaffir, shall be 50 lbs. per bu.; corn, pop, shall be 70 lbs. per bu.; cotton seed shall be 30 lbs. per bu.; cotton seed, Sea Island, shall be 44 lbs. per bu.; cucumbers shall be 48 lbs. per bu.; fish shall be 100 lbs. per ½ bbl.; flax seed shall be 56 lbs. per bu.; grapes, with stems, shall be 48 lbs. per bu.; grapes, without stems, shall be 60 lbs. per bu.; gooseberries shall be 48 lbs. per bu.; grass seed, Bermuda, shall be 14 lbs. per bu.; grass seed, blue, shall be 14 lbs. per bu.; grass seed, Hungarian, shall be 48 lbs.

per bu.; grass seed, Johnson, shall be 25 lbs. per bu.; grass seed, Italian rye, shall be 20 lbs. per bu.; grass seed, orchard, shall be 14 lbs. per bu.; grass seed, tall meadow and tall fescue, 24 lbs. per bu.; grass seed, all meadow and fescue except tall, 14 lbs. per bu.; grass seed, perennial rye, shall be 14 lbs. per bu.; grass seed, timothy, shall be 45 lbs. per bu.; grass seed, velvet, shall be 7 lbs. per bu.; grass, red top, shall be 14 lbs. per bu.; hemp seed shall be 44 lbs. per bu.; hominy shall be 62 lbs. per bu.; horseradish shall be 50 lbs. per bu.; liquids shall be 42 gals. per bbl.; meal, corn, whether bolted or unbolted, 48 lbs. per bu.; melon, cantaloupe, shall be 50 lbs. per bu.; millet shall be 50 lbs. per bu.; mustard shall be 58 lbs. per bu.; nuts, chestnuts, shall be 50 lbs. per bu.; nuts, hickory, without hulls, shall be 50 lbs. per bu.; nuts, walnuts without hulls, shall be 50 lbs. per bu.; oats, seed, shall be 32 lbs. per bu.; onions, button sets, shall be 32 lbs. per bu.; onions, top buttons, shall be 28 lbs. per bu.; onions, matured, shall be 57 lbs. per bu.; osage orange seed shall be 33 lbs. per bu.; peaches, matured, shall be 50 lbs. per bu.; peaches, dried, shall be 25 lbs. per bu.; peanuts shall be 22 lbs. per bu.; peach seed shall be 50 lbs. per bu.; peanuts, Spanish, shall be 30 lbs. per bu.; parsnips shall be 50 lbs. per bu.; pears, matured, shall be 56 lbs. per bu.; pears, dried, shall be 26 lbs. per bu.; peas, dry, shall be 60 lbs. per bu.; peas, green, shall be, in hull 30 lbs. per bu.; pieplant shall be 50 lbs. per bu.; plums shall be 64 lbs. per bu.; pork, net, shall be 200 lbs. per bbl.; potatoes, Irish, shall be 56 lbs. per bu.; potatoes, sweet, green, shall be 56 lbs. per bu.; and the dry weight 47 lbs. per bu.; quinces, matured, shall be 48 lbs. per bu.; raspberries shall be 48 lbs. per bu.; rice, rough, shall be 44 lbs. per bu.; rye seed shall be 56 lbs. per bu.; sage shall be 4 lbs. per bu.; salads, mustard, spinach, turnips, kale 10 lbs. per bu.; salt shall be 50 lbs. per bu.; sorghum seed shall be 50 lbs. per bu.; sorghum molasses shall be 12 lbs. per gal.; strawberries shall be 48 lbs. per bu.; sunflower seed shall be 24 lbs. per bu.; teosinte shall be 59 lbs. per bu.; tomatoes shall be 56 lbs. per bu.; turnips shall be 50 lbs. per bu.; wheat shall be 60 lbs. per bu.; cement shall be 80 lbs. per bu.; charcoal shall be 22 lbs. per bu.; coal, stone, shall be 80 lbs. per bu.; coke shall be 40 lbs. per bu.; hair plastering, shall be 8 lbs. per bu.; land plaster shall be 100 lbs. per bu.; lime, unslaked, shall be 80 lbs. per bu.; lime, slaked, shall be 40 lbs. per bu.

It shall be unlawful to purchase or sell, or barter or exchange, any article named in this section on any other basis than as stated herein: Provided, however, that any and/or all such articles may be sold by weight, avoirdupois standard.

If any person shall take any greater weight than is specified for any of the items named herein, he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for same. (Code, ss. 3849, 3850; 1885, c. 26; 1905, c. 126; Rev., s. 3066; 1909, c. 555, s. 1; c. 835; 1915, c. 230, s. 1; 1917, c. 34; Ex. Sess. 1921, c. 87; 1931, c. 76; 1937, c. 354.)

Editor's Note. — The 1931 amendment changed the weights relating to sweet potatoes. The 1937 amendment changed the clauses relating to corn in ear and sorghum molasses. It also rewrote the next to the last paragraph.

§ 81-23.1. Standard rule for measurement of logs. — The standard rule for determining the number of board feet in a tree or log shall be the so-called "International $\frac{1}{4}$ inch Log Rule." None of the provisions of this section shall apply to contracts entered into prior to the ratification of this section, nor to the measure of damages in any action in tort. This section shall not prevent the buyer and the seller from agreeing that some other log rule shall be used to determine the number of board feet in trees or logs covered by the contract between them. (1947, c. 400, s. 1.)

Editor's Note. — For brief discussion of section, see 25 N. C. Law Rev. 428.

§ 81-24: Repealed by Session Laws 1945, c. 280, s. 2.

§ 81-25. **Area of acre.**—The measure of an acre of land shall be equal to a rectangle of sixteen poles or perches in length and ten in breadth, and shall contain one hundred and sixty square perches or poles, or four thousand eight hundred and forty square yards, six hundred and forty such acres being contained in a square mile. (33 Edw. I, c. 6; R. C., c. 117, s. 7; Code, s. 3843; Rev., s. 3065; C. S., s. 8062.)

ARTICLE 3.

County Standard.

§§ 81-26 to 81-35: Repealed by Session Laws 1943, c. 543.

ARTICLE 4.

Public Weighmasters.

§ 81-36. **Public weighmaster defined; to be licensed.** — Any person, either for himself or as a servant or agent of any other person, firm, or corporation, or who is elected by popular vote, who shall weigh, or measure, or count, or who shall ascertain from, or record the indications or readings of, a weighing, or measuring, or recording, device or apparatus for any other person, firm, or corporation, and declare the weight, or measure, or count, or reading or recording to be the true weight, or measure, or count, or reading, or recording of any commodity, thing, article, or product upon which the purchase, or sale, or exchange, is based, and make a charge for, or collect pay, a fee, or any other compensation for such act, shall issue a certificate of weight, or measure, or count, in accordance with the provisions of this article, shall be licensed and shall be known as a public weighmaster in the State of North Carolina. (1939, c. 285, s. 1; 1945, c. 1067.)

Editor's Note. — The 1945 amendment struck out "and" formerly appearing after "act" near the end of the section and substituted a comma therefor. For comment on section, see 17 N. C. Law Rev. 338.

§ 81-36.1. **Administration of article.** — The provisions of this article shall be administered by the State Department of Agriculture through the State Superintendent of Weights and Measures. (1945, c. 1067.)

§ 81-37. **Application for license permit.** — Any person desiring to be a public weighmaster in this State shall apply for and obtain license permit from the State of North Carolina through the State Superintendent of Weights and Measures by filing formal application under oath as follows:

"I,, a citizen of the United States, residing at, county of, have familiarized myself with the law and with full knowledge of the provisions contained therein relative to licensing of public weighmaster, do hereby file application for license permit to be issued accordingly.

I certify that I am of sound mind and am physically fit to perform the duties imposed upon a public weighmaster and that I will, if licensed, abide by and enforce all laws, rules and regulations relating to the Public Weighmaster Act to the best of my knowledge and ability." (1939, c. 285, s. 2; 1949, c. 983, s. 1.)

Editor's Note. — The 1949 amendment inserted "under oath" in reference to the filing of application, and struck out the latter part of the original form of application.

§ 81-38. **Forms of certificates of weight, etc., to be approved by State Superintendent of Weights and Measures.**—It shall be the duty of every public weighmaster licensed by this article to issue a certificate of weight, measure, count, reading, or recording on forms approved by the State Superi-

tendent of Weights and Measures, and to enforce the provisions of this article, together with rules and regulations relating thereto. Said public weighmaster shall not receive compensation from the State for the duties so performed. (1939, c. 285, s. 3.)

§ 81-39. **Official seal of public weighmasters.**—It shall be the duty of every public weighmaster so licensed by this article, to obtain from the State Department of Weights and Measures an official seal, which seal shall have inscribed thereon the following words: "North Carolina Public Weighmaster" and such other design and/or legend as the State Superintendent of Weights and Measures may deem appropriate. The seal shall be stamped or impressed upon each and every weight, measure, numerical count, reading or recording certificate issued by such public weighmaster, and when so applied the certificate shall be recognized and accepted as a declaration of the official, true, and accurate and undisputed weight, measure, count, reading or recording of the commodity, product, or article weighed, or measured, or counted within the tolerance allowed by the "Uniform Weights and Measures Act" of this State: Provided, however, that the weighers of tobacco in "leaf tobacco warehouses" may use, in lieu of said seal, a signature, which signature shall also appear, in ink or other indelible substance on the weighmaster's formal application, and again, posted in a conspicuous and accessible place in the tobacco warehouse where he is acting as weighmaster. (1939, c. 285, s. 4; 1941, c. 317, s. 1.)

Editor's Note. — The 1941 amendment added the proviso at the end of the section.

§ 81-40. **Violations of provisions by weighmasters made misdemeanor.**—Any public weighmaster who shall refuse to issue a certificate as prescribed by this article, or who shall issue a certificate giving a false weight, or measure, or count, or reading, or recording, or who shall misrepresent the weight, or measure, or count, or reading or recording of the quantity of any commodity, produce or article to any person, firm or corporation, or who shall otherwise violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court, and, in addition thereto, his license shall be revoked and he shall forfeit his seal which, when so forfeited, shall be turned over to the State Superintendent of Weights and Measures or his agents. (1939, c. 285, s. 5.)

§ 81-41. **Requesting weighmaster to falsify weights; impersonation of weighmaster; alteration of certificate, etc.**—Any person, firm, or corporation who shall request a public weighmaster to weigh, measure, count, read, or record any commodity, product or article falsely or incorrectly, or who shall request a false or inaccurate certificate of weight, measure, count, reading or recording, or any person issuing a certificate of weight, or measure, or count, or reading, or recording within the meaning of this article, who is not a public weighmaster as provided for by this article, or who shall act as, or for, or in any way impersonate, a public weighmaster, or who shall erase, change, or alter any certificate issued by a public weighmaster, or who shall make incorrect the certificate by increasing or decreasing the weight or measure or count of the commodity, product or article certified to for the purpose of deception, or who shall violate any provision of this article for which a special penalty has not been provided, shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court. (1939, c. 285, s. 6.)

§ 81-42. Certificates of weighmasters presumed accurate and correct.—When a public weighmaster certificate is used in the sale, or purchase, or barter, or exchange of any commodity, produce, or article, the certified weight, or measure, or count or reading or recording shall be deemed to be the true, accurate and undisputed weight, or measure, or count, or reading or recording at time said commodity, produce, or article is put into the natural channels of trade, which is, at the time of sale or purchase or barter or exchange: Provided, however, that reasonable variations, or tolerances shall be permitted as established by rules and regulations as provided for by Uniform Weights and Measures Act. (1939, c. 285, s. 7; 1941, c. 317, s. 2.)

Editor's Note. — The 1941 amendment written contract or agreement to the con-
struck out from the end of the section trary."
"And provided, further, that there is no

§ 81-43. Duty of custodian of product during time intervening between weighing and issuance of certificate.—If any commodity, product or article is to be offered for sale, or sold and is weighed or measured or counted by any public weighmaster and a certificate issued prior to sale, or acceptance of such commodity, product or article by the purchaser, his agent, or consignee or, if any commodity, product or article is offered for sale, sold, and/or delivered pending the weighing or measuring or counting of such commodity, product, or article by a public weighmaster and the issuance of a certificate, the person, firm or corporation in whose custody said commodity, product or article is, shall keep, protect and prevent any increase or decrease in weight, measure or count, in the interim so that the declaration of weight, or measure, or count shall be true in accordance with § 81-42. The term "interim" as used in this section shall be construed to mean the time intervening between the weighing and issuance of certificate and the sale or purchase; and the time intervening between the sale or purchase and the presentation of such commodity, product, or article to the public weighmaster for weighing, or measuring or counting, and the issuance of certificate. Any loss sustained in the weight or measure or count of any commodity, produce, or article while in custody shall be borne by the person, firm or corporation in whose custody said commodity, produce, or article is. (1939, c. 285, s. 8.)

§ 81-43.1. Weighing tobacco in sales warehouses. — All leaf tobacco offered for sale in a leaf tobacco warehouse in this State shall be weighed by a public weighmaster, shall be accompanied by a public weighmaster certificate, and shall be and remain in custody of the warehouse operator from and after the time it is weighed by the public weighmaster until it is sold or the bid is rejected by the owner thereof. (1945, c. 1067.)

§ 81-44. Complaints to weighmaster or State Superintendent of Weights and Measures.—When doubt or difference arises as to the correctness of the weight, or measure, or count, or reading, or recording of any amount or part of any commodity, product, or article for which a certificate of weight, measure, count, reading or recording, has been issued by a public weighmaster, the owner, agent or consignee shall make complaint before moving said commodity, produce, or article from city, town or community where weight certificate was issued, to the public weighmaster issuing said certificate or to the State Superintendent of Weights and Measures setting forth cause or causes for such doubt and/or difference, and have said amount, or part of the amount, or any commodity, product, or article reweighed, or remeasured, or recounted by the weighmaster issuing the certificate or by the State Superintendent of Weights and Measures or his agents: Provided, the commodity, produce or article is kept and protected as is required during the interim period provided for in § 81-43. If, on reweighing, remeasuring or recounting, a difference in original weight, or measure or count. is sustained the difference thus sustained shall be

that, and that only, which is in excess of tolerance allowed by § 81-42, and any desired adjustment as a result of such difference shall be made accordingly, and the cost of reweighing or remeasuring or recounting shall be borne by the public weighmaster responsible for the issuance of such faulty certificate; otherwise, the cost shall be borne by the complainant. (1939, c. 285, s. 9; 1941, c. 317, s. 3.)

Editor's Note. — The 1941 amendment inserted the provision referring to §§ 81-42 and 81-43 and made other changes.

§ 81-45. Approval by State Superintendent of Weights and Measures of devices used.—It shall be unlawful for any public weighmaster to use any weights or measures, or weighing or measuring or reading or recording device, which has not been tested and/or approved by the State Superintendent of Weights and Measures, or his assistant or deputy inspector in accordance with the "Uniform Weights and Measures Act" and/or the rules and regulations governing same. (1939, c. 285, s. 10.)

§ 81-46. Annual license for public weighmasters. — Public weighmasters shall be licensed for a period of one year beginning on the first day of July and ending on the thirtieth day of June, next, and a fee of five dollars (\$5.00) shall be paid by each person so licensed to the State Superintendent of Weights and Measures at the time of filing application, as set forth in § 81-37, which fee shall be deposited with the State Treasurer of North Carolina by the said State Superintendent of Weights and Measures, and shall be kept in a separate and distinct fund designated as a special uniform weights and measures fund by said Treasurer, and shall be disbursed by him under the terms of the Executive Budget Act: Provided, that a similar fee, as provided in this section, shall be required of all renewals of license as a public weighmaster, which fee shall also be turned into the Treasurer of the State by the State Superintendent of Weights and Measures, to be expended in the manner herein set out. (1939, c. 285, s. 11; 1943, c. 543.)

Editor's Note. — The 1943 amendment struck out "from the date of issuance thereof," formerly appearing near the beginning of the section, and inserted in lieu

thereof "beginning on the first day of July and ending on the thirtieth day of June, next."

§ 81-47. Use of fees collected.—All monies collected by this article shall be used exclusively for the enforcement of this and the Uniform Weights and Measures Act. (1939, c. 285, s. 12.)

§ 81-48. Seal obtained from State Superintendent of Weights and Measures. — Each public weighmaster licensed under this article shall obtain from the State Superintendent of Weights and Measures the seal, as provided for by this article, and pay the sum of two dollars and fifty cents (\$2.50), which sum shall be for the use of said seal, and no additional charges shall be made as long as the public weighmaster is licensed in accordance with the provisions of this article. Monies collected under this section shall be deposited with the State Treasurer of North Carolina and expended for the purposes of this article under the terms of the Executive Budget Act. The State Superintendent of Weights and Measures shall issue to the public weighmaster the said seal upon receipt of said sum. All seals as issued to the public weighmaster shall be paid for out of the special uniform weights and measures fund. (1939, c. 285, s. 13.)

§ 81-49. Seal declared property of State.—The seal herein provided for shall be the property of the State of North Carolina and shall be forfeited and returned to the State Superintendent of Weights and Measures upon termination of the performance of duties herein described as being the duties of a public weighmaster. Failure or refusal of a person licensed as a public weigh-

master under this article to return, turn over, or surrender the official seal furnished by the State Superintendent of Weights and Measures upon expiration of term of license or for malfeasance in office, shall be a misdemeanor and any person convicted thereof shall forfeit the amount paid for use of such seal and shall be punished by a fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00), or by imprisonment for not more than three months, or both such fine and imprisonment, in the discretion of the court. (1939, c. 285, s. 14.)

§ 81-50. **Cotton weighing.** — If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale, or package of lint cotton, for or on account of the draft, turn, or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and fined three hundred dollars or imprisoned, in the discretion of the court: Provided, however, that deductions may be made by the weigher for water, dirt, or other foreign substances on such bag, bale or package of cotton, or for other just cause; but, if such deductions are made, the nature of such deductions shall be indicated upon the principal weight ticket which shall also show the gross weight of the cotton, the amount deducted as tare, and the net weight of said cotton. (1874-5, c. 58, ss. 1, 3; Code, s. 1007; Rev., s. 3816; C. S., s. 5085; 1943, c. 762, s. 2.)

Editor's Note. — The 1943 amendment rewrote the proviso.

§ 81-51: Repealed by Session Laws 1943, c. 543.

ARTICLE 5.

Scale Mechanics.

§ 81-52: **Purpose of article.**—The purpose and intent of this article shall be:

- (1) To protect the owners and/or users of scales and weighing devices in their needs or requirements for scale repair and service.
- (2) To define the name "scale mechanic," provide for scale mechanic registration, and to provide for financial underwriting of services rendered. (1941, c. 237, s. 1; 1947, c. 380.)

Editor's Note. — Session Laws 1947, c. 380, rewrote §§ 81-52 through 81-58 to appear as set forth herein. The title of the act purports to amend "section 52-58 inclusive of the General Statutes" which is an obvious misnumbering and was clearly intended to refer to §§ 81-52 through 81-58. It will be noted that there is no section numbered 81-56.
For comment on the 1941 act, see 19 N. C. Law Rev. 447.

§ 81-53. **Definitions.**—The definition of certain terms used in this article shall be as follows:

- (1) **Adjustment.**—The term "adjustment" is defined as meaning an act involving the tightening or loosening, or lengthening or shortening, or movement, of any part of a scale or weighing device, or the coordination or mechanical action of parts with or upon each other, so as to make the scale or weighing device give correct indications of applied weight values within legal tolerance, and the correctness of indications shall be determined by test provided for under definition of the term "service" as defined in this article.
- (2) **Installation.**—The term "installation" is defined as meaning an act involving the erection, or building, or assembling of parts, or the placing or setting up of a scale or weighing device so as to give correct indications of applied weight values within legal tolerance when used for the purpose intended, and the correctness of indications shall be de-

terminated by test provided for under definition of the term "service" as defined in this article.

- (3) Maintenance. — The term "maintenance" is defined as meaning an act pursuant to the retention of a scale or weighing device in such working condition as to give correct applied weight value indications within legal tolerance when used as intended, which may involve either or both adjustment or repair before or after inaccuracy, develops in fact, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this article.
- (4) Repair.—The term "repair" is defined as meaning an act involving the replacement or mending of a broken or nonadjustable part or parts and the restoration of a scale or weighing device to such working condition as to give correct indications of applied weight values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under the term "service" as defined in this article.
- (5) Scale Mechanic.—The term "scale mechanic" is defined as meaning any person who, for hire or award, renders service involving adjustment, installation, repair, or maintenance of a scale or weighing device, either used or intended to be used in determining weight value, or values, by either physical act, instruction, or supervision.
- (6) Service.—The term "service" is defined as meaning activity involving adjustment, installation, repair, or maintenance or a combination of two or more of these activities with respect to a scale or weighing device, and, in addition thereto, a test for determination of the accuracy of weight value indication. Said determination is to be accomplished by applying a series of loads of standard weight on a platter or platform up to capacity on a scale of 30 pounds capacity, and up to $\frac{1}{4}$ scale capacity, applied to the respective corners, on a scale having a capacity in excess of 30 pounds. (1941, c. 237, s. 2; 1947, c. 380.)

§ 81-54. Prerequisites for scale mechanic. — It shall be unlawful for any scale mechanic to render service as a scale mechanic until after he or she has complied with the following requirements:

- (1) Obtain from the office of State Superintendent of Weights and Measures a copy of Scale Mechanic Act, a copy of regulations pertinent to said act, and an application form for registration.
- (2) Obtain a bond in the sum of one thousand dollars (\$1,000.00) issued by a corporate surety company licensed to do business in North Carolina.
- (3) File bond with clerk of superior court of the county in which such applicant resides, unless he or she be a resident of some other state, in which event such bond shall be filed with clerk of superior court in Wake County, North Carolina.
- (4) Obtain receipt in duplicate for such bond filed with clerk of superior court and mail or deliver one copy of such receipt together with the application form for registration, completely filled out, to office of State Superintendent of Weights and Measures, Raleigh, North Carolina.
- (5) Obtain a registration card or certificate from State Superintendent of Weights and Measures and a model form of service certificate.

The provisions of this section shall not apply to a full time employee who renders service only on a scale or weighing device, or on scales or weighing device, owned solely by his or her employer unless additional pay or compensation is received for such service. (1941, c. 237, s. 3; 1947, c. 380.)

§ 81-55. Registration; certificate of registration; annual renewal. —The State Superintendent of Weights and Measures shall register any person who has complied with the requirements stipulated under this article by making

a record of receipt of application and of bond, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale mechanic and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1st next and shall be renewed on the first day of July of each year thereafter. (1941, c. 237, ss. 4, 5; 1943, c. 543; 1947, c. 380.)

§ 81-56.1. **Service certificate.**—Whenever any service is rendered on any scale or weighing device used or intended to be used in this State by a scale mechanic, a certificate shall be issued by such scale mechanic who rendered said service, which shall be known as a “service certificate.” The size and form of said service certificate will be determined by the State Superintendent of Weights and Measures. Inclusive of other pertinent information or statements, the said certificate shall bear a statement expressed in ink or other indelible substance naming the kind of service rendered, whether adjustment, installation, repair, or maintenance, and stating that a service test as defined under the term “service” has been made, and that the service rendered is guaranteed to be as represented. The service certificate shall be made out in triplicate, with original going to the owner of such scale or weighing device or his agent, and a duplicate shall be sent to office of State Superintendent of Weights and Measures if service is upon a scale or weighing device which has been condemned by a weights and measures inspector, and the triplicate copy shall be retained by the scale mechanic issuing such certificate. (1947, c. 380.)

§ 81-56.2. **Bond.** — The bond required by this article shall underwrite the guarantee of a refund or compensation, covering any claim by owner of scale or weighing device for damage or injury, which claim is sustained by the court, resulting in misrepresentation of service rendered, or failure to comply with all the provisions of this article, by the scale mechanic, regardless of his or her intent; provided, however, that the aggregate liability of the surety to all claimants sustained by the court shall in no event exceed the amount of said bond. (1947, c. 380.)

§ 81-56.3. **Scale removal.** — When a scale or weighing device is removed from the premises where located by a scale mechanic, the scale mechanic or his servant or agent shall issue a receipt for said scale or weighing device, on which shall be written in ink or other indelible substance the name and address of the owner, the name and address of receiving agent, date of receipt, anticipated date of return, name or make of scale, and such other information pertinent to its identification. The form of receipt shall be approved by the State Superintendent of Weights and Measures. (1947, c. 380.)

§ 81-56.4. **Condemned scale.**—It shall be unlawful for any owner of a scale or weighing device which has been condemned by a weights and measures inspector to either use or dispose of same in any manner but shall hold same at the disposal of the State Superintendent of Weights and Measures, his deputy, or inspector; provided, however, said scale or weighing device may be removed from the premises for scales service only. (1947, c. 380.)

§ 81-56.5. **Secondhand scale.**—It shall be unlawful for any person to sell, or offer for sale, or put into use, a secondhand or rebuilt or reconditioned scale or weighing device unless said scale shall have been tested and approved by the Superintendent of Weights and Measures, or his deputy, or inspector, or shall be accompanied by a service certificate as provided for in this article. Said service certificate shall be retained by the purchaser or user of said scale until an inspector of weights and measures has tested and approved such secondhand scale. The said certificate shall serve as proof of the accuracy of scale at the time scale was purchased or put into service. A secondhand or rebuilt or reconditioned scale or weighing device as referred to in this section shall be considered as being a scale

or weighing device in the channels of trade which does not belong to the previous user. (1947, c. 380.)

§ 81-56.6. **Scale location.**—It shall be unlawful for any scale or weighing device to be installed, set up, put into service, or used on a foundation or support that aids in giving false indication of weight values applied to platter, platform, or other load receiving element. (1947, c. 380.)

§ 81-57. **Exemption.** — The provisions of this article shall not prohibit the user of a scale or weighing device from employing some person other than a scale mechanic to render service as defined by this article upon his or her scale or weighing device, nor apply to the person so employed, who does not solicit such employment, provided that said user shall not be relieved of his or her responsibility or liability concerning the accuracy of the scale or weighing device after service has been rendered. (1947, c. 380.)

§ 81-57.1. **Rules and regulations.** — Such rules and regulations as are necessary to carry out the purpose and intent of this article shall be made and published by the State Superintendent of Weights and Measures, by and with the advice of his advisory board. (1941, c. 237, s. 6; 1947, c. 380.)

§ 81-58. **Penalty.**—Any person who violates any of the provisions of this article, or who for hire or award renders service as a scale mechanic on a scale or weighing device without registering as a scale mechanic or who shall fail to issue a service certificate or who shall issue a service certificate bearing false statements regarding service rendered, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or by imprisonment for not more than three months or by both fine and imprisonment upon conviction in any court of competent jurisdiction; and in addition, if the defendant be a scale mechanic, he or she shall forfeit any charges or remuneration for service rendered, if service be involved, and he or she and/or the bonding company shall, at the discretion of the court, reimburse or compensate the owner of the scale or weighing device in question for such damage, or injury, sustained; and upon a subsequent conviction in any court of competent jurisdiction, the penalty shall be the same as for first conviction and in addition, at the discretion of the court, if defendant be a scale mechanic, his or her privilege to act as or in the capacity of a scale mechanic may be revoked for a specified length of time, his or her registration card or certificate seized and turned over to the State Superintendent of Weights and Measures with instructions concerning reinstatement or renewal. (1941, c. 237, s. 7; 1947, c. 380; 1949, c. 983, s. 2.)

Editor's Note. — The 1949 amendment inserted "or who shall fail to issue a service certificate or who shall issue a service certificate bearing false statements regarding service rendered."

ARTICLE 6.

Surveyors.

§§ 81-59 to 81-66: Repealed by Session Laws 1959, c. 1158.

Cross Reference.—As to official survey article is not applicable to Washington base, see §§ 102-1 to 102-14. and Tyrrell counties.

Editor's Note.—The act repealing this

ARTICLE 7.

Standard Weight Packages of Grits, Meal and Flour.

§§ 81-67 to 81-70: Repealed by Session Laws 1945, c. 280, s. 2.

§§ 81-71, 81-72: Repealed by Session Laws 1943, c. 543.

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 1955 amendment rewrote this article as set forth herein.

§ 81-74. **Definitions.**—(a) Application.—The term “application” shall be construed as being the act of applying liquid fertilizer to the soil of a consumer.

(b) Consumer.—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.

(c) Distribution.—The term “distribution” shall be construed as one or more acts involved in transporting the product from one premise to another.

(d) Distributor.—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.

(e) Handling.—The term “handling” shall be construed as including any and all operations involved in the transferring of liquid fertilizers.

(f) Liquid Fertilizer.—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 (2), article 2, chapter 106 of the General Statutes known as the North Carolina Fertilizer Law.

(g) Quality.—The term “quality” shall be construed to mean grade as defined in chapter 106, article 2, § 106-50.3 (6) of the General Statutes.

(h) Quantity.—The term “quantity” shall be construed to mean volume, or amount, expressed in U. S. Standard avoirdupois pounds.

(i) Retailer.—The term “retailer” shall be construed as being any person, firm, or corporation who sells or delivers liquid fertilizer to the consumer.

(j) Safe.—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.

(k) Sale.—The term “sale” shall be construed as meaning the transfer of custody.

(l) Storage.—The term “storage” shall be construed as being the confinement of liquid fertilizers.

(m) Wholesaler.—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. (1953, c. 1198; 1955, c. 520; 1959, c. 1253, s. 1.)

Editor's Note. — The 1959 amendment deleted a 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 contractors referred to in § 106-50.3 (3) 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 equip-

ment 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 (\$1,000.00), 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.

Sec.	Sec.
82-1. Number and boundaries of wreck districts.	82-10. Sale of unclaimed property.
82-2. Commissioners of wrecks; appointment, residence and term of office.	82-11. Proceeds of sale to be paid to clerk of superior court.
82-3. Commissioners to give bond.	82-12. Disposition of proceeds of sale by clerk.
82-4. Commissioners to take oath of office.	82-13. Proof of ownership of property sold.
82-5. Duty of commissioners.	82-14. Stranded property to be reported; failure to report misdemeanor.
82-6. Salvage to be paid, or its payment secured, before release of goods.	82-15. Expenses to be deducted from proceeds of sales.
82-7. Adjustment of salvage when the parties cannot agree.	82-16. Violation of chapter a misdemeanor.
82-8. Sale of wrecked property for salvage; compensation of commissioner.	82-17. Commissioner violating chapter liable for double damages and guilty of a misdemeanor.
82-9. Compensation of commissioner when there is no sale.	82-18. Interfering with commissioner in the discharge of his duties.

§ 82-1. **Number and boundaries of wreck districts.** — The counties of Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover and Onslow are hereby divided into the following wreck districts namely:

Carteret.—The first from the Hyde County line to Core Banks life-saving station; the second from Core Banks life-saving station to Old Topsail Inlet; the third from Old Topsail Inlet to the Onslow County line.

Currituck.—The first to extend from the Virginia State line to Judy's Cove, the second to extend from Judy's Cove to Josephus Baum's fish house; the third to extend from Josephus Baum's fish house to the county line of Dare.

Dare.—The county of Dare shall constitute one wreck district, which shall extend from the Currituck County line to the Hyde County line.

Hyde.—The county of Hyde shall constitute one wreck district, which shall extend from the Dare County line to the Carteret County line.

New Hanover and Brunswick.—To extend from the Onslow County line to the South Carolina State line.

Onslow.—The first from Bogue Inlet to New River Inlet; the second from New River Inlet to the New Hanover County line. (1899, c. 79, ss. 1-9; 1903, c. 85; 1905, c. 199; Rev., s. 5439; 1915, c. 42; C. S., s. 8082; 1959, c. 941.)

Editor's Note. — The 1950 amendment rewrote the paragraph relating to Dare County.

Easement to Reach Wreck.—The case of *Hitfield v. Baum*, 35 N. C. 394 (1852), lays down the rule that there is an ease-

ment or right of way reserved by necessity for any person to enter over the land of another for the purpose of reaching and carrying away the cargo of a wrecked vessel.

§ 82-2. **Commissioners of wrecks; appointment, residence and term of office.**—The Governor, whenever it may be necessary, shall appoint a commissioner of wrecks for each of the districts designated in § 82-1. Each commissioner shall reside in the district for which he is appointed, unless separated by navigable waters, in which case the distance shall not exceed three miles. The restrictions as to residence shall not apply to Hyde County. No person who holds any office of profit or trust under the laws of the United States or the State of North Carolina, nor any person who is a pilot, shall hold the office of commissioner of wrecks. The term of office shall be for two years. (1899, c. 79, ss. 10, 12, 13; 1903, c. 85; Rev., s. 5440; 1907, c. 398; C. S., s. 8083.)

§ 82-3. **Commissioners to give bond.**—Every person appointed a commissioner of wrecks shall enter into a bond, with good and sufficient surety, in the sum of two thousand dollars, payable to the State of North Carolina and conditioned for the faithful performance of his duties. This bond shall be approved by the board of county commissioners and deposited in the office of the clerk of the superior court. (1899, c. 79, s. 10; Rev., s. 305; C. S., s. 8084.)

§ 82-4. **Commissioners to take oath of office.** — Every person appointed a commissioner of wrecks, before entering upon the duties of his office, shall go before some officer duly authorized to administer oaths and take an oath to perform faithfully the duties of his office, and the oaths to support the Constitution of the State and of the United States. (1899, c. 79, s. 11; Rev., s. 5441; C. S., s. 8085.)

§ 82-5. **Duty of commissioners.** — Upon the earliest intelligence given that any ship or vessel is stranded, it shall be the duty of the commissioner in whose district the same is stranded, or his duly authorized agent, to repair at once to such wrecked ship or vessel, and upon the permission of its master to summon immediately a sufficient number of men who, acting under the direction of the commissioner or his agent, shall at once proceed to save the cargo and material of such wrecked vessel. As soon as any such stranded property is saved it shall be immediately placed under guard, one guard to be selected by the commissioner or owner representing the same, and one other guard to be selected by the salvors. Such goods or stranded property shall be kept under strict guard until sold or the salvors are paid as provided in this chapter. (1899, c. 79, s. 14; 1901, c. 178; Rev., s. 5442; C. S., s. 8086.)

Editor's Note. — In the early case of *Etheridge v. Jones*, 30 N. C. 100 (1847), it was held that the commissioners did not have exclusive control of a wrecked vessel and the master or owner could take control of and dispose of it without any responsibility to the commissioners.

§ 82-6. **Salvage to be paid, or its payment secured, before release of goods.**—Every person who assists in saving such cargo or material shall, within thirty days after saving the same, be paid a reasonable reward by the owner or master of the stranded vessel, or by the merchant whose vessel or goods are saved. In default of payment of a reasonable compensation the goods or other property so saved shall remain in the joint custody of the commissioner and salvors until all such charges are paid, or until the payment thereof is secured to the satisfaction of the parties saving such goods or other property. (1899, c. 79, ss. 14, 15; Rev., s. 5443; C. S., s. 8087.)

§ 82-7. **Adjustment of salvage when the parties cannot agree.** — If the parties shall disagree touching the amount of reward or salvage to be paid to the persons employed, the commander, owner, or commissioner who represents the property saved shall choose one disinterested person, and the salvors shall nominate one other, who shall adjust and ascertain the same. If the persons thus chosen cannot agree, they shall choose one other indifferent person as umpire to decide between them: Provided, that the amount to be paid the salvors shall be determined and agreed upon before sale is made of such property. (1899, c. 79, s. 16; Rev., s. 5444; C. S., s. 8088.)

§ 82-8. **Sale of wrecked property for salvage; compensation of commissioner.**—If the owner of the vessel, or the property which has been saved, shall fail for thirty days after the salvage has been ascertained, either by agreement or as provided for in § 82-7, to pay such salvage, it shall be the duty of the commissioner of wrecks in charge of such stranded or wrecked vessel or other property to sell the same at public sale, after first advertising such sale in the same manner as is required for sales of personal property under execution. Each commissioner shall provide himself with books and shall record in them all such sales

by him made. He shall receive for selling any such wrecked or stranded property five per centum on the amount of sales, and in addition thereto he shall receive his actual expenses incurred in going to and returning from the place of the wreck, or where the property is stranded, to be paid out of the gross amount of such sales. At any public sale of stranded property, the salvors may select one person and the commissioner one other, who shall keep an accurate account of the sales, make the collections, settle with the commissioner his fees, and pay to the salvors the amount agreed on or awarded by the referees. (1899, c. 79, s. 17; 1901, c. 178; 1905, c. 66; Rev., s. 5445; C. S., s. 8089.)

§ 82-9. **Compensation of commissioner when there is no sale.** — If any owner or merchant shall remove any such goods or other stranded property from the custody of any commissioner without a sale, then such commissioner shall receive, in addition to his actual expenses incurred for the purposes mentioned in § 82-8, two and one-half per centum on the amount of the value of such property, which amount shall be ascertained in the same manner as is provided for ascertaining the amount of the reward to be paid salvors in those cases where such reward cannot be determined by agreement. No commissioner shall receive any salvage or other reward except the commission prescribed in this chapter. (1899, c. 79, ss. 17, 18; 1905, c. 66; Rev., s. 5446; C. S., s. 8090.)

§ 82-10. **Sale of unclaimed property.** — Whenever any vessel, cargo, or material of any ship or vessel or any other property shall be cast ashore or taken up at sea and brought to shore, and no person is present to claim the same as owner, it shall be the duty of the commissioner of the district where the same is brought or cast ashore to take charge of such property and to proceed to advertise and sell it at public sale, first giving twenty days' notice of such sale at three public places. On making any such sale the commissioner shall, out of the gross proceeds thereof, retain a commission of five per centum as his compensation and the amount awarded to the salvors pursuant to the provisions of this chapter. (1899, c. 79, ss. 19, 20; Rev., s. 5447; C. S., s. 8091.)

§ 82-11. **Proceeds of sale to be paid to clerk of superior court.** — When any commissioner shall undertake to sell any property where no person is or has been present to claim the same, it shall be his duty to notify the clerk of the superior court of his county of such sale. After any such sale is made, the commissioner shall forward to such clerk the proceeds of the sale, after deducting his commission of five per centum and paying the salvors the amount awarded to them as provided in this chapter. (1899, c. 79, s. 21; Rev., s. 5448; C. S., s. 8092.)

§ 82-12. **Disposition of proceeds of sale by clerk.** — It shall be the duty of the clerk of the superior court to make a record and keep an account of all moneys received by him from any commissioner of wrecks, and he shall advertise in some weekly newspaper published in North Carolina the amount so received, giving a true description of the marks, numbers, and kinds of goods or other stranded property, for which the same was sold. Each commissioner shall give the clerk of the superior court all necessary information for the proper enforcement of this section in each return made by him to the clerk. The clerk shall advertise for the space of sixty days, and if no person shall come to claim the money within a year and a day from the date of advertisement, then the clerk holding such money shall transmit the same, after deducting one per centum for his trouble and also after deducting the cost of advertising, to the Treasurer of the State for the benefit of the public school funds. (1899, c. 79, s. 22; Rev., s. 5449; C. S., s. 8093.)

§ 82-13. **Proof of ownership of property sold.** — If any person shall claim to be the owner of any property sold as provided in § 82-10 and shall present his claim to the clerk holding the money arising from the sale of such prop-

erty, it shall be the duty of such person to prove his title to the satisfaction of the clerk. If any person making a claim to such property be unknown to the clerk, then the clerk shall submit such claim to the consideration of three disinterested persons, one of whom shall be chosen by the claimant, and the decision of such referees shall always be final. (1899, c. 79, s. 23; Rev., s. 5450; C. S., s. 8094.)

§ 82-14. **Stranded property to be reported; failure to report misdemeanor.**—If any person shall find any wrecked or stranded property on or near the seashore, no person being present to claim the same, he shall as soon as possible give information thereof to the nearest commissioner of wrecks, who shall advertise and sell the same as provided in this chapter. If such finder shall refuse to report the goods so found, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars, or imprisoned not more than thirty days. (1899, c. 79, s. 24; Rev., ss. 3548, 5451; C. S., s. 8095.)

§ 82-15. **Expenses to be deducted from proceeds of sales.** — All necessary expenses shall be deducted from the gross proceeds of any sales made under this chapter. Such necessary expenses shall include only the cost of advertising, guarding, and surveying, when a survey is called. (1899, c. 79, s. 19; Rev., s. 5452; C. S., s. 8096.)

§ 82-16. **Violation of chapter a misdemeanor.** — If any person shall violate any of the provisions of this chapter he shall be guilty of a misdemeanor. (1899, c. 79, s. 26; Rev., s. 3562; C. S., s. 8097.)

§ 82-17. **Commissioner violating chapter liable for double damages and guilty of a misdemeanor.**—If any commissioner of wrecks shall by fraud or willful neglect violate any of the provisions of this chapter, or abuse the trust reposed in him, he shall forfeit and pay double the amount of damages to the party aggrieved. He shall also be guilty of a misdemeanor, and upon conviction shall forfeit his office and shall thereafter be incapable of acting as commissioner. (1899, c. 79, s. 25; Rev., s. 3563; C. S., s. 8098.)

§ 82-18. **Interfering with commissioner in the discharge of his duties.**—If any person shall willfully and unlawfully resist, delay, or obstruct any commissioner of wrecks in discharging or attempting to discharge his duties as such commissioner, he shall be guilty of a misdemeanor. (1905, c. 66, s. 2; Rev., s. 3564; C. S., s. 8099.)

Division XII. Occupations.

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Chapter 83.
Architects.

Sec.	Sec.
83-1. Definitions.	83-9. Refusal, revocation, or suspension of certificates.
83-2. North Carolina Board of Architecture; creation; membership; vacancies.	83-10. Examination fees; expenses of Board.
83-3. Oath of members.	83-11. Annual renewal of certificate; fee.
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83-5. Seal of Board.	83-13. Seal of registered architect; plans to bear seal.
83-6. Meetings of Board; quorum.	83-14. County record of registered architects; fees.
83-7. Record of proceedings and of registration.	83-15. Copy to registered architects.
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§ 83-1. **Definitions.**—When used in this chapter, unless the context otherwise requires:

- (1) "Architect" means a person who is technically qualified and licensed under the laws of this State to practice architecture.
- (2) The term "Board" as used in this chapter shall mean the North Carolina Board of Architecture, as established under this chapter.
- (3) The practice of architecture consists of rendering or offering to render service by consultations, investigations, evaluations, preliminary studies, plans, specifications, contract documents and a coordination of all factors concerning the design and supervision of construction of buildings or any other service in connection with the designing or supervision of construction of buildings located within the boundaries of the State, regardless of whether such services are performed in connection with one or all of these duties, or whether they are performed in person or as the directing head of an office or organization performing them. (1915, c. 270, s. 9; C. S., s. 4985; 1941, c. 369, s. 3; 1951,

c. 1130, s. 1; 1957, c. 794, ss. 1, 2.)

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

The 1957 amendment deleted the words "to clients" formerly appearing after the words "render service" near the beginning

of subdivision (3). It also substituted "North Carolina Board of Architecture" for "State Board of Architectural Examination and Registration" in subdivision (2).

§ 83-2. **North Carolina Board of Architecture; creation; membership; vacancies.**—There shall be a North Carolina Board of Architecture, consisting of five members, to be appointed by the Governor in the following manner, to wit: Within thirty days after the ninth day of March, one thousand nine hundred and fifteen, the Governor shall appoint five persons who are reputable architects residing in the State of North Carolina, who have been engaged in the practice of architecture at least ten years. The five persons so appointed by the Governor shall constitute the North Carolina Board of Architecture, and they shall be appointed for one, two, three, four, and five years, respectively. Thereafter, in each year, the Governor in like manner shall appoint one licensed architect to fill the vacancy caused by the expiration of the term of office, the term of such new members to be for five years. If vacancy shall occur in the Board for any cause, the same shall be filled by the appointment of the Governor. (1915, c. 270, s. 1; C. S., s. 4986; 1957, c. 794, s. 3.)

Editor's Note. — The 1957 amendment changed the name of the Board from "State Board of Architectural Examination

and Registration" to "North Carolina Board of Architecture."

§ **83-3. Oath of members.**—Each member of the North Carolina Board of Architecture shall, before entering upon the discharge of the duties of his office, take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said Board, and to uphold the Constitution of North Carolina and the Constitution of the United States. (1915, c. 270, s. 2; C. S., s. 4987; 1957, c. 794, s. 4.)

Editor's Note. — The 1957 amendment substituted "North Carolina Board of Architecture" for "State Board of Architectural Examination and Registration."

§ **83-4. Organization of Board; officers; treasurer's bond.**—The said Board shall, within thirty days after its appointment by the Governor, meet in the city of Raleigh, at a time and place to be designated by the Governor, and organize by electing a president, vice-president, secretary, and treasurer, each to serve for one year. Said Board shall have power to make such bylaws, rules, and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The treasurer shall give bond in such sum as the Board shall determine, with such security as shall be approved by the Board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. (1915, c. 270, s. 1; C. S., s. 4988.)

§ **83-5. Seal of Board.** — The Board shall adopt a seal for its own use. The seal shall have the words "North Carolina Board of Architecture," and the secretary shall have charge, care, and custody thereof. (1915, c. 270, s. 5; C. S., s. 4989; 1957, c. 794, s. 5.)

Editor's Note. — The 1957 amendment substituted "North Carolina Board of Architecture" for "Board of Architectural Examination and Registration, State of North Carolina."

§ **83-6. Meeting of Board; quorum.**—The Board shall meet once a year for the purpose of electing officers and transacting such other business as may properly come before it. Due notice of such annual meeting, and the time and place thereof, shall be given to each member by letter, sent to his last post-office address at least ten days before the meetings, and thirty days' notice of such annual meeting shall be given in some newspaper published in the city of Raleigh, at least once a week for four weeks preceding such meeting. Three members of the Board shall constitute a quorum. (1915, c. 270, s. 1; C. S., s. 4990; 1957, c. 794, s. 6.)

Editor's Note. — The 1957 amendment deleted "in July of each succeeding year" formerly appearing after "year" in the first sentence.

§ **83-7. Record of proceedings and of registration.** — The secretary shall keep a record of the proceedings of the Board and registration for all applicants for registration and admission to practice architecture, giving the name and location of the institution or place of training where the applicant was prepared for the practice of architecture, and such other information as the Board may deem proper and useful. This registration shall be prima facie evidence of all matters recorded therein. (1915, c. 270, s. 1; C. S., s. 4991.)

§ **83-8. Examination and certificate of applicant.** — Any person hereafter desiring to be registered and admitted to the practice of architecture in the State shall make a written application for examination to the North Carolina Board of Architecture, on a form prescribed by the Board, giving his name, age (which shall not be less than twenty-one years), his residence, and such evidence of his qualification and proficiency as may be prescribed by said Board, which application shall be accompanied by a fee in such amount as may be established by the Board, not however, in excess of twenty-five dollars (\$25.00) for residents of this State and fifty dollars (\$50.00) for nonresidents. If said application is satisfactory to the Board, then the applicant shall be entitled to an examination to

determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to practice architecture in North Carolina. Any person failing to pass such examination may be re-examined at any regular meeting of the Board at a fee to be established by the Board, such fee not to exceed twenty-five dollars. (\$25.00). (1915, c. 270, s. 3; 1919, c. 336, s. 1; C. S., s. 4992; 1957, c. 794, s. 7.)

Editor's Note. — The 1957 amendment struck out "Board of Architectural Examination and Registration" and inserted in lieu thereof "North Carolina Board of Architecture." It also made changes in the fees.

§ 83-9. Refusal, revocation, or suspension of certificates. — Said Board may, in accordance with the provisions of chapter 150 of the General Statutes, refuse to grant certificate to any person convicted of a felony, or who, in the opinion of the Board, has been guilty of gross, unprofessional conduct, or who is addicted to habits of such character as to render him unfit to practice architecture. The North Carolina Board of Architecture may suspend for a period or revoke the certificate of admission to practice, and forbid practice by any architect on grounds of dishonest practice, unprofessional conduct, or incompetence. The procedure for such action shall be in accordance with the provision of chapter 150 of the General Statutes. (1915, c. 270, s. 5; 1919, c. 336, s. 3; C. S., s. 4993; 1953, c. 1041, s. 1; 1957, c. 794, s. 8.)

Editor's Note. — The 1953 amendment inserted the references to chapter 150 of the General Statutes, and made other changes.

The 1957 amendment substituted "North Carolina Board of Architecture" for "Board of Architectural Examination and Registration."

§ 83-10. Examination fees; expenses of Board. — All examination fees shall be paid in advance to the treasurer of said North Carolina Board of Architecture. The State of North Carolina shall not be liable for the compensation of any members or officers of said Board. All expenses incurred by said Board in the necessary discharge of their duties shall be paid out of funds derived from examination fees herein provided for, and shall be paid by the treasurer upon warrant drawn by the secretary and approved by the president. The said Board shall have the power to determine what are necessary expenses and to fix the salaries of the respective officers. (1915, c. 270, s. 6; C. S., s. 4994; 1957, c. 794, s. 9.)

Editor's Note. — The 1957 amendment substituted "North Carolina Board of Ar-

chitecture" for "Board of Architectural Examination and Registration."

§ 83-11. Annual renewal of certificate; fee.—Every architect continuing his practice in the State shall, on or before the first day of July in each year, obtain from the North Carolina Board of Architecture a renewal of his certificate for the ensuing year upon the payment of a fee in such amount as may be fixed by the Board, not however, in excess of twenty-five dollars (\$25.00); and upon failure to do so shall have his certificate of admission to practice, revoked, but such certificate may be renewed at any time within one year upon the payment of the prescribed renewal fee and an additional five dollars (\$5.00) for late renewal. (1919, c. 336, s. 2; C. S., s. 4995; 1951, c. 1130, s. 2; 1957, c. 794, s. 10.)

Editor's Note.—Prior to the 1951 amendment the annual renewal fee was \$5.00 and the fee for renewal after revocation was \$10.00.

The 1957 amendment substituted "North Carolina Board of Architecture" for "Board of Architectural Examination and Registration" and made changes in the fees.

The 1957 amendment substituted "North

§ 83-12. Practice without certificate unlawful.—In order to safeguard life, health and property, it shall be unlawful for any person to practice architecture in this State as defined in this chapter, except as hereinafter set forth, or use the title "Architect" or display or use any words, letters, figures, title, sign, card, advertisement, or other device to indicate that such person practices or offers to

practice architecture, or is an architect or is qualified to perform the work of an architect, unless such person shall have secured from the Board a certificate of admission to practice architecture in the manner herein provided, and shall thereafter comply with the provisions of the laws of North Carolina governing the registration and licensing of architects.

Nothing in this chapter shall prevent any person who is qualified under the law as a "registered engineer" from performing such architectural work as is incidental to engineering projects or utilities.

Nothing in this chapter shall be construed to prevent any individual from making plans or data for buildings for himself; nothing in this chapter shall prevent any person from selling or furnishing plans for the construction of residence or farm or commercial buildings of a value not exceeding twenty thousand dollars (\$20,000.00); provided that such persons preparing plans and specifications for buildings of any kind shall identify such plans and specifications by placing thereon the name and address of the author.

Any person not registered under this chapter, who shall in any way hold himself out to the public as an architect, or practice architecture as herein defined, or seek to avoid the provisions of this chapter by the use of any other designation than the title of "Architect", shall be guilty of a misdemeanor and shall upon conviction be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or suffer imprisonment for a period not exceeding three months or both so fined and imprisoned, each day of such unlawful practice to constitute a distinct and separate offense. (1915, c. 270, s. 4; C. S., s. 4996; 1941, c. 369, ss. 1, 2; 1951, c. 1130, s. 3; 1957, c. 794, s. 11.)

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

The 1957 amendment substituted "individual" for "person" near the beginning of the third paragraph.

Right of Unregistered Person to Recover for Work on Plans. — Plaintiff, a builder-designer, but not a licensed architect, who made preliminary studies, consulted with defendants and made changes on plans calling for the construction of a

residence originally intended to cost about \$18,000, could recover on a quantum meruit basis for the work he performed on the plans up to the time the residence designed did not exceed in value \$20,000, but he was not entitled to recover for any work performed after the plans called for a residence of a value in excess of \$20,000. *Tillman v. Talbert*, 244 N. C. 270, 93 S. E. (2d) 101 (1956).

§ 83-13. **Seal of registered architect; plans to bear seal.** — Every architect who shall have obtained from said Board a certificate, shall have a seal which must contain the name of the architect, his place of business, and the words "Registered Architect, of North Carolina," and he shall stamp all drawings and specifications issued from his office, for use in this State, with an impression of said seal. (1915, c. 270, s. 7; C. S., s. 4997.)

§ 83-14. **County record of registered architects; fees.**—Every person holding a certificate of said Board to practice architecture shall have said certificate recorded in the office of the clerk of the superior court of the county in which he resides or has his principal office. Said clerk shall record the same in a book to be kept by him, entitled "Record of Architecture," and the clerk shall be entitled to a fee of one dollar for recording such certificate: Provided, however, that in any counties where the clerk is on a salary and not on a fee basis, then the said fee of one dollar shall be paid into the county treasury. It shall be unlawful for any person to hold himself out as an architect until said certificate shall have been recorded, and any person found guilty of holding himself out as an architect without registration of his certificate, as aforesaid, shall be guilty of a misdemeanor, and fined not more than fifty dollars, in the discretion of the court. (1915, c. 270, s. 8; C. S., s. 4998.)

§ 83-15. **Copy to registered architects.** — A notice and copy of this chapter shall be mailed by the secretary of the North Carolina Board of Archi-

ecture to each architect in and out of the State to whom a certificate has been issued under this chapter. (1919, c. 336, s. 3; C. S., s: 4993; 1957, c. 794, s. 12.)

Editor's Note. — The 1957 amendment chitecture" for "State Board of Architectural Examination and Registration." substituted "North Carolina Board of Ar-

Chapter 84. Attorneys at Law.

Article 1.

Qualifications of Attorney; Unau- thorized Practice of Law.

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- 84-1. Oaths taken in open court.
- 84-2. Persons disqualified.
- 84-2.1. "Practice law" defined.
- 84-3. Officers of inferior courts disqualified in certain cases.
- 84-4. Persons other than members of State Bar prohibited from practicing law.
- 84-5. Prohibition as to practice of law by corporation.
- 84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys.
- 84-7. Solicitors, upon application, to bring injunction or criminal proceedings.
- 84-8. Punishment for violations; legal clinics of law schools excepted.
- 84-9. Unlawful for anyone except attorney to appear for creditor in insolvency and certain other proceedings.
- 84-10. Violation of preceding section a misdemeanor.

Article 2.

Relation to Client.

- 84-11. Authority filed or produced if requested.
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- 84-13. Fraudulent practice, attorney liable in double damages.

Article 3.

Arguments.

- 84-14. Court's control of argument.

Article 4.

North Carolina State Bar.

- Sec.
- 84-15. Creation of North Carolina State Bar as an agency of the State.
- 84-16. Membership and privileges.
- 84-17. Government.
- 84-18. Election of councilors.
- 84-19. Change of judicial districts.
- 84-20. Compensation of councilors.
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- 84-22. Officers and committees of the North Carolina State Bar.
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- 84-32. Records and judgments and their effect; restoration of licenses.
- 84-33. Annual and special meetings.
- 84-34. Membership fees and list of members.
- 84-35. Saving as to North Carolina Bar Association.
- 84-36. Inherent powers of courts unaffected.
- 84-37. State Bar may investigate and enjoin unauthorized practice.
- 84-38. Solicitation of retainer or contract for legal services prohibited; division of fees.

ARTICLE 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-1. **Oaths taken in open court.**—Attorneys before they shall be admitted to practice law shall, in open court before a justice of the supreme or judge of the superior court, take the oath prescribed for attorneys, and also the oaths of allegiance to the State, and to support the Constitution of the United States, prescribed for all public officers, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken may act as attorneys during their good behavior. (1777, c. 115, s. 8; R. C., c. 9, s. 3; Code, s. 19; Rev., s. 209; C. S., s. 197.)

Nonresident Attorneys.—As this section requires the oath of allegiance to the State, it debars a citizen of another state from obtaining a license to practice law, and a nonresident attorney does not acquire the

right to practice habitually in this State by having been previously allowed, through the courtesy of the courts, to appear in special cases. *Manning v. Roanoke, etc., R. Co.*, 122 N. C. 824, 28 S. E. 963 (1898).

§ 84-2. **Persons disqualified.** — No clerk of the superior or Supreme Court, nor deputy or assistant clerk of sheriff, nor any justice of the peace, nor county commissioner shall practice law. Persons violating this provision shall be less than two hundred dollars. This section shall not apply to Confederate soldiers. (C. C. P., s. 424; 1870-1, c. 90; 1871-2, c. 120; 1880, c. 43; 1883, c. 406; Code, ss. 27, 28, 110; Rev., ss. 210, 3641; 1919, c. 205; C. S., s. 198; 1933, c. 15; 1941, c. 177; 1943, c. 543.)

Local Modification.—Anson: 1951, c. 7; Burke: 1933, c. 135; Madison: 1935, c. 214; New Hanover: 1959, c. 483.

Editor's Note.—Registers of deeds were, by the 1933 amendment, added to the list

No clerk of the superior or Supreme said courts, nor register of deeds, nor county commissioner shall practice law. Persons violating this provision shall be guilty of a misdemeanor and fined not

of those excluded from practice. The 1943 amendment made the former second paragraph of this section into a new section designated as § 84-2.1. That paragraph had been added by the 1941 amendment.

§ 84-2.1. **“Practice law” defined.**—The phrase “practice law” as used in this chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, or assisting by advice, counsel, or otherwise in any such legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase “practice law” shall not be construed to limit the foregoing general definition of such term, but shall be construed to include the foregoing particular acts, as well as all other acts within said general definition. (C. C. P., s. 424; 1870-1, c. 90; 1871-2, c. 120; 1880, c. 43; 1883, c. 406; Code, ss. 27, 28, 110; Rev., ss. 210, 3641; 1919, c. 205; C. S., s. 198; 1933, c. 15; 1941, c. 177; 1943, c. 543; 1945, c. 468.)

Editor's Note.—Prior to the 1943 amendment this section appeared as the second paragraph of § 84-2. It had been added as said paragraph by the 1941 amendment. For comment on the 1941 act, see 19 N. C. Law Rev. 454.

The 1945 amendment extended the definition of “practice law” to include “aiding in the preparation” of certain instruments and writings listed, added inventories and accounts to the list and inserted the provision as to petitions or orders in any probate or court proceeding.

What Constitutes Practicing Law.—To constitute the practice of law, within the prohibition of this section, it is necessary that the person charged with its violation shall have customarily or habitually held himself out to the public as a lawyer, or that he has demanded compensation for

his services as such. *State v. Bryan*, 98 N. C. 644, 4 S. E. 522 (1887).

The fact that a person on one occasion acted as an attorney for a party to an action is some evidence for the jury to consider, but is not conclusive of the question. *State v. Bryan*, 98 N. C. 644, 4 S. E. 522 (1887). See § 84-4.

Practice of law embraces the preparation of legal documents and contracts by which legal rights are secured. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962).

Not All Activities within Definition Are Unlawful for Lay Persons. — It was not the purpose and intent of this section to make unlawful all activities of lay persons which come within the general definition of practicing law. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962). See note to § 84-4.

§ 84-3. **Officers of inferior courts disqualified in certain cases.**—No judge or prosecuting attorney of any recorder's, municipal, or county court

shall appear in any other court on behalf of the defendant in a criminal action, where such criminal action has been tried in the court of such officer. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars. (1917, c. 213; C. S., s. 199.)

Local Modification. — Iredell: 1917, c. 213, s. 3.

§ 84-4. Persons other than members of State Bar prohibited from practicing law.—It shall be unlawful for any person or association of persons, except members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this State or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document. Provided, that nothing herein shall prohibit any person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law. The provisions of this section shall be in addition to and not in lieu of any other provisions of chapter 84. (1931, c. 157, s. 1; 1937, c. 155, s. 1; 1955, c. 526, s. 1.)

Cross Reference. — As to officers disqualified to practice law, see § 84-2.

Editor's Note.—The 1955 amendment re-wrote this section.

For note on unauthorized practice of law by corporations, see 41 N. C. Law Rev. 225.

For case law survey on unauthorized practice of law, see 41 N. C. Law Rev. 447.

This section is constitutional and valid, the right to practice law being subject to legislative regulation within constitutional restrictions and limitations, and the statute not being in contravention of any provision of the State or federal Constitutions. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540 (1936).

The purpose of this section is for the better security of the people against incompetency and dishonesty in an area of activity affecting general welfare. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962); commented on in 41 N. C. Law Rev. 225.

The right to practice law is personal and may not be exercised by a corporation either directly or indirectly by employing

lawyers to practice for it. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540 (1936).

The practice of law is not limited to the conduct of cases in court, but embraces, in its general sense, legal advice and counsel and the preparation of legal documents and contracts by which legal rights are secured, although such matter may or may not be pending in court. *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540 (1936).

Services of Motor Clubs Held to Violate Section.—Where defendant corporations, as a part of their services, were engaged in giving legal advice, in employing attorneys for members, in allowing lay members of the incorporated club to write letters on club stationery to persons involved in accidents with members of the club advising that such persons were liable in damages in law for negligence in causing such accidents, and in drawing up receipts stating that a certain sum was received as settlement of such damages when collections were made as a result of such letters, they were held to be engaged in the practice of law in violation of this section.

Seawell v. Carolina Motor Club, 209 N. C. 624, 184 S. E. 540 (1936).

Right to Enjoin Unlawful Practice of Law.—A cemetery lot owner could not enjoin a cemetery corporation from practicing law without a license—a criminal offense, since he had an adequate remedy at law by having the corporation indicted and convicted by the State. *Mills v. Carolina Cemetery Park Corp.*, 242 N. C. 20, 86 S. E. (2d) 893 (1955).

Section Does Not Confer Absolute Monopoly in Preparation of Legal Documents.—This section was not enacted for the purpose of conferring upon the legal profession an absolute monopoly in the preparation of legal documents. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Persons Having Primary Interest in Transaction May Prepare Necessary Papers.—A person, firm or corporation having a primary interest, not merely an incidental interest, in a transaction, may prepare legal documents necessary to the furtherance and completion of the transaction without violating this section. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Automobile, furniture, and appliance dealers prepare conditional sale contracts. Banks prepare promissory notes, drafts and letters of credit. Many lending institutions prepare deeds of trust and chattel mortgages. Owner-vendors and purchasers of land prepare deeds. All such activities are legal and do not violate the statute so long as the actor has a primary interest in the transaction. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

§ 84-5. Prohibition as to practice of law by corporation.—It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required,

Preparation of Documents by Employees of Corporations.—A person who, in the course of his employment by a corporation, prepares a legal document in connection with a business transaction in which the corporation has a primary interest, the corporation being authorized by law and its charter to transact such business, does not violate the statute, for his act in so doing is the act of the corporation in the furtherance of its own business. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

A deed of trust is a legal document. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

The grantor or the beneficiary in a deed of trust may prepare the instrument with impunity if the latter is extending credit to the former; the named trustee may not do so, for his interest is only incidental. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Any adult person desiring to do so may prepare his own will. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

A person involved in litigation, though not a lawyer, may represent himself and either defend or prosecute the action or proceeding in a tribunal or court, even in Supreme Court, and may prepare and file pleadings and other papers in connection with the litigation. *State v. Pledger*, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Cited in North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

or from discussing the business and financial aspects of fiduciary relationships. (1931, c. 157, s. 2; 1937, c. 155, s. 2; 1955, c. 526, s. 2.)

Editor's Note.—The 1955 amendment re-wrote this section.

For comment on the 1955 amendment, see 33 N. C. Law Rev. 528.

§ 84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys. — It shall be unlawful to exact, charge, or receive any attorney's fee for the foreclosure of any mortgage under power of sale, unless the foreclosure is conducted by licensed attorney at law of North Carolina, and unless the full amount charged as attorney's fee is actually paid to and received and retained by such attorney, without being directly or indirectly shared with or rebated to anyone else, and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same, or to share with or rebate to any other person, firm, or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted, and has forwarded the case to the attorney conducting such foreclosure. (1931, c. 157, s. 3.)

§ 84-7. Solicitors, upon application, to bring injunction or criminal proceedings. — The solicitor of any of the superior courts shall, upon the application of any member of the Bar, or of any bar association, of the State of North Carolina, bring such action in the name of the State as may be proper to enjoin any such person, corporation, or association of persons who it is alleged are violating the provisions of §§ 84-4 to 84-8, and it shall be the duty of the solicitors of this State to indict any person, corporation, or association of persons upon the receipt of information of the violation of the provisions of §§ 84-4 to 84-8. (1931, c. 157, s. 4.)

Cross Reference.—As to the power of the North Carolina State Bar to investigate and enjoin unauthorized practice of law, see § 84-37.

Cited in North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 84-8. Punishment for violations; legal clinics of law schools excepted.—Any person, corporation, or association of persons violating the provisions of §§ 84-4 to 84-8 shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court. Provided, that §§ 84-4 to 84-8 shall not apply to any law school or law schools conducting a legal clinic and receiving as their clientage only those persons unable financially to compensate for legal advice or services rendered. (1931, c. 157, s. 5; c. 347.)

§ 84-9. Unlawful for anyone except attorney to appear for creditor in insolvency and certain other proceedings.—It shall be unlawful for any corporation, or any firm or other association of persons other than a law firm, or for any individual other than an attorney duly licensed to practice law, to appear for another in any bankruptcy or insolvency proceeding, or in any action or proceeding for or growing out of the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors, or to present or vote any claim of another, whether under an assignment or transfer of such claim or in any other manner, in any of the actions, proceedings or matters hereinabove set out. (1931, c. 208, s. 2.)

Cross Reference.—As to unlawful solicitation of claims of creditors in insolvency, etc., proceedings, see § 23-46.

§ 84-10. **Violation of preceding section a misdemeanor.** — Any individual, corporation, or firm or other association of persons violating any provision of § 84-9 shall be guilty of a misdemeanor. (1931, c. 208, s. 3.)

Cited in *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

ARTICLE 2.

Relation to Client.

§ 84-11. **Authority filed or produced if requested.** — Every attorney who claims to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court in which he claims to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf, otherwise he shall not be allowed so to do: Provided, that when any attorney claims to enter an appearance by virtue of a letter to him directed (whether such letter purport a general or particular employment), and it is necessary for him to retain the letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and the clerk shall make a note to that effect upon the docket. (R. C., c. 31, s. 57; Code, s. 29; Rev., s. 213; C. S., s. 200.)

Cross Reference.—As to appearance by attorney, see § 1-11.

Sufficiency of Writing.—The power of attorney which a lawyer may be required to file, pursuant to this section, is some writing addressed to him by the client or an agent for the client. Therefore, letters written by the client to third persons expressing gratification because of the employment of a particular attorney will not suffice to supply the want of power. *Day v. Adams*, 63 N. C. 254 (1869).

A power of attorney, signed by the purchaser of a note, in the name of the payee, is sufficient authority under this section for an attorney at law to appear in a cause in court, although the agent has no written authority to make the power. *Johnson v. Sikes*, 49 N. C. 70 (1856).

A power of attorney given by a married woman to dismiss an action need not be registered. *Hollingsworth v. Harman*, 83 N. C. 153 (1880).

Right to Question Authority of Attorney.—While an attorney who claims to enter an appearance for any party to an action may be required to produce and file a power or authority as provided in this section, once an attorney has entered an appearance and has been recognized by the court as an attorney in the cause, the opposite party may not call in question his authority. *Henderson v. Henderson*, 232 N. C. 1, 59 S. E. (2d) 227 (1950).

Time of Demand for Authority. — In *Reece v. Reece*, 66 N. C. 377 (1872), it is held that the defendant has the right, because of this section to demand the au-

thority at the return term of a summons.

If the demand for the power of attorney is made at the return term, it is the practice and within the discretion of the judge to extend the time; if, however, such demand is not made at the proper time, and before the right to appear has been recognized, it comes too late, unless there are peculiar circumstances tending to excuse the party for not making it in apt time. *Reece v. Reece*, 66 N. C. 377 (1872).

After an attorney has entered an appearance and has been recognized by the court as attorney in the cause, no written authority can be required of him at a subsequent time. This means that the opposite party shall not call in question his authority, unless he does so within the time and in accordance with the provision of this section. *Day v. Adams*, 63 N. C. 254 (1869); *New Bern v. Jones*, 63 N. C. 606 (1869).

When Client Present.—If a written authority is required under this section the attorney must produce the same, even if his client is present at the bar of the court. *Day v. Adams*, 63 N. C. 254 (1869).

Special Appearance for Nonresident. — Upon special appearance of the attorneys of a husband who was a nonresident and a fugitive from justice, and whose property had been attached by his wife, for the purpose of moving to dismiss the action, the court should, on motion made, have required them to file their written authority under this section. *Walton v. Walton*, 178 N. C. 73, 100 S. E. 176 (1919).

§ 84-12. **Failure to file complaint, attorney liable for costs.** — When a plaintiff is compelled to pay the costs of his suit in consequence of a failure on the part of his attorney to file his complaint in proper time, he may sue such attorney for all the costs by him so paid, and the receipt of the clerk may be given in evidence in support of such claim. (1786, c. 253, s. 6; R. C., c. 9, s. 5; Code, s. 22; Rev., s. 214; C. S., s. 201.)

This section is not exhaustive, and the courts have power to order counsel to pay costs of cases in which they have been guilty of gross negligence (even of a kind

not included in this section), such conduct being a sort of contempt. *Ex parte Robins*, 63 N. C. 309 (1869).

§ 84-13. **Fraudulent practice, attorney liable in double damages.** — If any attorney commits any fraudulent practice, he shall be liable in an action to the party injured, and on the verdict passing against him, judgment shall be given for the plaintiff to recover double damages. (1743, c. 37; R. C., c. 9, s. 6; Code, s. 23; Rev., s. 215; C. S., s. 202.)

Aliens Prevented from Practicing.—In *Ex parte Thompson*, 10 N. C. 355, 362 (1824), the court said: "No one should be presented to the public under the panoply of such a license (to practice law), against whom an injured suitor would not have the full benefit of such remedy as the laws of the State provide, in the event of fraudulent or negligent practice." Hence the court reasoned that an alien could not

be admitted to practice, as actions under this section would be removable to the United States courts.

Presumption of Fraud.—The relation of attorney and client is one of a fiduciary character, and gives rise to a presumption of fraud when the former, in dealing with the latter, obtains an advantage. *Egerton v. Logan*, 81 N. C. 172 (1879).

ARTICLE 3.

Arguments.

§ 84-14. **Court's control of argument.** — In all trials in the superior courts there shall be allowed two addresses to the jury for the State or plaintiff and two for the defendant, except in capital felonies, when there shall be no limit as to number. The judges of the superior court are authorized to limit the time of argument of counsel to the jury on the trial of actions, civil and criminal as follows: To not less than one hour on each side in misdemeanors and appeals from justices of the peace; to not less than two hours on each side in all other civil actions and in felonies less than capital; in capital felonies, the time of argument of counsel may not be limited otherwise than by consent, except that the court may limit the number of those who may address the jury to three counsel on each side. Where any greater number of addresses or any extension of time are desired, motion shall be made, and it shall be in the discretion of the judge to allow the same or not, as the interests of justice may require. In jury trials the whole case as well of law as of fact may be argued to the jury. (1903, c. 433; Rev., s. 216; C. S., s. 203; 1927, c. 52.)

Discretion of Court.—The trial judge has a large discretion in controlling and directing the argument of counsel, but, under this section, this does not include the right to deprive a litigant of the benefit of his counsel's argument when it is confined within proper bounds and is addressed to the material facts of the case. *Puett v. Caldwell, etc.*, R. Co., 141 N. C. 332, 53 S. E. 852 (1906); *Irvin v. Southern R. Co.*, 164 N. C. 5, 80 S. E. 78 (1913).

It is the duty of the judge to interfere when the remarks of counsel are not warranted by the evidence and are calculated

to mislead or prejudice the jury. *State v. Howley*, 220 N. C. 113, 16 S. E. (2d) 705 (1941).

Counsel May Argue Both Law and Fact.—Counsel have the right to argue the whole case as well of law as of fact. *Brown v. Vestal*, 231 N. C. 56, 55 S. E. (2d) 797 (1949).

The right of counsel to state in his argument to the jury what he conceives the law of the case to be has been upheld in numerous decisions. *State v. Bovender*, 233 N. C. 683, 65 S. E. (2d) 323 (1951).

It is reversible error for the trial

judge not to permit attorneys to argue law to the jury and to apply in the argument the decisions of the court as provided by this section. *Howard v. Western Union Tel. Co.*, 170 N. C. 495, 87 S. E. 313 (1915).

Failure to charge upon a certain point is reversible error, especially after counsel has argued the whole case "as well of law as of fact" as is permitted by this section. *Nichols v. Fibre Co.*, 190 N. C. 1, 128 S. E. 471 (1925). It is the duty of the trial judge to instruct the jury upon the law, and he may correctly tell them to disregard the law as argued to them by counsel. *Sears, Roebuck & Co. v. Banking Co.*, 191 N. C. 500, 132 S. E. 468 (1926).

Wide latitude is given counsel in the exercise of the right to argue to the jury the whole case, as well of law as of fact, but counsel is not entitled to travel outside of the record and argue facts not included in the evidence, and when counsel attempts to do so it is the right and duty of the court to correct the argument, either at the time or in the charge to the jury. *State v. Little*, 228 N. C. 417, 45 S. E. (2d) 542 (1947); *State v. Graves*, 252 N. C. 779, 114 S. E. (2d) 770 (1960).

Reading and Commenting on Reported Cases.—As counsel have the right under this section to argue "the whole case as well of law as of fact," they may read to the jury reported cases and comment

thereon; but the facts contained in the cases cannot be read as evidence of their existence in another case. *Horah v. Knox*, 87 N. C. 483 (1882).

Reading Reported Cases Discussing Inapplicable Principles of Law.—Broad and comprehensive as the provisions of this section are, they do not permit counsel to read to the jury decisions discussing principles of law which are irrelevant to the case and have no application to the facts in evidence. *State v. Crisp*, 244 N. C. 407, 94 S. E. (2d) 402 (1956).

Reading Dissenting Opinion as Law of Case.—It is not permissible for counsel, in his argument to the jury, to read a dissenting opinion by a Justice of the Supreme Court as the law of the case over the defendant's objection, and where this has been done a new trial will be awarded on the defendant's exception thereto. It is the duty of the trial court, either to direct counsel not to read the dissenting opinion or to plainly and unequivocally instruct that the dissenting opinion has no legal bearing upon the case. *Conn v. Seaboard Air Line R. Co.*, 201 N. C. 157, 159 S. E. 331 (1931).

Limitation of Argument under Former Section.—See *State v. Miller*, 75 N. C. 73 (1876).

Cited in *Teasley v. Burwell*, 199 N. C. 18, 153 S. E. 607 (1930).

ARTICLE 4.

North Carolina State Bar.

§ 84-15. **Creation of North Carolina State Bar as an agency of the State.**—There is hereby created as an agency of the State of North Carolina, for the purposes and with the powers hereinafter set forth, the North Carolina State Bar. (1933, c. 210, s. 1.)

Editor's Note.—For a review of this section and those immediately following, see 11 N. C. Law Rev. 191. For article on "The Organized Bar in North Carolina", see 30 N. C. Law Rev. 337.

The purpose of the statute creating the North Carolina State Bar is to enable the Bar to render more effective service in

improving the administration of justice, particularly in dealing with the problem of admission to the Bar, and of disciplining and disbarring attorneys at law. *Baker v. Varser*, 240 N. C. 260, 82 S. E. (2d) 90 (1954).

Quoted in *In re Parker*, 209 N. C. 693, 184 S. E. 532 (1936).

§ 84-16. **Membership and privileges.** — The membership of the North Carolina State Bar shall consist of three classes, active, honorary and inactive.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, who shall have paid the membership dues hereinafter specified, unless classified as an inactive member by the council as hereinafter provided. No person other than a member of the North Carolina State Bar shall practice in any court of the State, except foreign attorneys as provided by statute.

The honorary members shall be:

- (1) The Chief Justice and associate justices of the Supreme Court of North Carolina;
- (2) The judges of the superior courts of North Carolina;
- (3) All former judges of the above-named courts resident in North Carolina, but not engaged in the practice of law;
- (4) Judges of the district courts of the United States and of the circuit court of appeals resident in North Carolina.

Inactive members shall be all persons found by the council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law.

Only active members shall be required to pay annual membership fees, and shall have the right to vote. A member shall be entitled to vote at all annual or special meetings of the North Carolina State Bar, and at all meetings of and elections held by the bar of each of the judicial districts in which he resides: Provided, that if he desires to vote with the bar of some district in which he practices, other than that in which he resides, he may do so upon filing with the resident judge of the district in which he desires to vote, and with the resident judge of the district in which he resides (and, after the North Carolina State Bar shall have been organized as hereinafter set forth, with the secretary-treasurer of the North Carolina State Bar), his statement in writing that he desires to vote in such other district: Provided, however, that in no case shall he be entitled to vote in more than one district. (1933, c. 210, s. 2; 1939, c. 21, s. 1; 1941, c. 344, ss. 1, 2, 3.)

Editor's Note.—The 1939 amendment inserted the requirement as to payment of membership dues in the second paragraph. The 1941 amendment, in making this section applicable to inactive members,

changed the first two paragraphs and inserted the fourth paragraph.

For comment on the 1939 and 1941 amendments, see 17 N. C. Law Rev. 341, and 19 N. C. Law Rev. 453.

§ 84-17. **Government.**—The Government of the North Carolina State Bar shall be vested in a council of the North Carolina State Bar, hereinafter referred to as the "council," consisting of one councilor from each judicial district of the State, to be appointed or elected as hereinafter set forth, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar whose term expires after October 1, 1961, who shall be a councilor for a term of three years from the date of the expiration of his term as president. Notwithstanding any provisions of this article as to the voting powers of members, the council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other matters, except as otherwise directed or overruled, as in § 84-33 provided. The councilors elected shall serve as follows: Those elected from the first, fourth, seventh, tenth, thirteenth, sixteenth, and nineteenth districts shall serve for one year from the date of their elections: those elected from the second, fifth, eighth, eleventh, fourteenth, seventeenth, and twentieth districts shall serve for two years from the date of their election; and those elected from the third, sixth, ninth, twelfth, fifteenth, and eighteenth districts shall serve for three years from the date of their election: Provided, that upon the election of successors to the councilors first elected, the term of office and the period for which such councilors are elected shall be three years from the date of election.

All councilors elected from any additional judicial district will be elected for a term of three years, except as may be hereinafter provided in G. S. 84-18 and G. S. 84-19. (1933, c. 210, s. 3; 1937, c. 51, s. 1; 1955, c. 651, s. 1; 1961, c. 641.)

Editor's Note.—The 1937 amendment struck out the former last paragraph of this section, providing: "Neither a councillor nor any officer of the council or of the North Carolina State Bar shall be deemed as such to be a public officer as that phrase is used in the Constitution and laws of the State of North Carolina." For

discussion of this amendment, see 15 N. C. Law Rev. 330.

The 1955 amendment changed "shall" to "will" in the second paragraph and added the exception clause thereto.

The 1961 amendment, effective Oct. 1, 1961, rewrote the latter part of the first sentence.

§ 84-18. **Election of councilors.** — Within thirty days after this article shall have gone into effect the judge of each judicial district shall, by notice posted at the front door of each courthouse within his district and by such other means as he shall think desirable, call a meeting of the attorneys residing within his district, and any others who may declare in writing their desire to be affiliated with that district, as hereinabove provided, for the purpose of organizing the bar of the district, the said meeting to be held at a place deemed by the judge to be convenient, on a day fixed, not less than twenty nor more than thirty days from posting of notice. At that meeting such attorneys as attend shall constitute a quorum, and shall forthwith form such organization herein referred to as the "district bar," as they may deem advisable, of which organization all active members of the North Carolina State Bar entitled to vote in that district shall be members. The district bar shall be the subdivision of the North Carolina State Bar for that judicial district, and shall adopt such rules, regulations and bylaws not inconsistent with this article as it shall see fit, a copy of which shall be transmitted to the secretary-treasurer of the North Carolina State Bar when organized; and copies of any amendments of such rules, regulations, and bylaws shall likewise be sent to said secretary-treasurer. The district bar shall elect a councilor to represent that district and all elections of councilors, for regular terms, shall be held as provided by rules, regulations and bylaws adopted at the district bar. In case of a vacancy in the office or position of councilor by death, resignation or otherwise, the president of the district bar shall appoint a member of his district bar who shall serve as councilor for said unexpired term and until the next meeting of the district bar for the election of a councilor for that district. In case the judge of any judicial district, by reason of physical disability or otherwise, shall fail to call the meeting aforesaid within thirty days after this article shall have gone into effect, the same may be called within thirty days thereafter by any two attorneys residing in said district, by written notice signed by them and delivered to the clerk of the court of each county in the district to be posted at the front door of each courthouse as aforesaid, the said meeting to be held on a day fixed not less than twenty nor more than thirty days after the posting of said notice; and thereupon the same proceedings shall take place as though the meeting had been called by the judge as aforesaid. Any clerk to whom any such notice shall be delivered to be posted shall immediately post the same and shall write upon the said notice the exact date and time when the same is so posted. In case more than one notice shall be posted hereunder by different groups of attorneys, that posted first in point of time shall prevail and be deemed to be the notice provided for under this article. Pending the organization of the council as hereinafter provided, notification of the election of each councilor shall be sent within five days after such election by the secretary of the district bar to the clerk of the Supreme Court of North Carolina; but after the organization of the council such notices shall be sent to its secretary-treasurer. In case neither the judge nor any two members shall call a meeting as aforesaid, a councilor for the said district, residing therein, shall be named at a meeting of such members of the council as shall have been elected in accordance herewith, to serve until such district bar shall be organized under the provisions of this article (except as to the time for calling meetings), either on the call of the judge of the district court or of two members of the bar,

and shall have elected a councilor to serve for the unexpired term of the councilor so named. (1933, c. 210, s. 4; 1953, c. 1310, s. 1.)

Editor's Note. — The 1953 amendment rewrote the fourth sentence and inserted the fifth sentence.

§ 84-19. Change of judicial districts.—In the event that a new district shall hereafter be carved out of an existing district, the council for the old district shall remain in office and continue to represent the district constituting that portion of the old district in which he resides or with which he has elected to be affiliated; and within thirty days after the division of the old district shall have become effective, or so soon thereafter as practicable, the same procedure shall be followed for the organization of the North Carolina State Bar, constituting the remaining and unrepresented portion of the old district, and for the election of a councilor to represent the same, as is prescribed by § 84-18; and if a new district or more than one new district shall be formed by a recombination or reallocation of the counties in more than one existing district, the same procedure shall be followed as is prescribed by § 84-18, in said new district, or in each of them if there be more than one, within thirty days after the election or appointment of the judge or judges thereof; but in that event the office of councilor for each of the old districts the counties in which shall have been so recombined into or reallocated to such new district or districts shall cease, determine, and become vacant so soon as the bar or bars of such new district, or all of such new districts if there shall be more than one, shall have been organized and shall have elected a councilor or councilors therefor, but not earlier: Provided, that if at such time any councilor whose office shall thus become vacant be actually serving upon a committee before which there is pending any trial of a case of professional misconduct or malpractice, he shall, notwithstanding the election of a new councilor, continue to serve as councilor for the purpose of trying such case until judgment shall have been rendered therein.

Provided that procedures for organization of the district bars shall be in accordance with G. S. 84-18 and that beginning July 1, 1955, it is provided that new councilors for the first, tenth, and fifteenth districts shall be elected for a term of one year; those from the sixth, thirteenth, eighteenth, and twenty-seventh districts for a period of two years; and those from the eighth, ninth, twelfth and twenty-fourth districts for a period of three years; provided that in subsequent elections for the said district the terms shall be for three years. Such term shall run from the election of said councilors following organization of the district bars subsequent to April 20, 1955. The terms of councilors residing in the second, third, fourth, fifth, seventh, eleventh, fourteenth, sixteenth, seventeenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fifth, twenty-sixth, twenty-eighth, twenty-ninth, and thirtieth districts shall continue under the terms and conditions as when elected or appointed and their successors for said district shall be elected for a term of three years from the date of the expiration of the said terms, provided that if at the time of the organization of the district bar the term of the councilor who is a resident of the said district having expired or a vacancy existing by death, resignation or otherwise, then at the organization of said district bar provision may be made for the election or appointment of a councilor to represent the said district.

As soon as may be practicable following the organization of the several district bars where the composition of such districts shall have had a change in the counties comprising said district, the officers of the district being divided or rearranged shall for the purpose of preservation, forward the records of the expiring district bar to the council of the North Carolina State Bar who shall preserve the same in the offices of the North Carolina State Bar. (1933, c. 210, s. 5; 1955, c. 651, s. 2.)

Editor's Note. — The 1955 amendment added the last two paragraphs.

§ 84-20. Compensation of councilors.—The members of the council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation not exceeding ten (\$10.00) dollars per day for the time spent in attending meetings, and shall receive actual expenses of travel and subsistence while engaged in his duties provided that for transportation by use of private automobile the expense of travel shall not exceed seven cents per mile. The council shall determine per diem, subsistence and mileage to be paid. Such allowance as may be fixed by the council shall be paid by the secretary-treasurer of the North Carolina State Bar upon certified statements presented by each member. (1933, c. 210, s. 6; 1935, c. 34; 1953, c. 1310, s. 2.)

Editor's Note. — The 1953 amendment rewrote the latter part of the first sentence.

§ 84-21. Organization of council; publication of rules, regulations and bylaws.—Upon receiving notification of the election of a councilor for each judicial district, or, if such notification shall not have been received from all said districts, within one hundred and twenty (120) days after this article shall have gone into effect, the clerk of the Supreme Court of North Carolina shall call a meeting of the councilors of whose election he shall have been notified, to be held in the city of Raleigh not less than twenty days nor more than thirty days after the date of said call; and at the meeting so held the councilors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councilors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this article. The regular term of all officers shall be one year, but those first elected shall serve until the first day of January, one thousand nine hundred thirty-five. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and bylaws, not inconsistent with this article, as it shall deem necessary or expedient for the discharge of its duties, the secretary-treasurer shall file with the clerk of the Supreme Court of North Carolina a certificate, to be called the "certificate of organization," showing the officers and members of the council, with the judicial districts which the members respectively represent, and their post-office addresses, and the rules, regulations and bylaws adopted by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this article have not been complied with, shall return the said certificate to the secretary-treasurer with a statement showing in what respects the provisions of this article have not been complied with; and the said certificate shall not be again presented to the Chief Justice of the Supreme Court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this article have been complied with, or (b) if for any reason the Chief Justice or judge should not act thereon within thirty days, then, after the lapse of thirty days from the presentation to the Chief Justice or judge, as the case may be, of any certificate of organization hereinbefore required to be presented by the secretary-treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this article has not been

complied with, the organization of the council shall be deemed to be complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina Reports. The rules and regulations set forth in the certificate of organization, and all other rules and regulations which may be adopted by the council under this article, may be amended by the council from time to time in any manner not inconsistent with this article. Copies of all such rules and regulations adopted subsequently to the filing of the certificate of organization, and of all amendments so made by the council, shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by it upon its minutes, and published in the next ensuing number of the North Carolina Reports: Provided, that the court may decline to have so entered upon its minutes any of such rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this article. (1933, c. 210, s. 7.)

§ 84-22. Officers and committees of the North Carolina State Bar.

—The officers of the North Carolina State Bar shall be a president, a first vice-president, a second vice-president, and a secretary-treasurer, who shall be deemed likewise to be the officers, with the same titles, of the council. Their duties shall be prescribed by the council. The president and vice-presidents shall be elected by the members of the North Carolina State Bar at its annual meeting, and the secretary-treasurer shall be elected by the council. All officers shall hold office for one year and until their successors are elected and qualified. The officers need not be members of the council. (1933, c. 210, s. 8; 1941, c. 344, ss. 4, 5.)

Editor's Note. — Prior to the 1941 amendment there was only one vice-president.

§ 84-23. Powers of council.—Subject to the superior authority of the General Assembly to legislate thereon by general laws, and except as herein otherwise limited, the council is hereby vested, as an agency of the State, with the control of the discipline, disbarment and restoration of attorneys practicing law in this State: Provided, that from any order suspending an attorney from the practice of law and from any order disbarring an attorney, an appeal shall lie in the manner hereinafter provided, to the superior court of the county wherein the attorney involved resides. The council shall have power to administer this article; to formulate and adopt rules of professional ethics and conduct; to publish an official journal concerning matters of interest to the legal profession, and to do all such things necessary in the furtherance of the purposes of this article as are not prohibited by law. (1933, c. 210, s. 9; 1935, c. 74, s. 1; 1937, c. 51, s. 2.)

Editor's Note.—The words "and restoration" in the first sentence were inserted by the 1935 amendment. Prior to the 1937 amendment an appeal lay "as of right" to the regular superior court judge.

In *State v. Hollingsworth*, 206 N. C. 739, 175 S. E. 99 (1934), construing C. S. § 205, it was held that the court was without authority to set aside a judgment of disbarment on motion, especially since the enactment of this and subsequent sections.

North Carolina Bar, Inc., Has Jurisdiction over Unethical Conduct of Counsel.—While the court has the inherent power to act whenever it is made to appear that the conduct of counsel in a cause pending

in court is improper or unethical, questions of propriety and ethics are ordinarily for the consideration of the North Carolina Bar, Inc., which is now vested with jurisdiction over such matters. *McMichael v. Proctor*, 243 N. C. 479, 91 S. E. (2d) 231 (1956).

Confession of Guilt.—Where an attorney has confessed in open court to four crimes, all involving moral turpitude, and he has been disbarred from practicing in the district court of the United States, disbarment must ultimately result regardless of this and the following sections. In *re Brittain*, 214 N. C. 95, 197 S. E. 705 (1938).

§ 84-24. **Admission to practice.**—The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the Supreme Court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this article.

For the purpose of examining applicants and providing rules and regulations for admission to the bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of seven members of the bar, elected by the council of the North Carolina State Bar, who need not be members of the council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.

The secretary of the North Carolina State Bar shall be the secretary of the Board, and serve without additional pay. The Board of Law Examiners shall elect a member of said Board as chairman thereof, who shall hold office for such period as said Board may determine.

The examination shall be held in such manner and at such times as the Board of Law Examiners may determine.

The Board of Law Examiners, subject to the approval of the council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of such change.

All such rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in § 84-21 in relation to the certificate of organization and the rules and regulations of the council.

Whenever the council shall order the restoration of license to any person as authorized by § 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to such person, noting thereon that the same is issued in compliance with an order of the council of the North Carolina State Bar, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G. S. 84-21 or as may be promulgated by the Supreme Court. (1933, c. 210, s. 10; c. 331; 1935, cc. 33, 61; 1941, c. 344, s. 6; 1947, c. 77; 1951, c. 991, s. 1; 1953, c. 1012.)

Cross references. — As to discipline and disbarment, see § 84-28. As to restoration of license to practice law, see § 84-32.

Editor's Note.—Prior to the 1935 amendments this section provided that a member of the Supreme Court should act as a member of the Board of Law Examiners. The second 1935 amendment struck out this provision and changed the number of members of the Bar serving on the Board from six to seven. The first 1935 amendment repealed provisions relative to fees of applicants and to compensation of the Board, previously included in this section, by enacting new and different provisions. These subjects are now provided for in §§ 84-25 and 84-26.

The 1941 amendment added the next to

last paragraph, and the 1947 amendment changed the fourth paragraph.

The 1951 amendment rewrote the fourth paragraph and the 1953 amendment added the last paragraph.

A person does not have a natural or constitutional right to practice law; it is a privilege or franchise to be earned by hard study and compliance with the qualifications for admission to practice law prescribed by law. By virtue of its police power a state is authorized to establish qualifications for admission to practice law in its jurisdiction. *Baker v. Varsar*, 240 N. C. 260, 82 S. E. (2d) 90 (1954).

Applicant Has Burden of Showing Compliance with Residence Requirement.—The burden of showing that he has the qualifi-

cations to comply with requirements of Rule Five of the Rules Governing Admission to Practice of Law in North Carolina, adopted under authority of this article, and specifying the resident requirement, rests upon the applicant, and if the proof offered by him fails to satisfy the Board of Law Examiners that he has the qualifications required by the rule, it is their

duty to deny his application to take the examination for admission. *Baker v. Varser*, 240 N. C. 260, 82 S. E. (2d) 90 (1954).

The findings of fact made by the Board of Law Examiners supported by the evidence are conclusive upon a reviewing court, and are not within the scope of reviewing powers. *Baker v. Varser*, 240 N. C. 260, 82 S. E. (2d) 90 (1954).

§ 84-25. Fees of applicants.—All applicants before the Board of Law Examiners shall pay such fees as prescribed under the rules of said Board as may be promulgated under G. S. 84-21 and G. S. 84-24. (1935, c. 33, s. 1; 1955, c. 651, s. 3.)

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

§ 84-26. Pay of Board of Law Examiners.—Each member of the Board of Law Examiners shall receive the sum of fifty dollars for his services in connection with each examination and shall receive his actual expenses of travel and subsistence while engaged in duties assigned to him, provided that for transportation by the use of private automobile the expense of travel shall not exceed seven cents per mile. (1935, c. 33, s. 2; 1937, c. 35; 1953, c. 1310, s. 3.)

Editor's Note.—The 1953 amendment increased the mileage from five to seven cents per mile.

§ 84-27: Repealed by Session Laws 1945, c. 782.

§ 84-28. Discipline and disbarment.—The council or any committee of its members appointed for that purpose, or designated by the Supreme Court,

- (1) Shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation of professional ethics, made against any member of the North Carolina State Bar;
- (2) May administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes:
 - a. Commission of a criminal offense showing professional unfitness;
 - b. Detention without a bona fide claim thereto of property received or money collected in any fiduciary capacity;
 - c. Soliciting professional business;
 - d. Conduct involving willful deceit or fraud or any other unprofessional conduct;
 - e. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney;
 - f. The violation of any of the canons of ethics which have been adopted and promulgated by the council of the North Carolina State Bar.
- (3) May invoke the processes of the courts in any case in which they deem it desirable to do so and formulate rules of procedure governing the trial of any such person. Such rules shall make provision for:
 - a. Setting forth the charges in the form required for a complaint in a civil action in the superior court.
 - b. Notice of the charges by the service upon the person charged of a copy of the said complaint. Such service may be made by

- any officer authorized to serve legal processes wherever the person charged may be found.
- c. The right of the defendant to file a written and verified answer in which he may plead any defense to the merits of the charge, the sufficiency of the charge as alleged, or any other defense available to him. All defenses must be asserted by verified answer.
 - d. The right of the person charged to demand a trial:
 1. In the superior court at a regular term for the trial of civil cases by a judge and a jury, or by written agreement of all parties trial by jury may be waived and the facts found by the judge, or
 2. By a committee of not less than three members of the Bar who are not members of the council and are actively practicing in the State, such committee to be designated by the Supreme Court, or
 3. By a committee of not less than three members of the council. The election permitted shall be made in the answer, and if no election is made in the answer the person charged shall be conclusively deemed to have elected to be tried by a committee of the council. If the person charged shall not elect to be tried in the superior court in term as above provided, he shall be conclusively deemed to have waived all right to a trial by jury.
 - e. The certification, if the person charged shall elect to be tried in the superior court, of the original complaint and answer shall be made to the clerk of the superior court of the county in which such person shall reside if he resides in this State, or to the clerk of the superior court of Wake County if he does not reside in this State. The proceeding shall not be subject to dismissal if certification is made to the wrong county, but the person charged may move in the superior court to which certification is made for removal to the proper county. After certification all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions, with right of appeal to the Supreme Court.
 - f. For the trial of the person charged before a committee (if trial by a jury is waived) selected in accordance with the foregoing provisions, which trial shall conform as nearly as practicable to the procedure provided by law before referees in references by consent with the right to appeal to the superior court by the filing of exceptions with the council and from order or judgment of the council, the entire record shall be filed with the clerk of the superior court of the county in which the person charged resides if he resides within the State, or in Wake County if the person charged does not reside within the State, and thereafter all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, but neither party shall be entitled to a trial by jury. Both parties shall have the right to appeal to the Supreme Court in accordance with the procedure permitting appeals in civil actions.

Trial before the committee appointed for that purpose by the council, or designated by the Supreme Court, shall be held in the county in which the accused

member resides or if the accused is residing outside of the State, then in Wake County: Provided, however, that the committee conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of such committee the ends of justice or convenience of witnesses require such removal. The procedure herein provided shall apply in all cases of discipline or disbarments arising under this section.

Whenever the council shall have directed a hearing upon any charges against a member of the bar and said member shall request it to do so, the council shall advise the Supreme Court of the same and request the Supreme Court, through the Chief Justice, to designate a committee of not less than three members of the bar who are not members of the council, and who are actively practicing in the State, to sit as a trial committee to hear the cause; said committee when so designated shall proceed in the same manner as in the case of a committee of the council and under the same procedures set forth herein or as prescribed by rules adopted by the council and approved by the Supreme Court. (1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075.)

Cross References.—As to restoration of license, see § 84-32. As to issuance of written license upon restoration of license, see § 84-24.

Editor's Note.—The 1937 amendment re-wrote this section.

Most of the cases cited under this section were decided under former statutes similar in subject matter to the present section.

The 1959 amendment added the words "or designated by the Supreme Court" in the introductory paragraph. It also added the last paragraph and made changes in the next to last paragraph. Section 3 of the amendatory act provides: "This act shall not apply to any causes which have been heard before a trial committee or which are pending on appeal to the courts."

The 1961 amendment, effective July 1, 1961, rewrote subdivision (3).

Constitutionality.—Laws 1870-1, c. 216, s. 4, an early statute dealing with the same subject matter as this section, was constitutional. It did not take away any of the inherent rights which are absolutely essential in the administration of justice. *Ex parte Schenk*, 65 N. C. 353 (1871).

Rule-Making Power of Council of North Carolina State Bar.—The 1937 amendment to this section, providing that the council of the North Carolina State Bar should have power to formulate rules of procedure governing disbarment proceedings which shall conform as near as may be to the procedure provided by law for hearings before referees in compulsory references, relates to the formulation of rules of procedure incident to hearings before the council or the trial committee and not to procedure upon appeal to the superior

court. *In re Gilliland*, 248 N. C. 517, 103 S. E. (2d) 807 (1958).

Disbarment Is to Protect Public.—An order disbaring an attorney upon his conviction of a felony is not entered as additional punishment, but as a protection to the public. *State v. Spivey*, 213 N. C. 45, 195 S. E. 1 (1938).

Civil Action.—Proceedings for disbarment are of a civil nature. *In the Matter of Ebbs*, 150 N. C. 44, 63 S. E. 190 (1908).

The proceedings under each method by which disciplinary action or disbarment may be imposed partake of the nature of civil actions. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

In North Carolina there are two methods by which disciplinary action or disbarment may be imposed upon attorneys—statutory and judicial. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

The statutory method by which disciplinary action or disbarment may be imposed provides for written complaint, notice to accused, opportunity to answer and be represented by counsel, hearing before a committee conducting proceedings in the nature of a reference, and trial by jury unless waived. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Inherent Powers of Court Not Abridged.—Nothing contained in the statutes concerning discipline or disbarment is to be construed as disabling or abridging the inherent powers of the court to deal with its attorneys. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Summary Disbarment by Court in Criminal Prosecution.—Where an attorney is on trial, charged with a criminal offense involving moral turpitude and amounting to a felony, and pleads guilty, or is con-

victed, or pleads *nolo contendere* with agreement that he will surrender his license, the court conducting the criminal trial has authority to disbar him summarily without further proceedings, and on appeal the Supreme Court may do likewise upon motion of the Attorney General. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Former Law a "Disabling Statute". — The act of 1871, upon which C. S., §§ 204 and 205, were based, failed to provide any power to take the place of the power formerly invested in the courts, and so was a disabling statute. *Kane v. Haywood*, 66 N. C. 1 (1872); *In the Matter of Ebbs*, 150 N. C. 44, 63 S. E. 190 (1908). See § 84-36.

Disbarment for Crime—Nature of Offense.—Under Laws 1870-1, c. 216, s. 4, upon which an action for disbarment was originally based, conviction of a "criminal offense" showing untrustworthiness was sufficient basis for disbarment; but by Laws 1907, c. 941, s. 1, conviction of a "felony" was necessary; construing these provisions together the court, in *State v. Johnson*, 171 N. C. 799, 88 S. E. 437 (1916), held that the two provisions were consistent and reconcilable (a view evidently adopted by the Revision Commission of 1920, as C. S. § 205 contained the language of both provisions), and further stated that the conviction of a criminal offense—the illegal sale of liquor — was sufficient grounds for disbarment as showing the attorney unfit for practice. See also *State v. Johnson*, 174 N. C. 345, 93 S. E. 847 (1917).

It having appeared to the court that the defendant was guilty of an infamous misdemeanor, converted to a felony by §§ 14-1, 14-3, the court by virtue of its inherent power was authorized to order his name stricken from the rolls of attorneys and his license to practice law in the State of North Carolina returned to the Supreme Court, which issued it. *State v. Spivey*, 213 N. C. 45, 195 S. E. 1 (1938).

Same — Conviction or Confession of Guilt.—The words "conviction" and "confession," as used in a former statute providing that no attorney should be disbarred for crime unless upon conviction or confession in open court must be construed to convey the idea that the party had been convicted by a jury or had in open court declined to take issue by the plea of not guilty, and confessed himself guilty. *Kane v. Haywood*, 66 N. C. 1 (1872).

So the admission of an attorney in an answer to a rule to show cause why he should not be attached for contempt for

failure to pay money into court, not being voluntary, was not a confession in open court as contemplated by the statute. *Kane v. Haywood*, 66 N. C. 1 (1872).

Same—Indictment.—By a proper construction of the former statute, the court was shorn of its power to disbar an attorney, except in the single instance where he had been indicted for some criminal offense, showing him unfit to be trusted in the discharge of the duties of his profession, and upon such indictment had either been convicted or pleaded guilty. *Kane v. Haywood*, 66 N. C. 1 (1872).

Same—Conviction in Foreign State.—Laws 1870-1, c. 216, s. 4, and Laws 1907, c. 941, s. 1, did not confer upon the court the power to disbar an attorney because he had been "convicted" in the courts of another state or of the United States. In the *Matter of Ebbs*, 150 N. C. 44, 63 S. E. 190 (1908).

Same—Confession of a Felony.—A plea of guilty to an indictment charging defendant with willfully, feloniously, secretly, and maliciously giving aid and assistance to his codefendant by manufacturing evidence, altering and destroying original records in the office of the Commissioner of Revenue, etc., was held a confession of a felony, and ground for disbarment if defendant was a practicing attorney, under former § 205 of the Consolidated Statutes. *State v. Harwood*, 206 N. C. 87, 173 S. E. 24 (1934).

When Due Process Requires Notice and Opportunity to Be Heard. — Where the attorney pleads guilty or is convicted in another court, or the conduct complained of is not related to litigation pending before the court investigating attorney's alleged misconduct, the procedure, to meet the test of due process, must be initiated by a sworn written complaint, and the court should issue a rule or order advising the attorney to the specific charges, directing him to show cause why disciplinary action should not be taken, and granting a reasonable time for answering and preparation of defense, and attorney should be given full opportunity to be heard and permitted to have counsel for his defense. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Committee to Investigate Facts.—Where issues of fact are raised the court may appoint a committee to investigate and make report. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Trial by Jury.—Neither this section nor the Rules and Regulations of the North Carolina State Bar contain any provision sufficient to deprive a respondent in disbarment proceedings of the right ex-

pressly conferred by this section, upon appeal from the council of the North Carolina State Bar, to a trial by jury on the written evidence of the issues of fact arising on the pleadings. In re Gilliland, 248 N. C. 517, 103 S. E. (2d) 807 (1958).

Detention of Money or Property.—Under this section the detention of money received in his professional capacity without bona fide claim thereto is ground for

the disbarment of an attorney. In re Encoffery, 216 N. C. 19, 3 S. E. (2d) 425 (1939).

Fine and imprisonment is not the appropriate remedy to be applied to an attorney who, by reason of moral delinquency or other cause, has shown himself to be an unworthy member of the profession. Kane v. Haywood, 66 N. C. 1 (1872).

§ 84-29. Concerning evidence and witness fees.—In any investigation of charges of professional misconduct the council and any committee thereof, and any committee designated by the Supreme Court, shall have power to summon and examine witnesses under oath, and to compel their attendance, and the production of books, papers, and other documents or writings deemed by it necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary-treasurer or the president of the council or the chairman of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the council or its committee, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings; but the council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the council or any committee thereof or any committee designated by the Supreme Court or by deposition shall be entitled to the same fees as in civil actions.

In cases heard before the council or any committee thereof or any committee designated by the Supreme Court, if the party shall be convicted of the charges against him, he shall be taxed with the cost of the hearings: Provided, however, that such bill of costs shall not include any compensation to the members of the council or committee before whom the hearings are conducted. (1933, c. 210, s. 12; 1959, c. 1282, s. 2.)

Editor's Note.—The 1959 amendment inserted the references to committee designated by the Supreme Court. And see note under § 84-28.

§ 84-30. Rights of accused person.—Any person who shall stand charged with an offense cognizable by the council or any committee thereof, or any committee designated by the Supreme Court, shall have the right to invoke and have exercised in his favor the powers of the council and its committees, or any committee designated by the Supreme Court, in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13; 1959, c. 1282, s. 2.)

Editor's Note.—The 1959 amendment inserted the references to committee designated by the Supreme Court. And see note under § 84-28.

Deprivation of Right to Practice Is Judicial Act Requiring Due Process.—The

granting of a license to engage in business or practice a profession is a right conferred by administrative act, but the deprivation of the right is a judicial act requiring due process. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

§ 84-31. Designation of prosecutor; compensation. — Whenever charges shall have been preferred against any member of the Bar, and the council shall have directed a hearing upon the charges, it shall also designate some member of the Bar to prosecute said charges in such hearings as may be held, including hearing upon appeals in the superior and supreme courts. The coun-

cil may allow the attorney performing such services at its request such compensation as it may deem proper. (1933, c. 210, s. 14.)

§ 84-32. Records and judgments and their effect; restoration of licenses.—In the case of persons charged with an offense cognizable by the council or any committee thereof, or any committee designated by the Supreme Court, a complete record of the proceedings and evidence taken before the council or any committee thereof, or any committee designated by the Supreme Court, shall be made and preserved in the office of the secretary-treasurer, but the council may, upon sufficient cause shown and with the consent of the person so charged, cause the same to be expunged and destroyed. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court of the county wherein the accused resides, and also upon the minutes of the Supreme Court of North Carolina; and such judgment shall be effective throughout the State.

Whenever an attorney desires to voluntarily surrender his license to the council and the council consents to accept the same, he shall make such request and surrender in writing directed to the council and the council shall enter an order containing the conditions of acceptance of said license and a copy of such order shall be filed with the clerk of the Supreme Court and with the clerk of the superior court of the county of residence or prior residence of the licensee; provided, however, that the council may refuse to accept surrender of license in any case.

Whenever any attorney has been deprived of his license, the council, in its discretion, may restore said license upon due notice being given and hearing had and satisfactory evidence produced of proper reformation of the licentiate before restoration. (1933, c. 210, s. 15; 1935, c. 74, s. 2; 1953, c. 1310, s. 4; 1959, c. 1282, s. 2.)

Cross Reference.—As to issuance of written license upon restoration of license to practice, see § 84-24.

Editor's Note.—The 1953 amendment inserted the second paragraph.

The 1959 amendment inserted in the first paragraph the references to the committee designated by the Supreme Court. See note under § 84-28.

§ 84-33. Annual and special meetings. — There shall be an annual meeting of the North Carolina State Bar, open to all members in good standing, to be held at such place and time after such notice (but not less than thirty days) as the council may determine, for the discussion of the affairs of the Bar and the administration of justice; and special meetings of the North Carolina State Bar may be called, on not less than thirty days' notice, by the council, or on the call, addressed to the council, of not less than twenty-five per cent of the active members of the North Carolina State Bar; but at special meetings no subjects shall be dealt with other than those specified in the notice. Notice of all meetings, whether annual or special, may be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina State Bar. The North Carolina State Bar shall not take any action in respect of any decision of the council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action, save after notice in writing of the action of the council or committee proposed to be directed or overruled, which notice shall be given to the secretary-treasurer thirty days before the meeting, who shall give, by mail, at least fifteen days' notice to the members of the North Carolina State Bar, and unless at the meeting two-thirds of the members present and voting shall favor the motion to direct or overrule. At any annual or special meeting ten per cent of the active members of the Bar shall constitute a quorum; but there shall be no voting by proxy. (1933, c. 210, s. 16.)

§ 84-34. **Membership fees and list of members.**—Every active member of the North Carolina State Bar shall on or before the first day of January, nineteen hundred and thirty-four, pay to the secretary-treasurer, without demand therefor, in respect of the calendar year nineteen hundred and thirty-three, a membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with and including the year nineteen hundred and thirty-four, pay to the secretary-treasurer, in respect of the calendar year in which such payment is herein directed to be made, an annual membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with the calendar year one thousand nine hundred and thirty-nine, pay to the secretary-treasurer, in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of five dollars; and shall thereafter, prior to the first day of July, beginning with the calendar year 1955, pay to the secretary-treasurer, in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of ten dollars (\$10.00); and in every case the member so paying shall notify the secretary-treasurer of his correct post-office address; and shall thereafter, by the first day of July of each year beginning with and including the year 1961, pay to the secretary-treasurer in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of twenty dollars (\$20.00), and every member shall notify the secretary-treasurer of his correct post-office address. The said membership fee shall be regarded as a service charge for the maintenance of the several services prescribed in this article, and shall be in addition to all fees now required in connection with admissions to practice, and in addition to all license taxes now or hereafter required by law. The said fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this article shall have gone into effect until the first day of July of the second calendar year (a "calendar year" for the purposes of this article being treated as the period from January first to December thirty-first) following that in which he shall have been licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The said fees shall be disbursed by the secretary-treasurer on the order of the council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the council, publish an account of the financial transaction of the council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and post-office addresses forwarded to him and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this article. The name of each of the active members who shall be in arrears in the payment of membership fees for one or more calendar years shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein said member or members reside, and the court shall thereupon take such action as is necessary and proper. The names and addresses of such attorneys so certified shall be kept available to the public. The Commissioner of Revenue is hereby directed to supply the secretary-treasurer, from his record of license tax payments, with any information for which the secretary-treasurer may call in order to enable him to comply with this requirement.

The said list submitted to several clerks of the superior court shall also be submitted to the council of the North Carolina State Bar at its October meeting of each year and it shall take such action thereon as is necessary and proper. (1933, c. 210, s. 17; 1939, c. 21, ss. 2, 3; 1953, c. 1310, s. 5; 1955, c. 651, s. 4; 1961, c. 760.)

Cross Reference.—As to who is an active member, see § 84-16.

Editor's Note.—The 1953 amendment added the second paragraph and the 1955

amendment inserted in the first sentence of the first paragraph the provision making the annual membership fee ten dollars.

The 1961 amendment added that part of the first sentence beginning after the last semi-colon in the sentence.

§ 84-35. **Saving as to North Carolina Bar Association.**—Nothing in this article contained shall be construed as affecting in any way the North Carolina Bar Association, or any local bar association (1933, c. 210, s. 18.)

§ 84-36. **Inherent powers of courts unaffected.**—Nothing contained in this article shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys. (1937, c. 51, s. 4.)

Statutory Method of Disbarment Not Exclusive.—C. S., §§ 204 and 205, restricting the power of courts to disbar attorneys, were repealed by Laws 1933, c. 210, s. 20, and the statutory method of disbarment provided by the act of 1933 is not exclusive, but on the contrary the act recognizes the inherent power of the courts, and the courts have jurisdiction to order the disbarment of an attorney upon his conviction of an infamous misdemeanor, converted to a felony by §§ 14-1 and 14-3. *State v. Spivey*, 213 N. C. 45, 195 S. E. 1 (1938). See *State v. Johnson*, 171 N. C. 345, 93 S. E. 847 (1917).

Due Process Required.—While it is incontrovertible that our courts have inherent authority to take disciplinary action against attorneys practicing therein, even in relation to matters not depending in the particular court exercising that authority, it is not after the manner of our courts, however, to deprive a lawyer, any more than anyone else, of his constitutional guaranties or to revoke his license without due process of law. In *re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

§ 84-37. **State Bar may investigate and enjoin unauthorized practice.**—(a) The council or any committee of its members appointed for that purpose may inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. The council may bring or cause to be brought and maintain in the name of the North Carolina State Bar an action or actions, upon information or upon the complaint of any private person or of any bar association against any person, partnership, corporation or association and any employee, agent, director, or officer thereof who engages in rendering any legal service or makes it a practice or business to render legal services which are unauthorized or prohibited by law or statutes relative thereto. No bond for cost shall be required in such proceeding.

(b) In an action brought under this section the final judgment if in favor of the plaintiff shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of law. The provisions of statute or rules relating generally to injunctions as provisional remedies in actions shall apply to such a temporary injunction and the proceedings thereunder.

(c) The venue for actions brought under this section shall be the superior court of any county in which such acts constituting unauthorized or unlawful practice of law are alleged to have been committed or in which there appear reasonable grounds that they will be committed or in the county where the defendants in such action reside.

(d) The plaintiff in such action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for the examination of parties.

(e) This section shall not repeal or curtail any remedy now provided in cases of unauthorized or unlawful practice of law, and nothing contained herein shall be construed as disabling or abridging the inherent powers of the court in such matters. (1939, c. 281.)

Cross Reference.—As to the power of any solicitor of any of the superior courts to bring injunction or criminal proceedings, see § 84-7.

Editor's Note.—For comment on this section, see 17 N. C. Law Rev. 342.

§ 84-38. Solicitation of retainer or contract for legal services prohibited; division of fees.—It shall be unlawful for any person, firm, corporation, or association of his or their agent, agents, or employees, acting on his or their behalf, to solicit or procure through solicitation either directly or indirectly, any legal business, whether to be performed in this State or elsewhere, or to solicit or procure through solicitation either directly or indirectly, a retainer or contract, written or oral, or any agreement authorizing an attorney or any other person, firm, corporation, or association to perform or render any legal services, whether to be performed in this State or elsewhere.

It shall be unlawful for any person, firm, corporation, or association to divide with or receive from any attorney at law, or group of attorneys at law, whether practicing in this State or elsewhere, either before or after action is brought, any portion of any fee or compensation charged or received by such attorney at law, or any valuable consideration or reward, as an inducement for placing or in consideration of being placed in the hands of such attorney or attorneys at law, or in the hands of another person, firm, corporation or association, a claim or demand of any kind, for the purpose of collecting such claim or instituting an action thereon or of representing claimant in the pursuit of any civil remedy for the recovery thereof, or for the settlement or compromise thereof, whether such compromise, settlement, recovery, suit, claim, collection or demand shall be in this State or elsewhere. This paragraph shall not apply to agreements between attorneys to divide compensation received in cases or matters legitimately, lawfully and properly received by them.

Any person, firm, corporation or association of persons violating the provisions of this section shall be guilty of a misdemeanor and punished by fine or imprisonment or both in the discretion of the court.

The council of the North Carolina State Bar is hereby authorized and empowered to investigate and bring action against persons charged with violations of this section and the provisions as set forth in § 84-37 shall apply. Nothing contained herein shall be construed to supersede the authority of solicitors to seek injunctive relief or institute criminal proceedings in the same manner as provided for in § 84-7. Nothing herein shall be construed as abridging the inherent powers of the courts to deal with such matters. (1947, c. 573.)

Editor's Note.—For discussion of the purposes of this section see 25 N. C. Law Rev. 379.

Chapter 85.
Auctions and Auctioneers.

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ARTICLE 1.

In General.

§ 85-1. **Application of article.**—The provisions of this article shall apply only to sales of jewelry and silverware at public auction, and to the auctioneers conducting or engaged in such sales.

This article does not affect any sale of jewelry or silverware

- (1) By auction of jewelry or silverware made pursuant to and in execution of any order, decree, or judgment of the courts of the United States or of this State; or
- (2) Made in consequence of any assignment of property and estate for benefit of creditors; or
- (3) Made by executors, administrators, collectors, or guardians; or
- (4) Made pursuant to any law touching the collection of any tax or duty, or sale of any wrecked goods. (R. C., c. 10, s. 6; Code, s. 2284; Rev., s. 220; C. S., s. 4999; 1923, c. 243, s. 1.)

§ 85-2. **Appointment; bond.**—No person shall exercise or conduct the trade or business of an auctioneer in this State or offer to conduct any such trade or business described in this article unless such person shall hold a license issued by the Commissioner of Revenue, and no license shall issue to any person who is not a resident of the State of North Carolina, and who has not been a bona fide resident for at least two years prior to the date when such application for license is filed with the Department of Revenue. The license shall issue only upon the filing of a bond in the sum of five thousand dollars (\$5,000.00), with such conditions and sureties as may be required and approved by the Commis-

sioner of Revenue. The license shall expire on the first day of April following, unless the authority is sooner revoked by the Commissioner of Revenue, and such authority shall be subject to revocation at any time by such officer for the causes and in the manner set forth in § 85-9. The fees for each license shall be two hundred dollars (\$200.00). (R. C., c. 10, s. 1; Code, s. 2281; 1889, c. 40; 1891, c. 576; Rev., s. 217; C. S., s. 5000; 1923, c. 243, s. 1; 1941, c. 131.)

Editor's Note. — The 1923 amendment made two years bona fide residence a prerequisite to application for a license. It also increased the amount of the bond required and the license fee, and inserted the provision relating to revocation. See 1 N. C. Law Rev. 302.

The 1941 amendment substituted "Commissioner of Revenue" for "Insurance Commissioner" and "Department of Revenue" for "Insurance Department."

Liability of Surety on Bond.—Since it is the duty of an auctioneer to pay over to his employer the proceeds of sales made by him, sureties on his official bond, which is conditioned that he will do whatsoever the law requires, are liable to his employers for proceeds of sale which he withholds. *Comm'rs v. Holloway*, 10 N. C. 234 (1824).

§ 85-3. Requirements of law and of Commissioner of Revenue; false statement.—No person who shall conduct the business of an auctioneer in the State shall fail to comply with any provision of the law or any requirement of the Commissioner of Revenue pursuant to the law, and no such person shall make or cause to be made any false statement in any report required of him, and upon any violation of any section of this article, the Commissioner of Revenue may revoke his license to do business in this State. (1923, c. 243, s. 2; C. S., s. 5000(a); 1941, c. 131; c. 230, s. 2.)

§ 85-4. Punishment for violation of law.—Any person violating any of the provisions of this article shall be punished by a fine not exceeding two hundred dollars or by imprisonment in jail or worked on the roads for not exceeding two years, or by both such fine and imprisonment. (1923, c. 243, s. 3; C. S., s. 5000(b).)

§ 85-5. License tax by counties and municipalities.—Nothing in this article shall be construed to take away from the counties, cities or towns of this State any right or rights which they may now have, or may hereafter have, to levy a license tax on persons exercising or conducting the trade or business of an auctioneer. (1923, c. 243, s. 4; C. S., s. 5000(c).)

§ 85-6. Account semiannually; pay over moneys received.—It is the duty of such auctioneers, on the first days respectively of October and April, to render to the clerks of the superior court of their respective counties a true and particular account in writing of all the moneys made liable to duty by law, for which any jewelry or silverware may have been sold at auction, and also at private sale, where the price of the jewelry and silverware sold at private sale was fixed or agreed upon or governed by any previous sale at auction of any jewelry and silverware of the same kind; which account shall contain a statement of the gross amount of sales by them made for each particular person or company at one time, the date of each sale, the names of the owners of the jewelry and silverware sold, and the amount of the tax due thereon, which tax they shall pay as directed by law. The statement shall be subscribed by them and sworn to before the clerk of the said court, who is hereby authorized to administer the oath. And it is their further duty to account with and pay to the person entitled thereto the moneys received on the sales by them made. (R. C., c. 10, s. 2; Code, s. 2282; Rev., s. 218; C. S. s. 5001.)

§ 85-7. Acting without appointment; penalty.—No person shall exercise the trade or business of an auctioneer by selling any jewelry or silverware by auction or by any other mode of sale whereby the best or highest bidder is

deemed to be the purchaser, unless such person is appointed an auctioneer pursuant to this article, on pain of forfeiting to the State for every such sale the sum of two hundred dollars, which shall be prosecuted to recovery by the solicitor of the district. (R. C., c. 10, s. 5; Code, s. 2283; Rev., s. 219; C. S., s. 5002.)

§ 85-8. **Commissions; one per cent to town.** — Auctioneers are entitled to such compensation as may be agreed upon, not exceeding two and a half per cent on the amount of sales; and auctioneers of incorporated towns shall retain and pay one per cent of the gross amount of sales to the commissioners or other authority of their respective towns. (R. C., c. 10, s. 7; Code, s. 2285; Rev., s. 221; C. S., s. 5003.)

§ 85-9. **Power of Commissioner of Revenue to revoke licenses of auctioneers.**—The Commissioner of Revenue of the State of North Carolina shall have power to revoke an auctioneer's license, upon the conviction of the auctioneer by any court of competent jurisdiction of the State of North Carolina of any of the offenses hereinafter set out, or upon a finding by the Commissioner of Revenue that such auctioneer is guilty of any of the offenses hereinafter set out, to-wit:

- (1) Fraud;
- (2) Failing to account for or to remit any money or properties coming into his possession which belong to others;
- (3) Forgery, embezzlement, obtaining money under false pretense, larceny, conspiracy to defraud, or like offense or offenses;
- (4) False representations as to the origin, genuineness, cost to seller, value, or other matters relating to the sale of any property then or thereafter to be offered for sale at auction;
- (5) Conviction of any crime involving moral turpitude either in this State or any other state;
- (6) Making any false statement in the application for license;
- (7) Violating any of the provisions of the laws of this State relating to sales at auction.

Provided, that no license shall be revoked upon a finding by the Commissioner of Revenue except by charges preferred. The accused shall be furnished a written copy of such charges and given not less than twenty days' notice of the time and place when the Commissioner shall accord a full and fair hearing on the charges. From any action of the Commissioner of Revenue depriving the accused of his license, the accused shall have the right of appeal to the superior court of the county of his residence, upon filing notice of appeal within ten days of the decision of the Commissioner of Revenue. The trial in the superior court shall be heard de novo as in the case of an appeal from a justice of the peace. (1941, c. 230, s. 1.)

ARTICLE 2.

Auction Sales of Articles Containing Hidden Value.

§ 85-10. **Application of article.**—The provisions of this article shall relate to all persons, firms and corporations who shall sell or offer to sell any of the goods, wares and merchandise hereinafter enumerated by means of auction sale of same conducted either by themselves or licensed auctioneers, except that it shall not apply to receivers, trustees in bankruptcy, trustees acting under a bona fide mortgage or deed of trust, trustees acting under the provisions of a will, any person acting under orders of any court, or to administrators or to executors while acting as such or to the bona fide holder of an article pledged to secure a debt. (1941, c. 371, s. 1.)

§ 85-11. **Sale of certain articles in violation of article prohibited.**—It shall be unlawful for any person, firm or corporation to offer for sale or

sell to the highest bidder at an auction sale furs, objects of art, artware, glassware, silver plated ware, chinaware, gold, silver, precious or semiprecious stones, jewelry, watches, clocks, or gems of any kind, except as hereafter provided. (1941, c. 371, s. 2.)

§ 85-12. **Licensing of auction merchants.** — Before selling or offering for sale any of the articles hereinabove mentioned, the person, firm or corporation which is to conduct such auction sale shall apply to and obtain from the Revenue Department of the State of North Carolina a license or permit to engage in the activity covered by this article and pay therefor to the Commissioner of Revenue the sum of two hundred dollars (\$200.00) for such license or permit. The license or permit issued by the Revenue Department shall entitle the person, firm or corporation named therein to conduct the auction sale as provided in this article in one county, and upon payment of one half of the fee for each additional county, such person, firm or corporation shall have authority to conduct auction sales in additional counties for which the tax has been paid. No person or copartnership shall receive any license or permit to conduct any such sale unless such person or a member of the copartnership is and has been for a period of one year prior to the issuance of the permit a resident of the State of North Carolina and is and has been for a period of six months prior thereto a resident of one of the counties for which he seeks permit, and no corporation shall receive a license or permit to conduct such sale unless such corporation is either a domestic corporation of the State of North Carolina or a foreign corporation which has complied with all requirements of the State of North Carolina and domesticated in North Carolina. (1941, c. 371, s. 3.)

§ 85-13. **Bond prerequisite for license.** — Before any person, firm or corporation shall offer for sale or sell at public auction any of the goods hereinabove described, such person, firm or corporation shall obtain the permit provided in § 85-12 and shall file with the Commissioner of Revenue a good and sufficient bond in the penal sum of five thousand dollars (\$5,000.00), executed by a corporate surety licensed to do business in North Carolina or by two individual sureties who own real property in the State of North Carolina of a net value of twice the amount of such bond and who shall have justified on such bond before the clerk of the superior court of the county in which such individual sureties reside. Said bond shall be kept in full force and effect during the period for which such license is issued and for a period of one year thereafter. The conditions of said bond are to provide that the surety or sureties are irrevocably appointed as process agents on whom any process issued against the person, firm or corporation conducting such sale may be served, and shall further provide that the person, firm or corporation conducting said sale will pay all valid judgments secured against such person, firm or corporation on causes of action arising out of such sales by auction. (1941, c. 371, s. 4.)

§ 85-14. **Conduct of sales by licensed auctioneer required.**—An auctioneer duly licensed as such by the State of North Carolina shall be present and in charge of any such auction sale. (1941, c. 371, s. 5.)

§ 85-15. **Regulation of bidding at sales.**—At any such auction sale, no person interested either directly or indirectly as seller, and no person employed by any person interested either directly or indirectly as seller, shall bid on any articles offered for sale, and no person shall act as a fictitious bidder, or what is commonly known as a “capper,” “booster,” “by-bidder” or “shiller,” and no person shall bid or offer to bid or pretend to buy an article sold or offered for sale at any such auction by prearranged agreement with any person interested in the sale directly or indirectly as seller. (1941, c. 371, s. 6.)

§ 85-16. **Written description of articles purchased furnished to purchaser upon demand.**—At any such auction sale any person who shall pur-

chase any article may have the right to demand of the person, firm or corporation conducting such sale, at the time the sale is made or within forty-eight hours thereafter, a written description of the merchandise so purchased, which description shall be accurate and full, and shall give the name of the manufacturer or producer of such merchandise, if known; shall state whether the merchandise is an original, a copy, a reproduction, new or used, genuine or artificial, and shall also incorporate all representations made to induce persons to bid on such merchandise; such statement shall be deemed to be the representations upon which the merchandise is purchased, and upon a refusal to give such statement as herein provided, the sale may, at the option of the purchaser, be rescinded, in which event the purchaser shall have the privilege of demanding a return of all sums paid on account of such purchase. A notice of the right of a purchaser to demand such a statement shall be conspicuously displayed in each room where such auction shall take place. (1941, c. 371, s. 7.)

§ 85-17. **Application of Fair Trade Act.**—No sale shall be made at such auction sales which shall violate the provisions of the North Carolina Fair Trade Act. (1941, c. 371, s. 8.)

§ 85-18. **Presence of merchant at sales required; responsibility for auctioneer's acts.**—At all sales by auction conducted under the provisions of this article, the person, firm or corporation conducting such sale shall be present at all times in person or by an agent duly authorized in writing to represent such person, firm or corporation, and the person, firm or corporation conducting such sale shall be responsible for acts done and words spoken by the auctioneer or his assistants in furthering the sales by auction. (1941, c. 371, s. 9.)

§ 85-19. **Statements in advertisements deemed representations; merchandise not as advertised.**—At all such auction sales, all statements contained in the advertising of such sales shall be considered and deemed representations inducing purchasers to bid on and buy the merchandise advertised, and in the event any such merchandise shall not be as advertised, the purchaser thereof shall, at his option, be entitled to rescind such sale and have the right, upon such rescission, to demand and receive any sums paid by him on account of such purchase. (1941, c. 371, s. 10.)

§ 85-20. **False and fraudulent advertising, labeling, etc., prohibited.**—No person, firm or corporation conducting any such sale shall advertise any merchandise falsely or fraudulently, either by word of mouth, written or published advertisement, or other forms of advertisement, nor shall any such person, firm or corporation permit any article to be displayed or offered for sale which shall be falsely tagged, labeled or branded. (1941, c. 371, s. 11.)

§ 85-21. **False statements as to value or costs prohibited.**—No person, firm or corporation conducting any such sale shall allow or permit any false statement to be made by any person connected with such sale, either directly or indirectly, as seller, as to the value of any such merchandise being sold or as to the cost to the seller of any such merchandise being sold. (1941, c. 371, s. 12.)

§ 85-22. **Application of article to agents.**—The provisions of this article shall apply to the person, firm or corporation conducting such sale, whether such person, firm or corporation is the owner of the merchandise being sold, or selling such merchandise for others. (1941, c. 371, s. 13.)

§ 85-23. **Violation made misdemeanor.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars, or imprisoned for not

more than six months, or both, in the discretion of the court, and shall be permanently enjoined from thereafter participating in the conducting of any such auction sale, either directly or indirectly. (1941, c. 371, s. 14.)

§ 85-24. **Church and civic organizations not prevented from holding auctions.**—Nothing in this article shall be construed as preventing church and civic organizations from holding auction sales of antiques for charitable purposes. (1941, c. 371, s. 15.)

§ 85-25. **Purpose of article.**—It is the purpose of this article to provide for the protection of the public in purchasing articles containing a hidden value, which is not and cannot be determined except by persons having special knowledge thereof, when such articles are sold at public auction, where there is not ample time for deliberation and appraisal of such merchandise, and where the purchaser, by reason of the manner of sale, of necessity must rely principally upon the representations made by the seller as to value of said merchandise. (1941, c. 371, s. 18.)

§ 85-26. **Rights and privileges conferred by article are additional to rights, etc., under other laws.**—The rights and privileges herein granted to any purchaser shall be in addition to all other rights, privileges or remedies which such purchaser might otherwise have under the laws of North Carolina, and the provisions of this article shall not be deemed to deprive any such purchaser of any rights or remedies which he otherwise would have had. (1941, c. 371, s. 19.)

§ 85-27. **Counties may tax.**—Counties may levy and collect an annual license tax on the business taxed under this article not in excess of one hundred dollars (\$100.00). (1953, c. 468.)

Chapter 85A.

Bail Bondsmen and Runners.

Sec.	Sec.
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§ 85A-1. **Definitions.** — The following words when used in this chapter shall have the following meanings:

- (1) "Bail bondsman" shall mean a surety bondsman, professional bondsman or a property bondsman as hereinafter defined.
- (2) "Commissioner" shall mean the Commissioner of Insurance.
- (3) "Insurer" shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.
- (4) "Professional bondsman" shall mean any person who has been approved by the Commissioner and who pledges cash or approved unregistered bonds as security for a bail bond in connection with a judicial proceeding and receives or is promised money or other things of value.
- (5) "Property bondsman" is a person or persons who pledge real or other

property as security for a bail bond in a judicial proceeding and receives or is promised money or other things of value therefor.

- (6) "Runner" shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance. This does not affect the right of bail bondsman to hire counsel or to ask assistance of law enforcement officers.
- (7) "Surety bondsman" shall mean any person who has been approved by the Commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and receives or is promised money or other things of value therefor. (1963, c. 1225, s. 1.)

Editor's Note.—The act inserting this chapter is effective Jan. 1, 1964.

§ 85A-2. Commissioner of Insurance to administer chapter; rules and regulations; employees; evidence of Commissioner's actions.—(a) The Commissioner shall have full power and authority to administer the provisions of this chapter, which regulates bail bondsmen and runners and to that end to adopt, and promulgate rules and regulations to enforce the purposes and provisions of this chapter. Subject to the provisions of the State Personnel Act, the Commissioner may employ and discharge such employees, examiners, and such other assistants as shall be deemed necessary, and he shall prescribe their duties.

(b) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the Commissioner, or any record of the Commissioner authenticated under the hand of the Commissioner by the seal of his office shall be accepted by all the courts of this State as prima facie evidence of the contents thereof. (1963, c. 1225, s. 2.)

§ 85A-3. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications.— No undertaking shall be invalid, nor shall any person be discharged from his undertaking, nor a forfeiture thereof be stayed nor shall judgment thereon be stayed, set aside or reversed, the collection of any such judgment be barred or defeated by reason of any defect or form, omission or recital or of condition, failure to note or record the default of any principal or surety, or because of any other irregularity, or because the undertaking was entered into on Sunday or other holiday, if it appears from the tenor of the undertaking before what magistrate or at what court the principal was bound to appear, and that the official before whom it was entered into was legally authorized to take it and the amount of bail is stated.

The liability of a person on an undertaking shall not be affected by reason of the lack of any qualifications, sufficiency or competency provided in the criminal procedure law, or by reason of any other agreement that is expressed in the undertaking, or because the defendant has not joined in the undertaking. (1963, c. 1225, s. 3.)

§ 85A-4. Qualifications of sureties on bail.—Each and every surety for the release of a person on bail shall be qualified as:

- (1) An insurer and represented by a surety bondsman or bondsmen; or
- (2) A professional bondsman properly qualified and approved by the Commissioner; or
- (3) A natural person who has reached the age of 21 years, a citizen of the United States and a bona fide resident of North Carolina for a period of one (1) year immediately last past and who holds record title to property in North Carolina acceptable to the proper authority approving the bail bond. (1963, c. 1225, s. 4.)

§ 85A-5. **Surrender of defendant by surety or personally; when premium need not be returned.**—At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant, or the defendant may surrender himself, to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed. The defendant may be surrendered without the return of premium for the bond if he has been guilty of nonpayment of premium, changing address without notifying his bondsman, conceals himself, or leaves the jurisdiction of the court without the permission of his bondsman, or of violating his contract with the bondsman in any way that does harm to the bondsman, or the surety, or violates his obligation to the court. (1963, c. 1225, s. 5.)

§ 85A-6. **Procedure for surrender; exoneration of obligors; refund of deposit.** — The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination warrant, indictment, information or appeal, as the case may be, is pending, shall upon notice of three (3) days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings; and, if money or bonds have been deposited as bail, that such money or bonds be refunded. (1963, c. 1225, s. 6.)

§ 85A-7. **Arrest of defendant for purpose of surrender.**—For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor. (1963, c. 1225, s. 7.)

§ 85A-8. **Forfeiture of bail.**—The procedure for forfeiture of bail shall be that provided in article 11 of chapter 15 of the General Statutes and all provisions of that article shall continue in full force and effect except to the extent of direct conflict, if any, with this chapter. (1963, c. 1225, s. 8.)

§ 85A-9. **Bail bondsmen and runners to be qualified and licensed; exceptions; only individuals to be licensed; license applications generally.** — No person shall act in the capacity of a bail bondsman or runner or perform any of the functions, duties or powers prescribed for bail bondsmen or runner under the provisions of this chapter unless that person shall be qualified and licensed as provided in this chapter: Provided, however, that none of the provisions or terms of this section shall prohibit any individual or individuals, from pledging real or other property as security for a bail bond in judicial proceedings and who does not receive, or is not promised, money, or other things of value therefor.

No license shall be issued except in compliance with this chapter and none shall be issued except to an individual: Provided, however, that upon the taking effect of this chapter, any person then performing the functions of a bail bondsman or runner, within the definition of this chapter, shall not be required to take an examination, but shall be issued a license upon making the application herein required, and renewals thereof shall be granted subject to the provisions of §§ 85A-10, 85A-11 and 85A-17 of this chapter: Provided, further, that the provisions of

this chapter shall not apply to the holder of a valid all lines fire and casualty agent's license.

A firm, partnership, association, or corporation, as such shall not be licensed.

The applicant shall apply in writing on forms prepared and supplied by the Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this chapter or on any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation he sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

The failure of the applicant to secure approval of the Commissioner shall not preclude him from applying as many times as he desires, but no application shall be considered by the Commissioner within one (1) year subsequent to the date upon which the Commissioner denied the last application. (1963, c. 1225, s. 9.)

§ 85A-10. Expiration of licenses. — All licenses issued shall expire annually on June 30 unless revoked or suspended prior thereto by the Commissioner, or upon notice served upon the Commissioner that the insurer or employer of any runner has cancelled the licensee's authority to act for such insurer or employer. (1963, c. 1225, s. 10.)

§ 85A-11. Contents of application for bail bondsman's license.—The application for license in addition to the matters set out in § 85A-9, to serve as a bail bondsman must affirmatively show:

Applicant is a natural person who has reached the age of 21 years; is a citizen of the United States, and has been a bona fide resident of the state for one (1) year last past, will actively engage in the bail bond business, and has knowledge, experience or instruction in the bail bond business, or has held a valid all lines fire and casualty agent's license for one (1) year within the last five (5) years; or has been employed by a company engaged in writing bail bonds in which field he has actively engaged for at least one (1) year of the last five (5) years; or is actively engaged in bail bond business at the time this chapter is passed. (1963, c. 1225, s. 11.)

§ 85A-12. License fee; fingerprints. — A license fee of ten dollars (\$10.00) shall be submitted to the Commissioner with each application.

Applicant shall also furnish with his application, a complete set of his fingerprints and a recent credential-size full face photograph of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer. (1963, c. 1225, s. 12.)

§ 85A-13. Annual financial statement of professional bondsman.—In addition to the requirements prescribed in § 85A-11 above, an applicant for a professional bondsman license shall furnish annually a detailed financial statement under oath, and such statement shall be subject to the same examination as is prescribed by law for domestic insurance companies. (1963, c. 1225, s. 13.)

§ 85A-14. Contents of application for runner's license; endorsement by bail bondsman; fee; fingerprints and photograph.—In addition to the requirements prescribed in § 85A-9 above, an applicant for a license to serve as a runner must affirmatively show:

That the applicant will be employed by only one bail bondsman, who will supervise the work of the applicant; and

The applicant is a citizen of the United States; has been a bona fide resident of this State for more than six (6) months last past;

That the applicant will be employed by only one bail bondsman, who will supervise the work of the applicant, and be responsible for the runner's conduct in the bail bond business; and

The application must be endorsed by the appointing bail bondsman, who shall obligate himself to supervise the runner's activities in his behalf.

A license fee of ten dollars (\$10.00) shall be submitted to the Commissioner with each application, together with fingerprints and photograph. (1963, c. 1225, s. 14.)

§ 85A-15. **Examinations; fees.** — The applicant shall be required to appear in person and take a written examination prepared by the Commissioner, testing his ability and qualifications to be a bail bondsman or runner.

Each applicant shall become eligible for examination sixty (60) days after the date the application is received by the Commissioner, if the Commissioner is satisfied as to the applicant's fitness to take the examination. Examinations shall be held at such times and places as designated by the Commissioner, and applicant shall be given notice of such time and place not less than fifteen (15) days prior to taking the examination.

The fee for such examination shall be ten dollars (\$10.00) and shall be submitted with the application.

The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations: Provided, however, that at least one (1) year must intervene between examinations. (1963, c. 1225, s. 15.)

§ 85A-16. **Renewal of licenses; fees.**—A renewal license shall be issued by the Commissioner to a licensee who has continuously maintained same in effect without further examination, unless deemed necessary by the Commissioner, upon the payment of a renewal fee of ten dollars (\$10.00), but such licensee shall in all other respects be required to comply with and be subject to the provisions of this chapter. After the receipt of such licensee's application for renewal the current license shall continue in effect until the renewal license is issued or denied for cause. (1963, c. 1225, s. 16.)

§ 85A-17. **Grounds for denial, suspension, revocation or refusal to renew licenses.**—The Commissioner may deny, suspend, revoke or refuse to renew any license issued under this chapter for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner.
- (2) Violation of any laws of this State relating to bail in the course of dealings under the license issued him by the Commissioner.
- (3) Material misstatement, misrepresentation or fraud in obtaining the license.
- (4) Misappropriation, conversion or unlawful withholding of moneys, belonging to insurers or others and received in the conduct of business under the license.
- (5) Conviction of a felony involving moral turpitude.
- (6) Fraudulent or dishonest practices in the conduct of business under the license.
- (7) Willful failure to comply with, or willful violation of any proper order, rule or regulation of the Commissioner.
- (8) When, in the judgment of the Commissioner, the licensee has, in the conduct of the affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering him unfit to carry on the bail bond business or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith carrying on the bail bond business, or that he is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide his commissions in the case of limited surety agents, or premiums in the case of professional bondsman, and for such reasons is found by the Commissioner to be a source of detriment, injury or loss to the public. (1963, c. 1225, s. 17.)

§ 85A-18. **Procedure for suspending or revoking licenses.**—If, after investigation, it shall appear to the satisfaction of the Commissioner that a bail bondsman or runner has been guilty of violating any of the laws of this State relating to bail bonds, the Commissioner shall, upon ten days' notice in writing to the bail bondsman or runner and to the insurer represented by him if a surety bondsman, accompanied by a copy of the charges of the unlawful conduct of such bail bondsman or runner, suspend the license of such bail bondsman or runner, unless on or before the expiration of the ten (10) days the bail bondsman or runner shall make the Commissioner answer to the charges. If, after the expiration of said ten (10) days, and within twenty (20) days thereafter, the bail bondsman or runner shall have failed to make answer or deny said charges license of the bail bondsman or runner shall thereupon stand revoked. If, however, the bail bondsman or runner shall file written answer denying the charges within the time specified, the Commissioner shall call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issue of fact made by the charges and answer. The Commissioner shall give notice to such bail bondsman or runner and to the insurer represented by him, if a surety bondsman, of the time and place of the hearing. The parties shall have the right to produce witnesses, and to appear personally or by counsel. If upon such hearing the Commissioner shall determine that the bail bondsman or runner is guilty as alleged in said charges, he shall thereupon revoke the license of the bail bondsman or runner or suspend him for a definite period of time to be fixed in the order of suspension. (1963, c. 1225, s. 18.)

§ 85A-19. **Appeal from denial, suspension, revocation or refusal to renew license.** — Any applicant for license as bail bondsman or runner whose application has been denied or whose license shall have been so suspended or revoked, or renewal thereof denied, shall have the right of appeal from such final order of the Commissioner thereon to the superior court of the county from which the bail bondsman or runner applied for his license, and such appeal shall be heard de novo. (1963, c. 1225, s. 19.)

§ 85A-20. **Prohibited practices.**—No bail bondsman or runner shall:
Suggest or advise the employment of or name for employment any particular attorney to represent his principal.

Pay a fee or rebate or give or promise anything of value to a jailer, policeman, peace officer, committing magistrate, or any other person who has power to arrest or hold in custody; or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.

Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.

Accept anything of value from a principal except the premium, provided that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

Solicit business in or about any place where prisoners are confined. (1963, c. 1225, s. 20.)

§ 85A-21. **Receipts for collateral.**—When a bail bondsman accepts collateral he shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. (1963, c. 1225, s. 21.)

§ 85A-22. **Persons not to be bondsmen or runners.**—The following persons or classes shall not be bail bondsmen or runners and shall not directly or indirectly receive any benefits from the execution of any bail bond: Jailers, police officers, committing magistrates, justices of the peace, municipal or magistrate court judges, sheriffs, deputy sheriffs and constables, any person having the power to arrest or having anything to do with the control of federal, State, county or municipal prisoners. (1963, c. 1225, s. 22.)

§ 85A-23. **Bonds not to be signed in blank; authority to countersign only given to licensed employee.**—A bail bondsman shall not sign nor countersign in blank any bond, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed bondsman directly employed by the bondsman giving such power of attorney. (1963, c. 1225, s. 23.)

§ 85A-24. **Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential.**—Every insurer shall annually, prior to July 1, furnish the Commissioner a list of all surety bondsmen appointed by it to write bail bonds on its behalf. Every such insurer who subsequently appoints a surety bondsman in the State, shall give notice thereof to the Commissioner along with a written application for license for said bondsman. All such appointments shall be subject to the issuance of a license to such surety bondsman.

An insurer terminating the appointment of a surety bondsman shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives. (1963, c. 1225, s. 24.)

§ 85A-25. **Bail bondsman to give notice of discontinuance of business; cancellation of license.**—Any bail bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the clerks of the superior court and the sheriffs with whom he is registered and return his license to the Commissioner for cancellation within thirty (30) days for such discontinuance. (1963, c. 1225, s. 25.)

§ 85A-26. **Persons eligible as runners; bail bondsmen to annually report runners; notices of appointments and terminations; information confidential.**—Every person duly licensed as a bail bondsman may appoint as runner any person who holds or has qualified for a runner's license. Each bail bondsman must, on or before July 1 of each year, furnish to the Commissioner a list of all runners appointed by him. Each such bail bondsman who shall, subsequent to the filing of this list, appoint additional persons as runners shall file written notice with the Commissioner of such appointment.

A bail bondsman terminating the appointment of a runner shall file written notice thereof with the Commissioner, together with a statement that he has given or mailed notice to the runner. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in any action against the bail bondsman. (1963, c. 1225, s. 26.)

§ 85A-27. **Substituting bail by sureties for deposit.** — If money or bonds have been deposited, bail by sureties may be substituted therefor at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the same and they shall be refunded accordingly, and the original undertakings shall be cancelled. (1963, c. 1225, s. 27.)

§ 85A-28. Deposit for defendant admitted to bail authorizes release and cancellation of undertaking.—When the defendant has been admitted to bail, he, or another in his behalf, may deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of the United States, or of the State, or of any county, city or town within the State, equal in market value to the amount of such bail, together with his personal undertaking, and an undertaking of such other person, if the money or bonds are deposited by another. Upon delivery to the official in whose custody the defendant is of a certificate of such deposit, he shall be discharged from custody in the cause.

When bail other than a deposit of money or bonds has been given, the defendant or the surety may, at any time before a breach of the undertaking, deposit the sum mentioned in the undertaking, and upon such deposit being made, accompanied by a new undertaking, the original undertaking shall be cancelled. (1963, c. 1225, s. 28.)

§ 85A-29. Professional bondsmen to make deposit with Commissioner; refusal, suspension or revocation of license for false financial statement.—Professional bondsmen shall, before writing cash or security bail bonds, deposit with the Commissioner in the same manner as required of domestic insurance companies, an amount determined by the Commissioner not less than twenty-five thousand dollars (\$25,000.00) but not more than fifty thousand dollars (\$50,000.00). Such deposit shall be subject to all laws, rules and regulations as to guaranty funds of domestic insurance companies.

A license may be refused, suspended or cancelled by the Commissioner at any time he determines that the financial statement filed by the applicant or professional bondsman is inadequate to meet the requirements of the Commissioner. (1963, c. 1225, s. 29.)

§ 85A-30. Affidavit by property bondsman; penalty for misstatement; actions limited to agreements and security set forth in affidavit.—Every property bondsman shall file with the undertaking an affidavit stating whether or not he or any one for his use has been promised or has received any security or consideration for his undertaking, and if so, the nature and amount thereof, and the name of the person by whom such promise was made or from whom such security or consideration was received. Any willful misstatement in such affidavit relating to the security or consideration promised or given shall render the person making it subject to the same prosecution and penalty as one who commits perjury. An action to enforce any indemnity agreement shall not lie in favor of the surety against such indemnitor, except with respect to agreements set forth in such affidavit. In an action by the indemnitor against the surety to recover any collateral or security given by the indemnitor, such surety shall have the right to retain only such security or collateral as is mentioned in the affidavit required above. (1963, c. 1225, s. 30.)

§ 85A-31. Registration of licenses and appointments by insurers.—No bail bondsman shall become a surety on an undertaking unless he has registered his license in the office of the sheriff and with the clerk of the superior court in the county in which the bondsman resides and he may then become such surety in any other county upon presenting to the official required to approve the sufficiency of bail, a certificate of such registration. A surety bondsman shall also file a certified copy of his appointment by power of attorney from each insurer which he represents as agent with each of said officers. Registration and filing of certified copy of renewed power of attorney shall be performed annually on July 1. The clerk of the superior court and the sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the Commissioner. (1963, c. 1225, s. 31.)

§ 85A-32. Disposition of fees.—Fees collected by the Commissioner pur-

suant to this chapter shall be paid into the general fund of the State. (1963, c. 1225, s. 32.)

§ 85A-33. **Penalties for violations.** — Any person, firm, association or corporation violating any of the provisions of this chapter shall, upon conviction, be fined not more than five hundred dollars (\$500.00) for each offense, or imprisoned in the county jail for not more than six (6) months, or both. (1963, c. 1225, s. 33.)

§ 85A-34. **Counties subject to chapter.**—This chapter shall apply to the following counties: Beaufort, Buncombe, Caldwell, Cleveland, Columbus, Currituck, Greene, Guilford, Hyde, Iredell, Jackson, Lenoir, Madison, McDowell, Person, Richmond, Rutherford, Transylvania, Yadkin and Yancey. (1963, c. 1225, s. 34.)

Chapter 86.

Barbers.

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| <p>Sec.</p> <p>86-1. Necessity for certificate of registration and shop or school permit.</p> <p>86-2. What constitutes practice of barbering.</p> <p>86-3. Qualifications for issuance of certificates of registration.</p> <p>86-4. Registered apprentice must serve under registered barber and take examination before opening shop.</p> <p>86-5. Period of apprenticeship; affidavit; qualifications for certificate as registered barber.</p> <p>86-6. State Board of Barber Examiners; appointment and qualifications; Governor; term of office and removal.</p> <p>86-7. Office; seal; officers and secretary; bond.</p> <p>86-8. Salary and expenses; employees; audit; annual report to Governor.</p> <p>86-9. Application for examination; payment of fee.</p> <p>86-10. Board to conduct examinations not less than four times each year.</p> <p>86-11. Issuance of certificates of registration.</p> | <p>Sec.</p> <p>86-11.1 [Repealed.]</p> <p>86-12. Barbers from other states; temporary permits; graduates of out-of-State barber schools.</p> <p>86-13. Procedure for registration.</p> <p>86-14. Procedure for registration of barbers not registered under § 86-13.</p> <p>86-15. Fees.</p> <p>86-16. Persons exempt from provisions of chapter.</p> <p>86-17. Sanitary rules and regulations; inspection.</p> <p>86-18. Certificates to be displayed.</p> <p>86-19. Renewal or restoration of certificates.</p> <p>86-20. Disqualifications for certificate.</p> <p>86-21. Refusal, revocation or suspension of certificates or permits.</p> <p>86-22. Misdemeanors.</p> <p>86-23. Board to keep record of proceedings; data on registrants.</p> <p>86-24. Barbering among members of same family.</p> <p>86-25. Licensing and regulating barber schools and colleges.</p> |
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§ 86-1. **Necessity for certificate of registration and shop or school permit.**—No person or combination of persons shall, either directly or indirectly, practice or attempt to practice barbering as hereinafter defined in the State of North Carolina without a certificate of registration either as a registered apprentice or as a registered barber issued pursuant to the provisions of this chapter by the State Board of Barber Examiners hereinafter established. No person, or combination of persons, or corporation, shall operate, manage, or attempt to manage or operate a barber school, barber shop, or any other place where barber service is rendered, after July first, one thousand nine hundred and forty-five, without a shop permit, or school permit, issued by the State Board of Barber Examiners, pursuant to the provisions of this chapter. (1929, c. 119, s. 1; 1941, c. 375, s. 1; 1945 c. 830, s. 1.)

Editor's Note.—The 1941 amendment struck out "for pay" formerly appearing after "shall" in the first sentence. The 1945 amendment added the second sentence.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 427.

Constitutionality.—This chapter, known as the "Barber's Act," relates to the public health and is constitutional as a valid exercise of the police power of the State. *State v. Locky*, 198 N. C. 551, 152 S. E. 693 (1930).

Validity of Chapter Is No Longer Open to Attack.—The validity of this chapter,

providing for the licensing of barbers and the control and regulation of the trade, having been judicially determined, it may not be attacked in a subsequent suit. *Motley v. State Board of Barber Examiners*, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

Application.—The provisions of this chapter apply to proprietor barbers, as in this case the owner and operator of a one-chair barber shop. *State v. Locky*, 198 N. C. 551, 152 S. E. 693 (1930).

Cited in *James v. Denny*, 214 N. C. 470, 199 S. E. 617 (1938).

§ 86-2. **What constitutes practice of barbering.**—Any one or combination of the following practices shall constitute the practice of barbering in the purview of this chapter :

- (1) Shaving or trimming the beard, or cutting the hair.
- (2) Giving facial or scalp massages, or treatments with oils, creams, lotions and other preparations either by hand or mechanical appliances.
- (3) Singeing, shampooing or dyeing the hair or applying hair tonics.
- (4) Applying cosmetic preparations, antiseptics, powders, oils, clays and lotions to the scalp, neck or face. (1929, c. 119, s. 2; 1941, c. 375, s. 2.)

Editor's Note. — The 1941 amendment appearing after "practices" near the beginning of the section struck out "when done for pay" formerly

§ 86-3. **Qualifications for issuance of certificates of registration.**—No person shall be issued a certificate of registration as a registered apprentice by the State Board of Barber Examiners, hereinafter established :

- (1) Unless such person is at least seventeen years of age.
- (2) Unless such person passes a satisfactory physical examination prescribed by said Board of Barber Examiners.
- (3) Unless each [such] person has completed at least an eight months' course in a reliable barber school or college approved by said Board of Barber Examiners.
- (4) Unless such person passes the examination prescribed by the Board of Barber Examiners and pays the required fees hereinafter enumerated. (1929, c. 119, s. 3; 1961, c. 577, s. 1.)

Editor's Note. — The 1961 amendment substituted "eight months'" for "six months'" in subdivision (3).

§ 86-4. **Registered apprentice must serve under registered barber and take examination before opening shop.**—No registered apprentice, registered under the provisions of this chapter, shall operate a barber shop in the State, but must serve his period of apprenticeship under the direct supervision of a registered barber, as required by § 86-5.

Every registered apprentice when eligible shall take the examination to receive a certificate of registration as a registered barber. No registered apprentice shall be permitted to practice for a period of more than three years without passing the required examination to receive a certificate of registration as a registered barber. (1929, c. 119, s. 4; 1941, c. 375, s. 3.)

Editor's Note. — The 1941 amendment added the second paragraph.

§ 86-5. **Period of apprenticeship; affidavit; qualifications for certificate as registered barber.**—Any person to practice barbering as a registered barber, must have worked as a registered apprentice for a period of at least eighteen months under the direct supervision of a registered barber, and this fact must be demonstrated to the Board of Barber Examiners by the sworn affidavit of three registered barbers, or such other methods of proof as the Board may prescribe and deem necessary. A certificate of registration as a registered barber shall be issued by the Board hereinafter designated, to any person who is qualified under the provisions of this chapter, or meets the following qualifications :

- (1) Who is qualified under the provisions of § 86-3;
- (2) Who is at least nineteen years of age;
- (3) Who passes a satisfactory physical examination as prescribed by said Board;
- (4) Who has practiced as a registered apprentice for a period of eighteen months, under the immediate personal supervision of a registered barber; and

- (5) Who has passed a satisfactory examination, conducted by the Board, to determine his fitness to practice barbering, such examination to be so prepared and conducted, as to determine whether or not the applicant is possessed of the requisite skill in such trade, to properly perform all the duties thereof, including the ability of the applicant in his preparation of tools, shaving, haircutting, and all the duties and services incident thereto, and has sufficient knowledge concerning diseases of the face, skin and scalp, to avoid the aggravation and spreading thereof in the practice of said trade. (1929, c. 119, s. 5.)

§ 86-6. State Board of Barber Examiners; appointment and qualifications; Governor; term of office and removal.—A board to be known as the State Board of Barber Examiners is hereby established to consist of three members appointed by the Governor of the State. Each member shall be an experienced barber, who has followed the practice of barbering for at least five years in the State. The members of the first Board appointed shall serve for six years, four years and two years, respectively, after appointed, and members appointed thereafter shall serve for six years. The Governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1929, c. 119, s. 6.)

§ 86-7. Office; seal; officers and secretary; bond.— The Board shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. Said Board shall elect its own officers, and in addition thereto, may elect or appoint a full-time executive secretary who may or may not be a member of the Board, and whose salary shall be fixed by the Governor with the approval of the Advisory Budget Commission. Said full-time secretary, before entering upon the duties of his office, shall execute to the State of North Carolina a satisfactory bond with a duly licensed bonding company in this State as surety or other acceptable surety, such bond to be in the penal sum of not less than ten thousand dollars (\$10,000.00) and conditioned upon the faithful performance of the duties of his office and the true and correct accounting of all funds received by him. Said full-time secretary shall turn over to the State Treasurer to be credited to the State Board of Barber Examiners all funds collected or received by him under this chapter, such funds to be held and expended under the supervision of the Director of the Budget, exclusively for the enforcement and administration of the provisions of this chapter, subject to the limitations hereof. Provided, however, that nothing herein shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from fees collected under the provisions of this chapter and received by the said State Treasurer in the manner aforesaid. (1929, c. 119, s. 7; 1941, c. 375, s. 4; 1943, c. 53, s. 1; 1945, c. 830, s. 2; 1957, c. 813, s. 1.)

Editor's Note.— The 1943 amendment rewrote the provisions relating to the secretary, thereby omitting the sentence added by the 1941 amendment which provided that the Board should employ such agents, assistants, and attorneys as it might deem

necessary. The 1945 amendment increased the salary of the secretary. The 1957 amendment rewrote the provision as to salary and inserted "executive" before "secretary" in the second sentence.

§ 86-8. Salary and expenses; employees; audit; annual report to Governor.— Each member of the Board of Barber Examiners shall receive a salary to be fixed by the Governor with the approval of the Advisory Budget Commission, payable in equal monthly installments, and shall be reimbursed for his actual expenses, and shall receive seven cents (7¢) per mile for the distance traveled in performance of his duties, which said salary and expenses, and all other salaries and expenses, in connection with the administration of this chapter, shall be paid upon warrant drawn on the State Treasurer, solely from the funds de-

rived from the fees collected and received under this chapter. The Board shall employ such agents, assistants and attorneys as it may deem necessary. Each member of the Board of Barber Examiners, and each of its agents and assistants who collect any moneys or fees in the discharge of their duties, shall execute to the State of North Carolina a bond in the sum of one thousand dollars (\$1,000.00) conditioned upon the faithful performance of his duties of office, and the true accounting for all funds collected. There shall be annually made by the State Auditing Department, a complete audit and examination of the receipts and disbursements, and the State Board of Barber Examiners shall report annually to the Governor, a full statement of its receipts and expenditures, and also a full statement of its work during the year, together with such recommendations as it may deem expedient. (1929, c. 119, s. 8; 1943, c. 53, s. 2; 1945, c. 830, s. 3; 1957, c. 813, s. 2.)

Editor's Note. — The 1943 amendment rewrote the first sentence relating to increased the salary, and the 1957 amendment rewrote this section, the 1945 amendment increased the salary, and the 1957 amendment rewrote the first sentence relating to salary and expenses.

§ 86-9. Application for examination; payment of fee.—Each applicant for an examination shall:

- (1) Make application to the Board on blank forms prepared and furnished by the full-time secretary, such application to contain proof under the applicant's oath of the particular qualifications of the applicant.
- (2) Pay to the Board the required fee.

All applications for said examination must be filed with the full-time secretary at least thirty days prior to the actual taking of such examination by applicants. (1929, c. 119, s. 9.)

Cross reference.—As to fees generally, see § 86-15 and note.

§ 86-10. Board to conduct examinations not less than four times each year.—The Board shall conduct examinations of applicants for certificates of registration to practice as registered barbers, and of applicants for certificate of registration to practice as registered apprentices, not less than four times each year, at such times and places as will prove most convenient, and as the Board may determine. The examination of applicants for certificates of registration as registered barbers and registered apprentices shall include such practical demonstration and oral and written tests as the Board may determine. (1929, c. 119, s. 10.)

§ 86-11. Issuance of certificates of registration.—Whenever the provisions of this chapter have been complied with, the Board shall issue, or have issued, a certificate of registration as a registered barber or as a registered apprentice, as the case may be. (1929, c. 119, s. 11.)

§ 86-11.1: Repealed by Session Laws 1951, c. 821, s. 3.

§ 86-12. Barbers from other states; temporary permits; graduates of out-of-State barber schools. — Persons who have practiced barbering in another state or country for a period of not less than five years, and who move into this State, shall prove and demonstrate their fitness to the Board of Barber Examiners, as herein created, before they will be issued a certificate of registration to practice barbering, but said Board may issue such temporary permits as are necessary.

Any person who has graduated from a barber school in any other state having substantially the same standards as are required of barber schools in this State and who is otherwise qualified as required by this chapter, shall be allowed, upon making the application and paying the fee required by this chapter, to take the examination for a certificate of registration as a registered barber or as a reg-

istered apprentice, as the case may be. And the State Board of Barber Examiners shall issue a proper certificate to each such person who passes such examination. When any such person makes application for permission to take an examination, it shall be the duty of the State Board of Barber Examiners to ascertain and determine whether the barber school from which such person has graduated has substantially the same standards as are required of barber schools in this State. (1929, c. 119, s. 12; 1941, c. 375, s. 5; 1947, c. 1024; 1961, c. 577, s. 2.)

Editor's Note. — The 1941 amendment inserted "for a period of not less than two years" in the first paragraph, and the 1947 amendment added the second paragraph. The 1961 amendment substituted "five years" for "two years" near the beginning of the first sentence.

§ 86-13. Procedure for registration.—The procedure for the registration of present practitioners of barbering shall be as follows:

- (1) If such person has been practicing barbering for a shorter period of time than eighteen months, he shall, upon paying the required fee, and making an affidavit to that effect to the Board of Barber Examiners, be issued a certificate of registration as an apprentice.
- (2) If such person has been practicing barbering in the State of North Carolina for more than eighteen months, he shall upon paying the required fee and making an affidavit to that effect, to the Board of Barber Examiners, be issued a certificate of registration as a registered barber.
- (3) All persons, however, who are not actively engaged in the practice of barbering, at the time this chapter is enacted into law, shall be required to take the examination herein provided, and otherwise comply with the provisions of this chapter before engaging in the practice of barbering. (1929, c. 119, s. 13.)

§ 86-14. Procedure for registration of barbers not registered under § 86-13. — The procedure for the registration of present practitioners of barbering who were not registered under § 86-13, shall be as follows:

- (1) If such person has been practicing barbering in the State of North Carolina for more than eighteen months and is actively engaged in the practice of barbering at the time this bill is enacted into law, he shall, upon making affidavit to that effect and paying the required fee to the Board of Barber Examiners, be issued a certificate of registration as a registered barber.
- (2) All persons, however, who do not make application prior to January 1, 1938, shall be required to take the examination prescribed by the State Board of Barber Examiners, and otherwise comply with the provisions of this chapter before engaging in the practice of barbering. (1937, c. 138, s. 3.)

§ 86-15. Fees. — The fee to be paid by applicant for examination to determine his fitness to receive a certificate of registration, as a registered apprentice, shall be fifteen dollars (\$15.00), and such fee must accompany his application. The annual license fee of an apprentice shall be five dollars (\$5.00). The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration as a registered barber shall be fifteen dollars (\$15.00), and such fee must accompany his application. The annual license fee of a registered barber shall be five dollars (\$5.00). All licenses, both for apprentices and for registered barbers, shall be renewed as of the thirtieth day of June of each and every year, and such renewals for apprentices shall be three dollars (\$3.00), and for registered barbers five dollars (\$5.00). The fee for restoration of an expired certificate for registered barbers shall be seven dollars (\$7.00), and restoration of expired certificate of an apprentice shall be seven dollars (\$7.00). The fee to be paid for all barber shop permits, established, and under the inspection of the State

Board of Barber Examiners as of July first, one thousand nine hundred and forty-five, shall be five dollars (\$5.00), and the initial fee to be paid by barber shops thereafter established, [shall be five dollars (\$5.00) for the first year], or portion thereof, and the annual renewal fee for each barber shop permit shall be five dollars (\$5.00). The fee to be paid for barber school permits operating on, or before July first, one thousand nine hundred and forty-five, shall be twenty-five dollars (\$25.00). The initial fee to be paid by each barber school thereafter established, shall be fifty dollars (\$50.00), and the annual renewal fee for each barber school permit shall be twenty-five dollars (\$25.00). Each barber shop permit and each barber school permit shall be renewed as of the thirtieth day of June, each and every year, and shall not be transferable from one person to another, and such barber shop and barber school permit shall be conspicuously posted within each shop or school, or any place or establishment: Provided, further, that all fees received under this chapter shall be used exclusively for the enforcement of this chapter as provided by law. (1929, c. 119, s. 14; 1937, c. 138, s. 4; 1945, c. 830, s. 4; 1951, c. 821, s. 1; 1957, c. 813, s. 3.)

Editor's Note. — The 1937 amendment increased the fees charged under this section, and the 1945 amendment rewrote the latter half of this section.

The 1951 amendment increased the fee in the first sentence from five to fifteen dollars. The amendatory act also provided that the section be further amended by striking out the words and figures appearing in brackets in the seventh sentence and inserting in lieu thereof the following: "Any person or persons, firm or corporation, before establishing or opening a barber shop that has not heretofore been established by the person or persons, shall make application to the State Board of Barber Examiners, on forms to be furnished by said Board, for a permit to operate a barber shop, as provided by section 1, chapter 86, General Statutes, and no shop shall open for business until inspected and approved by the State Board of Barber Examiners, its agents or assistants to determine whether or not said shop meets sanitary require-

ments, as provided by § 86-17 of the General Statutes, the fee to be paid for inspection of barber shop, as provided above, shall be ten dollars (\$10.00)."

The latter part of the amendatory act is so ambiguous that no attempt has been made to incorporate the quoted matter in this section.

The 1957 amendment increased the fees in the second sentence from three to five dollars, near the end of the sixth sentence from four to seven dollars, and in the seventh sentence from two to five dollars.

Purpose of Fees — Constitutionality.— The fees prescribed are for the expenses of enforcing the chapter, which is necessary to the public health and welfare. They are not imposed for revenue, and the payment of the barber's license tax under the Revenue Act does not affect the obligation to pay the fees prescribed by this chapter, and assessment of the fees thereunder is constitutional. *State v. Lockey*, 198 N. C. 551, 152 S. E. 693 (1930).

§ 86-16. **Persons exempt from provisions of chapter.**—The following persons are exempt from the provisions of this chapter while engaged in the proper discharge of their professional duties:

- (1) Persons authorized under the laws of the State to practice medicine and surgery.
- (2) Commissioned medical or surgical officers of the United States Army, Navy, or Marine Hospital Service.
- (3) Registered nurses.
- (4) Students in schools, colleges and universities, who follow the practice of barbering upon the school, college, or university premises, for the purpose of making a part of their school expenses.
- (5) Undertakers.
- (6) Persons practicing hairdressing and beauty culture exclusively for females. The provisions of this chapter shall apply to all persons except those persons specifically exempted by this section and § 86-24. (1929, c. 119, s. 15; 1937, c. 138, s. 2; 1941, c. 375, s. 6.)

Editor's Note. — The 1941 amendment subdivision (6) for "in hairdressing and substituted "exclusively for females" in beauty shops patronized by women."

§ 86-17. **Sanitary rules and regulations; inspection.**—(a) Each barber and each owner or manager of a barber shop, barber school or college, or any other place where barber service is rendered, shall comply with the following sanitary rules and regulations:

- (1) **Inspection.**—All barber shops, or barber schools and colleges, or any other place where barber service is rendered, shall be open for inspection at all times during business hours to any members of the Board of Barber Examiners, or its agents or assistants.
- (2) **Proper Quarters.**—Every barber shop, or any other place where barber service is rendered, shall be located in buildings or rooms of such construction that the same may be easily cleaned.
- (3) **Barber Shops.**—Every barber shop, or barber school, or barber college, or any other place where barber service is rendered, shall be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition.
- (4) **Position of Barber Shops.**—Any room or place for barbering is prohibited which is used for other purposes, unless such a substantial partition or wall of ceiling height, separates such portion used for barber shops, or any place where barber service is rendered. However, this rule shall apply to sanitation only as determined by the discretion of the inspector.
- (5) **Walls and Floors.**—The floors, walls, and ceiling of all barber shops, or barber schools and colleges, or any other place where barber service is rendered, must be kept clean and sanitary at all times.
- (6) **Fixture Conditions.**—Work stands or cabinets, and chairs and fixtures of all barber shops, or any other place where barber service is rendered must be kept clean and sanitary at all times. All lavatories, towel urns, paper jars, cuspidors, and all receptacles containing cosmetics of any nature must be kept clean at all times.
- (7) **Tools and Instruments.**—Every owner or manager of each barber shop shall supply a separate tool cabinet, having a door as near airtight as possible, for himself and each barber employed. All tools and instruments shall be kept clean and sanitary at all times and shall be kept in tool cabinets, and shall not be placed in drawers or on work stands. Cabinets shall be of such construction as to be easily cleaned and shall be clean and sanitary at all times.
- (8) **Water.**—All barber shops, or any other place where barber service is rendered, located in towns or cities having a water system shall be required to connect with said water system. Running water, hot and cold, shall be provided, and lavatories shall be located at a convenient place in each barber shop.

All barber shops or any other place where barber service is rendered, not located in cities or towns having water systems must supply hot and cold water under pressure in tank to hold not less than five gallons, and said tanks must be connected with a lavatory. Tanks and lavatory shall be of such construction that they may be easily cleaned. Said lavatory must have a drain pipe to drain all waste water out of the building. The dipping of shaving mugs and towels, etc., into water receptacles is prohibited.
- (9) **Styptic Pencil and Alum.**—No person serving as a barber shall, to stop the flow of blood, use alum or other material unless the same be used in liquid or powder form with clean towels. The use of common styptic pencil or lump alum shall not be permitted for any purpose.
- (10) **Instruments.**—Each person serving as a barber, shall, immediately before using razors, tweezers, combs, contact cup or pad of vibrator or massage machine, sterilize same by immersing in a solution of fifty per

cent (50%) alcohol, five per cent (5%) carbolic acid, twenty per cent (20%) formaldehyde, or ten per cent (10%) lysol or any other product or solution that the Board may approve. Every owner or manager of each barber shop shall supply a separate container for each barber adequate to provide for a sufficient supply of the above solutions.

- (11) Hair Brushes and Combs.—Each barber shall maintain combs and hair brushes in clean and sanitary manner at all times, and each hair brush shall be thoroughly washed with hot water and soap before each separate use.
- (12) Mugs and Brushes.—Each barber shall thoroughly clean mug and lather brush before each separate use and same must be kept clean and sanitary at all times.
- (13) Headrest.—The headrest of every barber chair shall be protected with fresh, clean paper or clean laundered towel before its use for any person.
- (14) Towels.—Each and every person serving as a barber shall use a clean freshly laundered towel for each patron. This applies to every kind of towel, dry towel, steam towel, or washcloth. All clean towels shall be placed in closed cabinets until used. Receptacles composed of material that can be washed and cleansed, shall be provided to receive used towels and all used towels must be discarded in said receptacles until laundered. Towels shall not be placed in a sterilizer or tank or rinsed or washed in the barber shop. All wet and used towels must be removed from the work stand or lavatory after serving each patron.
- (15) Haircloths.—Whenever a haircloth is used in cutting the hair, shampooing, etc., a newly laundered towel or paper neck strap shall be placed around the neck so as to prevent the haircloth from touching the skin. Haircloths shall be discarded when soiled.
- (16) Baths and Toilets.—Baths and toilets must be kept in a clean and sanitary manner at all times.
- (17) Barber Hands.—Every person serving as a barber shall thoroughly cleanse his or her hands immediately before serving each customer.
- (18) Barber Appearance.—Each person working as a barber shall be clean, both as to person and dress.
- (19) Health Certificate.—No person having an infectious or communicable disease shall practice as a barber in the State of North Carolina. Each and every barber practicing the profession in North Carolina shall furnish the State Board of Barber Examiners a satisfactory health certificate, including Wassermann Test, at such times as the Board of Barber Examiners may deem necessary, signed by a physician in good standing and licensed by the North Carolina Board of Medical Examiners.
- (20) Diseases.—No barber shall serve any person having an infectious or communicable disease, and no barber shall undertake to treat any infectious or contagious disease.
- (21) Rules Posted. — The owner or manager of any barber shop, or any other place where barber service is rendered, shall post a copy of these rules and regulations in a conspicuous place in said shop.

(b) Any member of the Board and its agents and assistants shall have authority to enter upon and inspect any barber shop or barber school, or other place where barber service is rendered, at any time during business hours in performance of the duties conferred and imposed by this chapter. A copy of the sanitary rules and regulations set out in this section shall be furnished by the Board to the owner or manager of each barber shop or barber school, or any other place where barber service is rendered in the State, and such copy shall be posted in a conspicuous place in each barber shop or barber school. The Board shall have the right

to make additional rules and regulations governing barbers and barber shops for the proper administration and enforcement of this section, provided that no such additional rules and regulations shall be in effect until such rules and regulations shall have been furnished to each barber shop within the State. (1929, c. 119, s. 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, s. 7; 1961, c. 577, s. 3.)

Editor's Note. — The 1941 amendment rewrote this section. the words "or any other product or solution that the Board may approve." It also

The 1961 amendment added at the end of the first sentence in subsection (a) (10) added the last sentence of subsection (b).

§ 86-18. Certificates to be displayed.—Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair. (1929, c. 119, s. 17.)

§ 86-19. Renewal or restoration of certificates.—Every registered barber and every registered apprentice who continues in practice or service shall annually, on or before June thirtieth of each year, renew his certificate of registration and furnish such health certificate as the Board may prescribe and pay the required fee. Every certificate of registration shall expire on the thirtieth day of June in each and every year. A registered barber or a registered apprentice whose certificate of registration has expired may have his certificate restored immediately upon paying the required restoration fee and furnishing health certificate prescribed by the Board: Provided, however, that registered barber or registered apprentice whose certificate has expired for a period of three years shall be required to take the examination prescribed by the State Board of Barber Examiners, and otherwise comply with the provisions of this chapter before engaging in the practice of barbering.

All persons serving in the United States armed forces or any person whose certificates of registration as a registered barber, or registered apprentice, were in force one year prior to entering service, or one year prior to the beginning of war, may, without taking the required examination, renew said certificate within three years after receiving an honorable discharge, any other person three years after the end of war, by paying the current annual license fee and furnishing the State Board of Barber Examiners with a satisfactory health certificate. (1929, c. 119, s. 18; 1937, c. 138, s. 5; 1945, c. 830, s. 5.)

Editor's Note. — The 1937 amendment added the provision as to furnishing health certificate and taking examination. The 1945 amendment added the second paragraph.

§ 86-20. Disqualifications for certificate. — The Board may either refuse to issue or renew, or may suspend or revoke, any certificate of registration, or barber shop permit, or barber school permit for any one or combination of the following causes:

- (1) Conviction of a felony shown by certified copy of the record of the court of conviction.
- (2) Gross malpractice or gross incompetency.
- (3) Continued practice by a person knowingly having an infectious or contagious disease.
- (4) Advertising by means of knowingly false or deceptive statements.
- (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.
- (6) The commission of any of the offenses described in § 86-22, subdivisions three, four and six.
- (7) The violation of any one or a combination of the sanitary rules and regulations.
- (8) The violation of any of the provisions of §§ 86-4 and 86-15.
- (9) The violation of the provisions of G. S. 86-25 or the rules and regula-

tions pertaining to barber schools as provided for in G. S. 86-25. (1929, c. 119, s. 19; 1941, c. 375, s. 8; 1945, c. 830, s. 6; 1961, c. 577, s. 4.)

Editor's Note. — The 1941 amendment added the reference to § 86-15 in subdivision (8). The 1945 amendment inserted in the preliminary paragraph "or barber shop permit, or barber school permit." The amendment also

added the reference to § 86-15 in subdivision (8).
The 1961 amendment added subdivision (9).

§ 86-21. Refusal, revocation or suspension of certificates or permits.—The Board may neither refuse to issue nor refuse to renew, nor suspend, or revoke any certificate of registration, barber shop permits, or barber school permits, however, for any of these causes, except in accordance with the provisions of chapter 150 of the General Statutes. (1929, c. 119, s. 20; 1939, c. 218, s. 1; 1945, c. 830, s. 7; 1953, c. 1041, s. 2.)

Cross Reference.—For uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

inserted "barber shop permits, or barber school permits." The 1953 amendment added the reference to chapter 150 of the General Statutes and made other changes.

Editor's Note. — The 1945 amendment

§ 86-22. Misdemeanors.—Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars, nor more than fifty (\$50.00) dollars, or thirty days in jail or both:

- (1) The violation of any of the provisions of § 86-1.
- (2) Permitting any person in one's employ, supervision or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.
- (3) Permitting any person in one's employ, supervision or control, to practice as a barber unless that person has a certificate as a registered barber.
- (4) Obtaining or attempting to obtain a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.
- (5) Practicing or attempting to practice by fraudulent misrepresentations.
- (6) The willful failure to display a certificate of registration as required by § 86-18.
- (7) The violation of the reasonable rules and regulations adopted by the State Board of Barber Examiners for the sanitary management of barber shops and barber schools.
- (8) The violation of any of the provisions of § 86-5.
- (9) The refusal of any owner or manager to permit any member of the Board, its agents, or assistants to enter upon and inspect any barber shop, or barber school, or any other place where barber service is rendered, at any time during business hours.
- (10) The violation of any one or a combination of the sanitary rules and regulations.
- (11) Practicing or attempting to practice barbering during the period of suspension or revocation of any certificate of registration granted under this chapter. Each day's operation during such period of suspension or revocation shall be deemed a separate offense, and, upon conviction thereof, shall be punished as prescribed in this section.
- (12) The violation of § 86-15 as appearing in the recompiled volume. (1929, c. 119, s. 21; 1933, c. 95, s. 1; 1937, c. 138, s. 6; 1941, c. 375, ss. 9, 10; 1951, c. 821, s. 2.)

Editor's Note.—The 1933 amendment substituted in subdivision (7) "State Board of Barber Examiners" for "State Board of Health." The 1937 amendment inserted "or thirty days in jail or both" in the first paragraph, and struck out "Willful and con-

tinued" formerly appearing before "violation" in subdivision (7). The 1941 amendment changed subdivision (7) and added subdivision (8).

The 1951 amendment added subdivision (12).

§ 86-23. Board to keep record of proceedings; data on registrants.—The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered barber and registered apprentice, and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times. (1929, c. 119, s. 22.)

§ 86-24. Barbering among members of same family.—This chapter shall not prevent a member of the family from practicing barbering on a member of his or her family. (1941, c. 375, s. 12.)

§ 86-25. Licensing and regulating barber schools and colleges.—The North Carolina State Board of Barber Examiners shall have the right to approve barber schools or colleges in the State, and to prescribe rules and regulations for their operation. However, no barber school or college shall be approved by the Board unless it meets all of the following provisions:

- (1) Provide a course of instruction of at least eight (8) months for each student, said course of instruction and training may be completed within a period of one thousand, five hundred and twenty-eight (1,528) hours. Attendance on each working day to consist of not less than eight (8) hours a day for five (5) days a week and four (4) hours a day one day a week.
- (2) Each instructor or teacher in any barber school or college must be the holder of an up-to-date certificate of registration as a registered barber in the State of North Carolina, and before being permitted to instruct or teach, shall pass an examination prescribed by the Board to determine his or her qualifications to instruct or teach. Such examination shall be based, among other things, on the provisions of subdivision (3) of this section. Any person desiring to take an instructor's examination must make application to the Board for examination to take instructor's examination on forms to be furnished by the Board and pay the instructor's examination fee and the instructor's examination fee shall be twenty-five dollars (\$25.00) and each person who passes the instructor's examination shall be issued a certificate of registration as a registered instructor by paying the issuance fee of ten dollars (\$10.00), and said instructor's certificate shall be renewed as of the thirtieth day of June of each and every year. All persons who have heretofore passed the instructor's examination in this State shall be issued an instructor's certificate of registration without examination by paying the required issuance fee provided they make application and pay the required fee on or before September 30, 1961. Any person whose instructor's certificate has expired for a period of three years or more shall be required to take and pass the instructor's examination before such certificate can be renewed.
- (3) Each student enrolled shall be given a complete course of instruction on the following subjects: Haircutting; shaving; shampooing, and the application of creams and lotions; care and preparation of tools and implements; scientific massaging and manipulating the muscles of the scalp, face, and neck; sanitation and hygiene; shedding and regrowth of hair; elementary chemistry relating to sterilization and antiseptics; instruction in common skin and scalp diseases to the extent that they may be recognized; pharmacology as it relates to preparations commonly used in barber shops; instruction in the use of ultra-violet, infra-red lamps and other electrical appliances and the effects of the use of each on the human skin; structure of the skin and hair; structure of the head and cranium; muscles of the head, neck and face; glands

of the skin and their various functions; cells, digestion; blood circulation; nerve points of the face.

- (4) An application for student's permit and doctor's certification must be filed with the State Board of Barber Examiners for each student before entering school or college. Such application to be worded as prescribed by the State Board of Barber Examiners. No student shall be entitled to enroll without student's permit.
- (5) A monthly report of each student enrolled shall be furnished the State Board of Barber Examiners on the first of each month. This report to be prescribed by the State Board of Barber Examiners.
- (6) All services rendered in schools or colleges on patrons must be done by students only. Instructors may be allowed to teach and aid the students in performing the various barber services, but they shall not be permitted to finish up the patrons after the student has completed work.
- (7) Each barber school shall have a manager who will be responsible for the overall operation of the said school. The manager must have passed an instructor's examination conducted by the Board as provided by this section and had at least two or more years of experience as an instructor in an approved barber school.
- (8) A sign must be displayed on front of the place of business designating that it is a school or college.
- (9) The Board of Barber Examiners shall have the right to withdraw the approval of any barber school or college for the violation of any of the provisions of this law, or any of the rules and regulations prescribed by the Board, subject to the provisions of G. S. 86-21 and chapter 150 of the General Statutes. (1945, c. 830, s. 8; 1961, c. 577, s. 5.)

Editor's Note. — The 1961 amendment rewrote subdivision (1) added the part of subdivision (2) beginning with the third

sentence, rewrote subdivision (7) and added the latter part of subdivision (9).

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Contractors.**

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ARTICLE 1.

General Contractors.

§ 87-1. "General contractor" defined; exemptions. — For the purpose of this article, a "general contractor" is defined as one who for a fixed price, commission, fee or wage, undertakes to bid upon or to construct any building, highway, sewer main, grading or any improvement or structure where the cost of the undertaking is twenty thousand dollars (\$20,000.00) or more and anyone who shall bid upon or engage in constructing any undertakings or improvements above mentioned in the State of North Carolina costing twenty thousand dollars (\$20,-

000.00) or more shall be deemed and held to have engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments. (1925, c. 318, s. 1; 1931, c. 62, s. 1; 1937, c. 429, s. 1; 1949, c. 936; 1953, c. 810.)

Editor's Note. — The 1957 amendment made this section applicable to bidding upon construction. The 1949 amendment rewrote the section, increasing the minimum cost mentioned from ten thousand to fif-

teen thousand dollars and adding the second paragraph. The 1953 amendment increased the amount to twenty thousand dollars.

§ 87-2. Licensing Board; organization.—There shall be a State Licensing Board for Contractors consisting of five members who shall be appointed by the Governor within sixty days after March 10, 1925. At least one member of such Board shall have as a larger part of his business the construction of highways; at least one member of such Board shall have as the larger part of his business the construction of public utilities; at least one member shall have as the larger part of his business the construction of buildings. The members of the first Board shall be appointed for one, two, three, four and five years respectively, their terms of office expiring on the thirty-first day of December of the said years. Thereafter in each year the Governor in like manner shall appoint to fill the vacancy caused by the expiration of the term of office a member for a term of five years. Each member shall hold over after the expiration of his term until his successor shall be duly appointed and qualified. If vacancies shall occur in the Board for any cause the same shall be filled by the appointment of the Governor. The Governor may remove any member of the Board for misconduct, incompetency or neglect of duty. (1925, c. 318, s. 2.)

§ 87-3. Members of Board to take oath.—Each member of the Board shall, before entering upon the discharge of the duties of his office, take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said Board and to uphold the Constitution of North Carolina and the Constitution of the United States. (1925, c. 318, s. 3.)

§ 87-4. First meeting of Board; officers; secretary-treasurer and assistants.—The said Board shall, within thirty days after its appointment by the Governor, meet in the city of Raleigh, at a time and place to be designated by the Governor, and organize by electing a chairman, a vice-chairman, and a secretary-treasurer, each to serve for one year. Said Board shall have power to make such bylaws, rules and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The secretary-treasurer shall give bond in such sum as the Board shall determine, with such security as shall be approved by the Board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. The secretary-treasurer need not be a member of the Board, and the Board is hereby authorized to employ a full-time secretary-treasurer, and such other assistants and make such other expenditures as may be necessary to the proper carrying out of the provisions of this article. (1925, c. 318, s. 4; 1941, c. 257, s. 4; 1947, c. 611; 1951, c. 453.)

Editor's Note.—The 1941 amendment added the last sentence, the 1947 amendment increased the salary of the secretary-treasurer, and the 1951 amendment deleted the provision as to salary.

§ 87-5. Seal of Board.—The Board shall adopt a seal for its own use. The seal shall have the words "Licensing Board for Contractors, State of North Carolina," and the secretary shall have charge, care and custody thereof. (1925, c. 318, s. 5.)

§ 87-6. Meetings; notice; quorum.—The Board shall meet twice each year, once in April and once in October, for the purpose of transacting such business as may properly come before it. At the April meeting in each year the Board shall elect officers. Special meetings may be held at such times as the Board may provide in the bylaws it shall adopt. Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the bylaws may provide. Three members of the Board shall constitute a quorum. (1925, c. 318, s. 6.)

§ 87-7. Records of Board; disposition of funds. — The secretary-treasurer shall keep a record of the proceedings of the said Board and shall receive and account for all moneys derived from the operation of this article. Any funds remaining in the hands of the secretary-treasurer to the credit of the Board after the expenses of the Board for the current year have been paid shall be paid over to the Greater University of North Carolina for the use of the School of Engineering through the North Carolina Engineering Foundation. The Board has the right, however, to retain at least ten per cent of the total expense it incurs for a year's operation to meet any emergency that may arise. As an expense of the Board, said Board is authorized to expend such funds as it deems necessary to provide retirement and disability compensation for its employees. (1925, c. 318, s. 7; 1953, c. 805, s. 1; 1959, c. 1184.)

Editor's Note. — The 1953 amendment substituted the words "the School of Engineering through the North Carolina Engineering Foundation" for the words "its engineering department" formerly appearing at the end of the second sentence. The 1959 amendment added the last sentence.

§ 87-8. Records; roster of licensed contractors.—The secretary-treasurer shall keep a record of the proceedings of the Board and a register of all applicants for license showing for each the date of application, name, qualifications, place of business, place of residence, and whether license was granted or refused. The books and register of this Board shall be prima facie evidence of all matters recorded therein. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the secretary of the Board during the month of January of each year; such roster shall be printed by the Board out of funds of said Board as provided in § 87-7. On or before the first day of March of each year the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of the receipts and expenditures of the Board, attested by the affidavits of the chairman and the secretary, and a copy of the said roster of licensed general contractors. (1925, c. 318, s. 8; 1937, c. 429, s. 2.)

Editor's Note. — The 1937 amendment eliminated the requirement for mailing rosters of contractors to the clerks of cities, towns and counties.

§ 87-9. Compliance with Federal Highway Act, etc.; contracts financed by federal road funds.—Nothing in this article shall operate to prevent the State Highway Commission from complying with any act of Congress and any rules and regulations promulgated by the United States Secretary of Agriculture for carrying out the provisions of the Federal Highway Act, or shall apply to any person, firm or corporation proposing to submit a bid or enter into contract for any work to be financed in whole or in part with federal aid road funds in such manner as will conflict with any act of Congress or any such rules and regulations of the United States Secretary of Agriculture. (1939, c. 230.)

Editor's Note.—By virtue of Acts 1957, c. 65, s. 11 the name of the State Highway and Public Works Commission was changed to the State Highway Commission.

§ 87-10. Application for license; examination; certificate; renewal.—Anyone hereafter desiring to be licensed as a general contractor in this State

shall make and file with the Board, thirty days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed for examination by the Board, which application shall be accompanied by the sum of eighty dollars (\$80.00) if the application is for an unlimited license, or sixty dollars (\$60.00) if the application is for an intermediate license, or forty dollars (\$40.00) if the application is for a limited license; the holder of an unlimited license shall be entitled to engage in the business of general contracting in North Carolina unlimited as to the value of any single project, the holder of an intermediate license shall be entitled to engage in the practice of general contracting in North Carolina but shall not be entitled to engage therein with respect to any single project of a value in excess of three hundred thousand dollars (\$300,000.00), the holder of a limited license shall be entitled to engage in the practice of general contracting in North Carolina but the holder shall not be entitled to engage therein with respect to any single project of a value in excess of seventy-five thousand dollars (\$75,000.00) and the license certificate shall be classified as hereinafter set forth. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability and integrity, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of chapter 150 of the General Statutes.

The board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into four classifications as the common use of the terms are known—that is,

- (1) Building contractor ;
- (2) Highway contractor ;
- (3) Public utilities contractor ; and
- (4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant,

and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of thirty days thereafter, and then be canceled, but the applicant shall then be entitled to a re-examination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this article.

Anyone failing to pass this examination may be re-examined at any regular meeting of the Board without additional fee. Certificate of license shall expire on the first day of December following the issuance or renewal and shall become invalid on that day unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without re-examination, by the payment of a fee to the secretary of the Board of sixty dollars (\$60.00) for unlimited license, forty dollars (\$40.00) for intermediate license and twenty dollars (\$20.00) for limited license: Provided, the classification herein provided for shall not apply to contracts of the State Highway Commission. (1925, c. 318, s. 9; 1931, c. 62, s. 2; 1937, c. 328; c. 429, s. 3; 1941, c. 257, s. 1; 1953, c. 805, s. 2; 1953, c. 1041, s. 3.)

Editor's Note. — The 1941 amendment rewrote the section. For comment on the amendment, see 19 N. C. Law Rev. 446.

The first 1953 amendment increased the fees in the first and last paragraphs. The second 1953 amendment rewrote the proviso at the end of the first paragraph,

adding the reference to chapter 150 of the General Statutes.

By virtue of Acts 1957, c. 65, s. 11 the name of the State Highway and Public Works Commission was changed to the State Highway Commission.

§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.—The Board shall have the power to revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency or misconduct in the practice of his profession, or willful violation of any provisions of this article. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed hereunder; such charges shall be in writing and sworn to by the complainant and submitted to the Board. Such charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of chapter 150 of the General Statutes.

The Board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, three or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its finding in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board. (1925, c. 318, s. 10; 1937, c. 429, s. 4; 1953, c. 1041, s. 4.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

Editor's Note.—The 1937 amendment rewrote this section.

The 1953 amendment rewrote the latter part of the first paragraph, and added thereto the reference to chapter 150 of the General Statutes.

§ 87-12. Certificate evidence of license.—The issuance of a certificate of license or limited license by this Board shall be evidence that the person, firm or corporation named therein is entitled to all the rights and privileges of a li-

censed or limited licensed general contractor while the said license remains unrevoked or unexpired. (1925, c. 318, s. 11; 1937, c. 429, s. 5.)

Editor's Note.—The 1937 amendment inserted "or limited license" in this section.

§ 87-13. Unauthorized practice of contracting; impersonating contractor; false certificate; giving false evidence to Board; penalties. — Any person, firm or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works enumerated in § 87-1, without having first complied with the provisions hereof, or who shall attempt to practice general contracting in this State, except as provided for in this article, and any person, firm, or corporation presenting or attempting to file as his own the licensed certificate of another or who shall give false or forged evidence of any kind to the Board or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked certificate of license, and any architect or engineer who receives or considers a bid from anyone not properly licensed under this article, shall be deemed guilty of a misdemeanor and shall for each such offense of which he is convicted be punished by a fine of not less than five hundred dollars or imprisonment of three months, or both fine and imprisonment in the discretion of the court. And the Board may, in its discretion, use its funds to defray the expense, legal or otherwise, in the prosecution of any violations of this article. (1925, c. 318, s. 12; 1931, c. 62, s. 3; 1937, c. 429, s. 6.)

Editor's Note.—The reference to architect or engineer was inserted by the 1931 amendment. The 1937 amendment changed the first sentence and added the last sentence.

§ 87-14. Regulations as to issue of building permits. — Any person, firm or corporation, upon making application to the building inspector or such other authority of any incorporated city, town or village in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading or any improvement or structure where the cost thereof is to be twenty thousand dollars (\$20,000.00) or more, shall, before he be entitled to the issuance of such permit, furnish satisfactory proof to such inspector or authority that he is duly licensed under the terms of this article to carry out or superintendent the same, and that he has paid the license tax required by the Revenue Act of the State of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied; and it shall be unlawful for such building inspector or other authority to issue or allow the issuance of such building permit unless and until the applicant has furnished evidence that he is either exempt from the provisions of this article or is duly licensed under this article to carry out or superintend the work for which permit has been applied; and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and such building inspector, or other such authority, violating the terms of this section shall be guilty of a misdemeanor and subject to a fine of not more than fifty dollars (\$50.00). (1925, c. 318, s. 13; 1931, c. 62, s. 4; 1937, c. 429, s. 7; 1949, c. 934; 1953, c. 809.)

Editor's Note.—Prior to the 1937 amendment this section related to exemptions from the article. The 1949 amendment increased the minimum cost mentioned from ten thousand to fifteen thousand dollars, and the 1953 amendment increased the amount to twenty thousand dollars.

§ 87-15. Copy of article included in specifications; bid not considered unless contractor licensed. — All architects and engineers preparing plans and specifications for work to be contracted in the State of North Carolina shall include in their invitations to bidders and in their specifications a copy of this article or such portions thereof as are deemed necessary to convey to the in-

vited bidder, whether he be a resident or nonresident of this State and whether a license has been issued to him or not, the information that it will be necessary for him to show evidence of a license before his bid is considered. (1925, c. 318, s. 14; 1937, c. 429, s. 8; 1941, c. 257, s. 2.)

Editor's Note. — The 1937 amendment which was struck out by the 1941 amendment added a second sentence to this section.

ARTICLE 2.

Plumbing and Heating Contractors.

§ 87-16. **Board of Examiners; appointment; term of office.**—For the purpose of carrying out the provisions of this article there is hereby created a State Board of Examiners of Plumbing and Heating Contractors, consisting of seven members to be appointed by the Governor within sixty days after February 27, 1931. The said Board shall consist of one member from the engineering school of the Greater University of North Carolina, one member from the State Board of Health, one member to be a plumbing inspector from some city of the State, one licensed master plumber and one heating contractor, one member from the division of public health of the Greater University of North Carolina, and one member to be a licensed air conditioning contractor. The term of office of said members shall be so designated by the Governor that the term of one member shall expire each year. Thereafter in each year the Governor shall in like manner appoint one person to fill the vacancy on the Board thus created. Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term. Whenever the word "Board" is used in this article, it shall be deemed and held to refer to the State Board of Examiners of Plumbing and Heating Contractors. (1931, c. 52, s. 1; 1939, c. 224, s. 1.)

Local Modification. — Anson: 1939, c. 308; Burke: 1939, c. 397; Carteret, Towns of Morehead City, Beaufort and Atlantic Beach: 1935, c. 338; Durham: 1939, c. 381; Moore, Towns of Southern Pines and Pinehurst: 1935, c. 338; New Hanover: 1935, c. 338; Stanly, Town of Albemarle: 1935, c. 338; Surry, Town of Elkin: 1939, c. 297; Wake: 1939, c. 381.

Editor's Note.—The 1939 amendment increased the members of the Board from five to seven and added the last sentence.

Cited in *Muse v. Morrison*, 234 N. C. 195, 66 S. E. (2d, 783 (1951)).

§ 87-17. **Removal, qualifications and compensation of members; allowance for expenses.**—The Governor may remove any member of the Board for misconduct, incompetency or neglect of duty. Each member of the Board shall be a citizen of the United States and a resident of this State at the time of his appointment. Each member of the Board shall receive ten dollars per day for attending sessions of the Board or of its committees, and for the time spent in necessary traveling in carrying out the provisions of this article, and in addition to the per diem compensation, each member shall be reimbursed by the Board from funds in its hands for necessary traveling expenses and for such expenses incurred in carrying out the provisions hereof, as shall be approved by a majority of the members of the Board. (1931, c. 52, s. 2.)

§ 87-18. **Organization meeting; officers; seal; rules; employment of personnel.**—The Board shall within thirty days after its appointment meet in the city of Raleigh and organize, and shall elect a chairman and secretary and treasurer, each to serve for one year. Thereafter said officers shall be elected annually. The secretary and treasurer shall give bond approved by the Board for the faithful performance of his duties, in such sum as the Board may, from time to time determine. The Board shall have a common seal, shall formulate rules to govern its actions, and is hereby authorized to employ such personnel as it may deem necessary to carry out the provisions of this article. (1931, c. 52, s. 3; 1939, c. 224, s. 2; 1953, c. 254, s. 1.)

Editor's Note. — The 1939 amendment struck out "and each member of the Board shall be empowered to administer oaths and have power to compel the attendance of witnesses, and it may take testimony

and proofs concerning all matters within its jurisdiction."

The 1953 amendment added the provision of the last sentence as to employment of personnel.

§ 87-19. Regular and special meetings; quorum. — The Board after holding its first meeting as hereinbefore provided, shall thereafter hold at least two regular meetings each year. Special meetings may be held at such times and places as the bylaws and/or rules of the Board provide; or as may be required in carrying out the provisions hereof. A quorum of the Board shall consist of not less than three members. (1931, c. 52, s. 4.)

§ 87-20. Record of proceedings and register of applicants; reports. — The Board shall keep a record of its proceedings and a register of all applicants for examination, showing the date of each application, the name, age and other qualifications, place of business and residence of each applicant. The books and records of the Board shall be *prima facie* evidence of the correctness of the contents thereof. On or before the first day of March of each year the Board shall submit to the Governor a report of its activities for the preceding year, and file with the Secretary of State a copy of such report, together with a statement of receipts and expenditures of the Board attested by the chairman and secretary. (1931, c. 52, s. 5.)

§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.—(a) Definitions.—For the purpose of this article:

- (1) The word "plumbing" is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.
- (2) The phrase "heating, group number one" shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.
- (3) The phrase "heating, group number two" shall be deemed and held to be the air conditioning system of a building, which provides conditioned air for comfort cooling by the lowering of temperature, requiring, a total of more than 15 motor horse power or a total of more than 15 tons of mechanical refrigeration, in single or multiple units, and air distribution ducts.
- (4) The word "heating" shall be deemed and held to refer to heating group number one or heating group number two, or both.
- (5) Any person, firm or corporation, who for a valuable consideration, installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or any combination thereof, as defined in this article, shall be deemed and held to be engaged in the business of plumbing or heating contracting.
- (6) The word "contractor" is hereby defined to be a person, firm or corporation engaged in the business of plumbing or heating contracting.

(b) Eligibility and Examination of Applicants; Necessity for License. — In order to protect the public health, comfort and safety, the Board shall prescribe the standard of efficiency to be required of an applicant for license, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design, fire hazards and related subjects as same pertain to either plumbing or heating; and as a result of such examination, the

Board shall issue a certificate of license in plumbing, heating group number one, or heating group number two, or any combination thereof, to applicants who pass the required examination, and a license shall be obtained, in accordance with the provisions of this article, before any person, firm or corporation shall engage in, or offer to engage in, the business of either plumbing or heating contracting, or any combination thereof. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, and it is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or any combination thereof. Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. A person who fails to pass any examination shall not be re-examined until the next regular examination.

(c) **To Whom Article Applies.**—The requirements of this article shall apply only to persons, firms or corporations who engage in, or attempt to engage in, the business of plumbing or heating contracting, or any combination thereof, in cities or towns having a population of more than 3500 in accordance with the last official United States census. The provisions of this article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating.

(d) **License Granted without Examination.**—Persons who have an established place of business in cities or towns which attain a population of more than 3500, as indicated by the last official United States census, and who produce satisfactory evidence that they are engaged in the business of plumbing or heating contracting, and who have paid the required State revenue tax for the census year in which the municipality attained a population of more than 3500, shall be granted a certificate of license in the classification in which they are qualified, without examination, upon application to the Board and payment of the license fee.

(e) **Posting License; License Number on Contracts, etc.**—The current license issued in accordance with the provisions of this article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. (1931, c. 52, s. 6; 1939, c. 224, s. 3; 1951, c. 953, ss. 1, 2; 1953, c. 254, s. 2.)

Editor's Note. — The 1953 amendment rewrote this section as changed by the 1951 amendment.

Validity of Classification of Subjects of Taxation.—If the classification of the subjects of taxation, provided for in this section, is not arbitrary and unjust it cannot be regarded in law as a breach of the rule of uniformity. Classification by population is not in itself arbitrary, unreasonable, or unjust. *Roach v. Durham*, 204 N. C. 587, 169 S. E. 149 (1933).

A journeyman plumber, duly licensed under the ordinance of a municipality, who furnishes no materials, supplies or fixtures, but merely attaches or replaces fixtures, and does not install plumbing

systems or make substantial alterations thereof, is not engaged in carrying on the business of plumbing and heating contracting within this section, since plumbing is defined in the act in terms of the "plumbing system" and the act refers to plumbing and heating "contractors," and even granting that the definition in the act is ambiguous and is susceptible to a construction which would include journeyman plumbers, the court could not adopt such construction, since the statute must be given that construction which is favorable to defendant and tends least to interfere with personal liberty. *State v. Mitchell*, 217 N. C. 244, 7 S. E. (2d) 567 (1940).

§ 87-22. License fee based on population; expiration and renewal; penalty.—All persons, firms, or corporations engaged in the business of either

plumbing or heating contracting, or both, in cities or towns of ten thousand inhabitants or more shall pay an annual license fee of fifty dollars, and in cities or towns of more than thirty-five hundred and less than ten thousand inhabitants an annual license fee of twenty-five dollars. In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to his last known address of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of said license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the Board shall increase said license fee ten per centum for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided, further, that no penalty will be imposed if one-half of the annual license fee is paid in January and the remaining one-half in June of each year. (1931, c. 52, s. 7; 1939, c. 224, s. 4.)

Editor's Note. — The 1939 amendment rewrote this section.

§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer. — The Board shall charge an examination fee of ten dollars (\$10.00) for each regular examination provided, and such funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. Such examination fee shall be retained by the Board irrespective of whether or not the applicant is granted a license. (1959, c. 865, s. 2.)

§ 87-23. Revocation or suspension of license for cause.—The Board shall have power to revoke or suspend the license of any plumbing or heating contractor, or both, who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of either a plumbing or heating contractor, or both, as defined in this article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this article, against any plumbing or heating contractor, or both, who is licensed under the provisions of this article. All of such charges shall be in writing and verified by the complainant, and such charges shall be heard and determined by the Board in accordance with the provisions of chapter 150 of the General Statutes. (1931, c. 52, s. 8; 1939, c. 224, s. 5; 1953, c. 1041, s. 5.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

Editor's Note. — The 1939 amendment inserted "or suspend" near the beginning of the section and made other changes.

The 1953 amendment rewrote this section and added the reference to chapter 150 of the General Statutes.

Purpose of Law.—The manifest purpose of the law is to promote the health, comfort, and safety of the people by regulating plumbing and heating in public and private buildings. *Roach v. Durham*, 204 N. C. 587, 169 S. E. 149 (1933).

§ 87-24. Reissuance of revoked licenses; replacing lost or destroyed licenses.—The Board may in its discretion reissue license to any person, firm or corporation whose license may have been revoked: Provided, three or more members of the Board vote in favor of such reissuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board. (1931, c. 52, s. 9.)

§ 87-25. Violations made misdemeanor; employees of licensees excepted.—Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of either plumbing or heating contracting, or both, as defined in § 87-21, without first having been licensed to engage in such business, or businesses, as required by the provisions of this article; or any person, firm or corporation holding a limited heating license under the provisions of this article who shall practice or offer to practice or carry on any type of heating contracting not authorized by said limited license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this article, shall be guilty of a misdemeanor and upon conviction fined not less than one hundred dollars or imprisoned for not more than three months, or both, in the discretion of the court. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of the article, shall not be construed to have engaged in the business of either plumbing or heating contracting, or both. (1931, c. 52, s. 10; 1939, c. 224, s. 6.)

Editor's Note. — The 1939 amendment rewrote this section.

Acts Not Constituting Contracting. — A journeyman plumber, contracting and agreeing with various persons to perform labor required to install certain plumbing at a stipulated lump sum price, and who does not maintain a fixed place of business or sell or contract to furnish materials, supplies or fixtures of any kind,

and who fails to obtain a license from the State Board of Examiners of Plumbing and Heating Contractors, is not guilty of a misdemeanor under the provisions of this section, since his occupation does not constitute carrying on the "business of plumbing and heating contracting" within the meaning of the penal provisions of the statute. *State v. Ingle*, 214 N. C. 276, 199 S. E. 10 (1938).

§ 87-26. Corporations; partnerships; persons doing business under trade name.—(a) A license may be issued in the name of a corporation, provided, one or more officers, or full time employee or employees, or both, empowered to act for the corporation, are licensed in accordance with the provisions of this article; and provided such officers or employee or employees shall execute contracts to the extent of their license qualifications in the name of the said corporation and exercise general supervision over the work done thereunder.

(b) A license may be issued in the name of a partnership provided one or more general partners, or full time employee or employees empowered to act for the partnership, are licensed in accordance with the provisions of this article, and provided such general partners or employee or employees shall execute contracts to the extent of their license qualifications in the name of the said partnership, and exercise general supervision over the work done thereunder.

(c) A license may be issued in an assumed or designated trade name, provided the owner of the business conducted thereunder, or full time employee or employees empowered to act for the owner, are licensed in accordance with the provisions of this article; and such owner or employee or employees shall execute contracts to the extent of their license qualifications, in the said trade name, and exercise general supervision over the work done thereunder.

(d) A certificate of license may be issued in accordance with the provisions of this article upon payment of the annual license fee by such corporation, partnership, or owner of the business conducted under an assumed or designated trade name, as the case may be, and the names and qualifications of individual licensee or licensees connected therewith shall be indicated on the aforesaid license. (1931, c. 52, s. 12; 1939, c. 224, s. 8; 1957, c. 815.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, rewrote this section.

§ 87-27. **License fees payable in advance; application of.** — All license fees shall be paid in advance to the secretary and treasurer of the Board and by him held as a fund for the use of the Board. The compensation and expenses of the members of the Board as herein provided, the salaries of its employees, and all expenses incurred in the discharge of its duties under this article shall be paid out of such fund, upon the warrant of the chairman and secretary and treasurer. (1931, c. 52, s. 13; 1933, c. 57; 1939, c. 224, s. 9; 1953, c. 254, s. 3; 1959, c. 865, s. 1.)

Editor's Note. — The 1933 amendment made a former proviso applicable in towns of less than 10,000 instead of 5,000, and added a proviso relating to renewals. These provisos were deleted by the 1939 amendment.

The 1953 amendment substituted "chairman" for "president" near the end of the second sentence.

The 1959 amendment deleted the former proviso relating to the payment of a portion of the surplus to the State Treasurer.

It is obvious that the pervading intent

of this section is to provide for the maintenance of the Board and not to impose a tax as a part of the general revenue of the State and thereby exclude the operation of the police power. It is true that the act does not in express words authorize the exercise of this power, but in our opinion it appears by implication that the exercise of such power was intended. *Roach v. Durham*, 204 N. C. 587, 169 S. E. 149 (1933).

Cited in *Muse v. Morrison*, 234 N. C. 195, 66 S. E. (2d) 783 (1951).

ARTICLE 3.

Tile Contractors.

§ 87-28. **License required of tile contractors.**—In order to protect the health and safety of the people of North Carolina any person, firm or corporation desiring to engage in tile contracting within the State of North Carolina as defined in this article shall make application in writing for license to the North Carolina Licensing Board for Tile Contractors: Provided, that the provisions of this article shall not apply to State colleges, hospitals and other State buildings. (1937, c. 86, s. 1; 1941, c. 219, s. 1.)

Editor's Note. — The first fourteen words of the section were added by the 1941 amendment, which changed the last word in the section from "institutions" to "buildings." For comment on the amendment, see 19 N. C. Law Rev. 446.

This article is unconstitutional as an unwarranted interference with the fundamental right to engage in an ordinary

and innocuous occupation in contravention of article 1, §§ 1, 7, 17 and 31 of the Constitution of North Carolina. The statute cannot be upheld as an exercise of the police power, since its provisions have no substantial relation to the public health, safety or welfare but tend to create a monopoly. *Roller v. Allen*, 245 N. C. 516, 96 S. E. (2d) 851 (1957).

§ 87-29. **Tile contracting defined.**—Engaging in tile contracting for the purpose of this article is defined to mean any person, firm or corporation who for profit undertakes to lay, set or install ceramic tile, marble, or terrazzo floors or walls in buildings for private or public use. (1937, c. 86, s. 2; 1939, c. 75, s. 1; 1941, c. 219, s. 2.)

Editor's Note.—The 1953 amendment rewrote this section as changed by the 1939 amendment. For comment on 1939

amendment to this article, see 17 N. C. Law Rev. 337.

§ 87-30. **Licensing Board created; membership; appointment and removal.**—The North Carolina Licensing Board for Tile Contractors shall consist of five members, each of whom shall be a reputable tile contractor residing in the State of North Carolina who has been engaged in the business of tile contracting for at least five years. The members of the first Board shall be appointed within sixty days after March 1, 1937, for terms of one, two, three, four, and five years by the Governor, and the Governor in each year thereafter shall appoint one licensed tile contractor to fill the vacancy caused by the expiration

of the term of office, the term of such new member to be for five years. If vacancy shall occur in the Board for any cause the same shall be filled by appointment of the Governor. The Governor shall have the power to remove from office any member of said Board for incapacity, misconduct, or neglect of duty. (1937, c. 86, s. 3.)

§ 87-31. Oath of office; organization; meetings; authority; compensation.—The members of said Board shall qualify by taking an oath of office in writing to be filed with the Secretary of State to uphold the Constitution of the United States and the Constitution of North Carolina and to properly perform the duties of his office. The Board shall elect a president, vice-president, and secretary-treasurer. A majority of the members of the Board shall constitute a quorum. Regular meetings shall be held at least twice a year, at such time and place as shall be deemed most convenient. Due notice of such meetings shall be given to all applicants for license in such manner as the bylaws may provide. The Board may prescribe regulations, rules, and bylaws for its own proceedings and government and for the examination of applicants not in conflict with the laws of North Carolina. Special meetings may be held upon a call of three members of the Board. Each member of the Board shall receive for his services the sum of ten (\$10.00) dollars per day for each and every day spent in the performance of his duties, and shall be reimbursed for all necessary expenses incurred in the discharge of his duties. (1937, c. 86, s. 4.)

§ 87-32. Secretary-treasurer, duties and bond; seal; annual report to Governor.—It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the Board and all licenses issued, and to pay all necessary expenses of the Board out of the funds collected, and he shall give such bond as the Board shall direct. All funds in excess of the sum of one hundred (\$100.00) dollars remaining in the hands of the secretary-treasurer, after all of the expenses of the Board for the current year have been paid, shall be paid over to the Greater University of North Carolina for the use of the ceramic engineering department of North Carolina State College to be devoted by it to the development of the safe, proper, and sanitary uses of tile. The Board shall adopt a seal to be affixed to all of its official documents, and shall make an annual report of its proceedings to the Governor on or before the first day of March of each year, which report shall contain an account of all moneys received and disbursed. (1937, c. 86, s. 5.)

§ 87-33. Applications for examinations; fee; qualifications of applicants.—Any person desiring to be examined by said Board shall at least two weeks prior to the holding of an examination file an application upon the prescribed form to be furnished by the Board. Each applicant upon making an application shall pay to the secretary-treasurer of the Board an examination fee of twenty-five dollars (\$25.00). To qualify and obtain a license such applicant must be a citizen of the United States, or person who has duly declared his intention of becoming such citizen, who shall have had at least two years' experience, or its equivalent, next preceding the date of his application for license as a tile, marble and terrazzo student or mechanic, possessing the knowledge to specify the proper kind of tile, marble and terrazzo floors or walls for use in private or public buildings, and the ability to lay, set or install tile, marble and terrazzo in accordance with specifications and blueprints ordinarily used in the tile contracting business. (1937, c. 86, s. 6; 1941, c. 219, s. 6.)

§ 87-34. Fee for annual renewal of registration; license revoked for default; penalty for reinstatement.—Every licensed tile contractor who desires to continue in business in this State shall annually, on or before the first day of January of each year, pay to the secretary-treasurer of the Board the sum of fifty (\$50.00) dollars for which he shall receive a renewal of such registration.

and in case of the default of such registration by any person the license shall be revoked. Any licensed tile contractor whose license has been revoked for failure to pay the renewal fee, as herein provided, may apply to have the same re-granted upon payment of all renewal fees that should have been paid, together with a penalty of ten (\$10.00) dollars. (1937, c. 86, s. 7.)

§ 87-35. Power of Board to revoke or suspend licenses; charges; procedure.—The Board shall have the power after hearing to revoke or suspend the license of any tile contractor upon satisfactory proof that such license was secured by fraud or deceit practiced upon the Board, or upon satisfactory proof that such tile contractor is guilty of gross negligence, incompetency, or inefficiency in carrying on the business of tile contracting. Each charge against any contractor submitted to the Board shall be in writing and sworn to by the complainant. The procedure for the revocation or suspension of a license shall be in accordance with the provisions of chapter 150 of the General Statutes. (1937, c. 86, s. 8; 1953, c. 1041, s. 6.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-2 to 150-8.

Editor's Note. — The 1953 amendment added the reference to chapter 150 of the General Statutes, and made other changes.

License Not Required for Dismantling of Plumbing.—The license required by this section is for those who install, alter, or restore plumbing, and is not required for the dismantling of plumbing. *State v. Kermon*, 232 N. C. 342, 60 S. E. (2d) 580 (1950).

§ 87-36. No examination required of present contractors.—All persons, firms or corporations now actively engaged in the tile contracting business in the State of North Carolina shall upon filing affidavit with the Board be entitled to and receive a license without examination upon payment of the annual license fee. (1937, c. 86, s. 9; 1939, c. 75, s. 3; 1941, c. 219, s. 9.)

Editor's Note. — The 1939 amendment added a proviso exempting persons entering into contracts where the contract price did not exceed two hundred and fifty dol-

lars. The 1941 amendment inserted "be entitled to" and omitted the proviso added by the 1939 amendment.

§ 87-37. License to one member of firm, etc., sufficient; employees exempt; restricted application of article.—Any firm, partnership or corporation may engage in the tile contracting business in this State, provided, one member of said firm, partnership or corporation is a licensed tile contractor actually employed by said firm, partnership or corporation, and personally present in charge of such tile contracting work. No license shall be required of any mechanic or employee of a licensed tile contractor performing duties for the employer. Provided, however, that none of the provisions of this article shall apply to jobs in which the total cost of tile, labor and other materials necessary for laying same is less than one hundred and fifty dollars (\$150.00). (1937, c. 86, s. 10; 1941, c. 219, s. 10.)

Editor's Note. — The 1941 amendment made changes in the wording of the first

sentence and added the proviso at the end of the section.

§ 87-38. Penalty for misrepresentation or fraud in procuring or maintaining license certificate.—Any person, firm, or corporation not being duly licensed to engage in tile contracting in this State as provided for in this article who engages therein, and any person, firm, or corporation presenting as his own the license certificate of another or who shall give false or forged evidence of any kind to the Board or any member thereof in maintaining a certificate of license, or who shall falsely impersonate another, or who shall use an expired or revoked certificate of license, or an architect, engineer or contractor who receives or considers a bid from anyone not properly licensed under this article, shall be guilty of a misdemeanor, and for each offense of which he is convicted be punished by a fine of not less than two hundred (\$200.00) dollars, or

by imprisonment of not less than two months or both fined and imprisoned in the discretion of the court. (1937, c. 86, s. 11; 1939, c. 75, s. 4.)

Editor's Note.—The 1939 amendment inserted "who engages therein" after the word "article" near the beginning of the section.

Prior to the 1939 amendment it was held that the section failed to define the

acts prohibited, the doing of which should constitute a misdemeanor, and that such fatal deficiency could not be supplied by judicial interpolation of words to constitute a criminal offense. *State v. Julian*, 214 N. C. 574, 200 S. E. 24 (1938).

ARTICLE 4.

Electrical Contractors.

§ 87-39. Board of Examiners created; members appointed and officers; terms; principal office; meetings; quorum; compensation and expenses.—A State Board of Examiners of Electrical Contractors is hereby created, which shall consist of the State Electrical Engineer, who shall act as chairman of the Board, the secretary of the Association of Electrical Contractors of North Carolina, and three other members to be appointed by the Governor as follows: One from the faculty of the engineering school of the Greater University of North Carolina, one person who is serving as chief electrical inspector of a municipality in the State of North Carolina, and one representative of a firm, partnership or corporation located in the State of North Carolina and engaged in the business of electrical contracting. Of the three appointed members one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, and until their respective successors are appointed and qualified; and thereafter each appointment shall be for a term of three years. The principal office of the Board shall be at such place as shall be designated by a majority of the members thereof. The Board of Examiners shall hold regular meetings quarterly and may hold special meetings on call of the chairman. They shall annually appoint and at their pleasure remove a secretary-treasurer, who need not be a member of the Board, and whose duties shall be prescribed and whose compensation shall be fixed by the Board. Three members of the Board shall constitute a quorum. The appointive members of the Board shall be entitled to receive the sum of seven dollars (\$7.00) and actual and necessary expenses for each day actually devoted to the performance of their duties under this article: Provided, however, that none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. (1937, c. 87, s. 1.)

§ 87-40. Board to appoint secretary-treasurer within thirty days; bond required; oath of membership.—The Board of Examiners of Electrical Contractors shall within thirty days after its appointment meet at the time and place designated by the chairman and appoint a secretary-treasurer. The secretary-treasurer shall give a bond approved by the Board for the faithful performance of his duties in such form as the Board may from time to time prescribe. The Board shall have a common seal and shall formulate rules to govern its actions and may take testimony and proof concerning all matters within its jurisdiction. Before entering upon the performance of their duties hereunder each member of the Board shall take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said Board, and to uphold the Constitution of North Carolina and the Constitution of the United States. (1937, c. 87, s. 2.)

§ 87-41. Seal for Board; duties of secretary-treasurer; surplus funds; contingent or emergency fund.—The Board shall adopt a seal for its

own use. The seal shall have inscribed thereon the words "Board of Examiners of Electrical Contractors, State of North Carolina," and the secretary shall have charge and custody thereof. The secretary-treasurer shall keep a record of the proceedings of said Board and shall receive and account for all moneys derived under the operations of this article. Any funds remaining in the hands of the secretary-treasurer to the credit of the Board after the expenses of the Board for the current year have been paid shall be paid over to the electrical engineering department of the Greater University of North Carolina to be used for electrical experimentations: Provided, however, the Board shall have the right to retain as a contingent or emergency fund ten per cent of such gross receipts in each year of its operation. (1937, c. 87, s. 3.)

§ 87-42. Board to give examinations and issue licenses. — It shall be the duty of the Board of Examiners of Electrical Contractors to receive all applications for licenses filed by persons, or representatives or firms or corporations seeking to enter upon or continue in the electrical contracting business within the State of North Carolina, as such business is herein defined, and upon proper qualification of such applicant to issue the license applied for; to prescribe the conditions of examination of, and, subject to the provisions of this article, to give examinations to all persons who are under the provisions of this article required to take such examination. (1937, c. 87, s. 4.)

§ 87-43. Persons required to obtain licenses; examination required; licenses for firms or corporations. — No person, firm or corporation shall engage in the business of installing, maintaining, altering or repairing within the State of North Carolina any electric wiring, devices, appliances or equipment unless such person, firm or corporation shall have received from the Board of Examiners of Electrical Contractors an electrical contractor's license: Provided, however, that the provisions of this article shall not apply

- (1) To the installation, construction, or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
- (2) To the installation, construction, maintenance, or repair of telephone, telegraph, or signal systems, by public utilities;
- (3) To any mechanic employed by a licensee of this Board;
- (4) To the installation, construction or maintenance of electrical equipment and wiring for temporary use by contractors in connection with the work of construction;
- (5) To the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by persons, firms or corporations, upon their own property, who regularly employ one or more electricians or mechanics for the purpose of installing, maintaining or repairing of electrical wiring, devices or equipment used for the conducting of the business of said persons, firms or corporations;
- (6) To the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by State institutions and private educational institutions which maintain a private electrical department;
- (7) To the replacement of lamps and fuses and to the installation and servicing of appliances and equipment connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed.

No license shall be issued by said Board without an examination of the applicant for the purpose of ascertaining his qualifications for such work, but no such examination shall be required for the annual renewal of such license: Provided, however, that persons, firms or corporations residing in the State of North Carolina on March 1, 1937, who have paid the license fees required of electrical

contractors by the State Revenue Act of one thousand nine hundred and thirty-five, upon proper certification or establishment of such fact, shall be granted a license by the Board of Examiners under this article without examination; provided, further, any person who upon June 22, 1961, has attained the age of at least 40 and who has continuously engaged in the performance of electrical work under the direction and supervision of a licensee under this article who is the parent of such person and who has been serving continuously since January 1, 1939, as a mechanic employed by a licensee of said Board, as described in subdivision (3) of the first paragraph of this section upon proper certification by the employer licensee or other establishment of such fact, shall be granted a license by said Board under this article without examination. Individuals, firms or corporations shall be eligible to secure licenses from the Board of Examiners: Provided they have regularly on active duty in their respective principal places of business at least one person duly qualified as an electrical contractor under the provisions of this article; and provided further that they have regularly on active duty in each branch place of business operated by them at least one person, who has passed the examination required by this article for electrical contractors, whose duty it shall be to direct and supervise any and all electrical wiring or electrical installations done or made by such branch place or places of business. No license or renewal of any license shall be issued to applicant until the fees herein prescribed shall have been paid. (1937, c. 87, s. 5; 1951, c. 650, ss. 1-2½; 1953, c. 595; 1961, c. 1165.)

Editor's Note. — The 1951 amendment struck out "for which a permit is now or may hereafter be required by the statutes of the State of North Carolina, or by municipal or county ordinances in the county in which such work is undertaken, dealing with the erection and inspection of buildings and fire protection and electrical installation", which formerly appeared after

the word "equipment" in the opening paragraph. The amendment also rewrote the latter part of exemption (5) and added exemption (7).

The 1953 amendment rewrote the last two sentences of this section.

The 1961 amendment inserted the second proviso in the last paragraph of this section.

§ 87-44. **Fees for licenses.**—Before a license is granted to any applicant, and before any expiring license is renewed, the applicant shall pay to the Board of Examiners of Electrical Contractors a fee in such an amount as is herein specified for the license to be granted or renewed as follows:

For a Class 1 Electrical contractor's license, State-wide	\$25.00
For a Class 2 Electrical contractor's license, for one county only	5.00

(1937, c. 87, s. 6.)

§ 87-45. **Licenses expire on June 30th, following issuance; renewal; fees used for administrative expense.**—Each license issued hereunder shall expire on June thirtieth following the date of its issuance, and shall be renewed by the Board of Examiners of Electrical Contractors upon application of the holder of the license and payment of the required fee at any time within thirty days before the date of such expiration. Licenses renewed subsequent to the date of expiration thereof may in the discretion of the Board be subject to a penalty not exceeding ten per cent. The fees collected for licenses under this article shall be used for the expenses of the Board of Examiners in carrying out the provisions of this article, subject to the provisions herein made with reference to payment of surplus to the electrical engineering department of the Greater University of North Carolina for electrical experimental purposes. (1937, c. 87, s. 7.)

§ 87-46. **Examination before local examiner.** — In order that applicants for licenses hereunder who are by the provisions of this article required to take an examination before the issuance thereof shall not be subject to any unreasonable inconvenience in connection therewith, the Board of Examiners of Electrical Contractors may, and upon the request of the board of commissioners

of any county shall delegate to the electrical inspector of the county in which such applicant resides, or if there be no county electrical inspector, then to the electrical inspector of any municipality therein, the authority to conduct examinations of such applicant or applicants residing in such county, such examination, however, to be as prescribed by the Board of Examiners. In such an event the local examiner herein provided for shall transmit to the Board of Examiners of Electrical Contractors the results of such examination, and, if approved by the Board, licenses on the basis of such examination shall be issued to the applicants upon the payment of the fees herein prescribed. (1937, c. 87, s. 8.)

§ 87-47. License signed by chairman and secretary-treasurer under seal of Board; display in place of business required; register of licenses; records.—Licenses issued hereunder shall be signed by the chairman and the secretary-treasurer of the Board of Examiners, under the seal of the Board. Every holder of license shall keep his certificate of license displayed in a conspicuous place in his principal place of business. The secretary of the Board shall keep a register of all licenses to electrical contractors, which said register shall be open during the ordinary business hours for public inspection. The Board of Examiners shall keep minutes of all of its proceedings and an accurate record of its receipts and disbursements, which record shall be audited at the close of each fiscal year by a certified public accountant, and within thirty days after the close of each fiscal year a summary of its proceedings and a copy of the audit of its books shall be filed with the Governor and the Treasurer of the State. (1937, c. 87, s. 9.)

§ 87-48. Licenses not assignable or transferable; suspension or revocation.—No license issued in accordance with the provisions of this article shall be assignable or transferable. Any such license may, in accordance with the provisions of chapter 150 of the General Statutes, be suspended for a definite length of time or revoked by the Board of Examiners if the person, firm or corporation holding such license shall willfully or by reason of incompetence violate any of the statutes of the State of North Carolina, or any ordinances of any municipality or county relating to the installation, maintenance, alteration or repair of electric wiring, devices, appliances or equipment. (1937, c. 87, s. 10; 1953, c. 1041, s. 7.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

Editor's Note.—The 1941 amendment inserted "in accordance with the pro-

visions of chapter 150 of the General Statutes" in lieu of "after hearing" formerly appearing in the second line of this section.

§ 87-49. License does not relieve from compliance with codes or laws.—Nothing in this article shall relieve the holder or holders of licenses issued under the provisions hereof from complying with the building or electrical codes or statutes or ordinances of the State of North Carolina, or of any county or municipality thereof, now in force or hereafter enacted. (1937, c. 87, s. 11.)

§ 87-50. Responsibility for negligence; nonliability of Board. — Nothing in this article shall be construed as relieving the holder of any license issued hereunder from responsibility or liability for negligent acts on the part of such holder in connection with electrical contracting work; nor shall the Board of Examiners of Electrical Contractors be accountable in damages, or otherwise, for the negligent act or acts of any holder of such license. (1937, c. 87, s. 12.)

§ 87-51. Penalty for violation of article.—Any person, firm or corporation who shall violate any of the provisions of this article, or who shall engage or undertake to engage in the business of electrical contracting as herein

defined, without first having obtained a license under the provisions of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars (\$25.00) or more than fifty dollars (\$50.00) for each offense. Conviction of a violation of this article on the part of a holder of a license issued hereunder shall automatically have the effect of suspending such license until such time as it shall have been reinstated by the Board of Examiners of Electrical Contractors. (1937, c. 87, s. 13.)

ARTICLE 5.

Refrigeration Contractors.

§ 87-52. **Board of Examiners; appointment; term of office.** — For the purpose of carrying out the provisions of this article there is hereby created a State Board of Refrigeration Examiners consisting of seven members to be appointed by the Governor within sixty days after January 1, 1956. The Board shall consist of an employee of the State Board of Health, one member from the Engineering School of the Greater University of North Carolina, two members who are licensed refrigeration contractors, one member from the Division of Public Health of the Greater University of North Carolina, one member who is a manufacturer of refrigeration equipment and one member who is a wholesaler of refrigeration equipment. The term of office of said members shall be further designated by the Governor so that the term of one member shall expire each year. Thereafter in each year the Governor shall in like manner appoint one person to fill the vacancy on the Board thus created. Vacancies in the membership of the Board shall be filled by appointment of the Governor for the unexpired term. Whenever the word "Board" is used in this article is shall be deemed and held to refer to the State Board of Refrigeration Examiners. (1955, c. 912, s. 1; 1959, c. 1206, s. 2.)

Editor's Note. — The 1959 amendment struck out "one member from" near the beginning of the second sentence and inserted in lieu thereof the words "an employee of."

For comment on this article, see 33 N. C. Law Rev. 520.

§ 87-53. **Removal, qualifications and compensation of members; allowance for expenses.**—The Governor may remove any member of the Board for misconduct, incompetency or neglect of duty. Each member of the Board shall be a citizen of the United States and a resident of this State at the time of his appointment. Each member of the Board shall receive fifteen dollars (\$15.00) per day for attending sessions of the Board or of its committees, and for the time spent in necessary traveling in carrying out the provisions of this article, and in addition to the per diem compensation, each member shall be reimbursed by the Board from funds in its hands for necessary traveling expenses and for such expenses incurred in carrying out the provisions hereof, as shall be approved by a majority of the members of the Board. (1955, c. 912, s. 2.)

§ 87-54. **Organization meeting; officers; seal; rules.**—The Board shall within thirty days after its appointment meet in the city of Raleigh and organize, and shall elect a chairman and secretary and treasurer, each to serve for one year. Thereafter said officer shall be elected annually. The secretary and treasurer shall give bond approved by the Board for the faithful performance of his duties, in such sum as the Board may, from time to time, determine. The Board shall have a common seal, shall formulate rules to govern its actions, and is hereby authorized to employ such personnel as it may deem necessary to carry out the provisions of this article. (1955, c. 912, s. 3.)

§ 87-55. **Regular and special meetings; quorum.** — The Board after holding its first meeting, as hereinbefore provided, shall thereafter hold at least two regular meetings each year. Special meetings may be held at such times and places as the bylaws and/or rules of the Board provide; or as may be required in carrying out the provisions hereof. A quorum of the Board shall consist of four members. (1955, c. 912, s. 4.)

§ 87-56. **Record of proceedings and register of applicants; reports.**—The Board shall keep a record of its proceedings and a register of all applicants for examination, showing the date of each application, the name, age and other qualifications, places of business and residence of each applicant. The books and records of the Board shall be prima facie evidence of the correctness of the contents thereof. On or before the first day of March of each year the Board shall submit to the Governor a report of its activities for the preceding year, and file with the Secretary of State a copy of such report, together with a statement of receipts and expenditures of the Board attested by the chairman and secretary. (1955, c. 912, s. 5.)

§ 87-57. **License required of persons, firms or corporations engaged in the refrigeration trade.**—In order to protect the public health, safety, morals, order and general welfare of the people of this State, all persons, firms or corporations, whether resident or nonresident of the State of North Carolina, before engaging in refrigeration business or contracting, as defined in this article, shall first apply to the Board and shall procure a license. (1955, c. 912, s. 6.)

§ 87-58. **Definitions; contractors licensed by Board; towns exempted; examinations.**—(a) As applied in this article, refrigeration trade or business is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions, provided however, that this article shall not apply to the replacement of lamps and fuses and to the installation and servicing of appliances and equipment connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed, “or devices using gas as a fuel, or ice using or storing equipment”; and provided, further, that the provisions of this article shall not repeal any wording, phrase, or paragraph as set forth in North Carolina General Statutes, chapter 87, article 2; and provided, further, that this article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any air conditioning units, devices or systems for the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.

(b) The phrase “refrigeration contractor” is hereby defined to be a person, firm or corporation engaged in the business of refrigeration contracting.

(c) Any person, firm or corporation who for valuable consideration engages in the refrigeration business or trade as herein defined shall be deemed and held to be in the business of refrigeration contracting.

(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of efficiency to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as same pertain to refrigera-

tion; and as a result of such examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting as herein defined. Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. A person who fails to pass any examination shall not be re-examined until the next regular examination.

(e) The requirements of this article shall apply only to persons, firms or corporations who engage in, or attempt to engage in, the business of refrigeration in cities or towns having a population of more than 10,000 in accordance with the last official United States census.

(f) Licenses Granted Without Examination.—Persons who had an established place of business prior to January 1, 1956, and persons who have an established place of business in cities or towns which attain a population of more than 10,000, as indicated by the last official United States census, and who produce satisfactory evidence that they are engaged in the refrigeration business as herein defined, and who have paid the required State revenue tax for the census year in which the municipality attained a population of more than 10,000, shall be granted a certificate of license, without examination, upon application to the Board and payment of the license fee.

(g) The current license issued in accordance with the provisions of this article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. (1955, c. 912, s. 7; 1959, c. 1206, s. 1.)

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

§ 87-59. **Revocation or suspension of license for cause.**—The Board shall have power to revoke or suspend the license of any refrigeration contractor who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a refrigeration contractor as defined in this article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this article, against any refrigeration contractor who is licensed under the provisions of this article. All of such charges shall be in writing and verified by the complainant, and such charges shall be heard and determined by the Board in accordance with the provisions of chapter 150 of the General Statutes. (1955, c. 912, s. 8.)

§ 87-60. **Re-issuance of revoked licenses; replacing lost or destroyed licenses.**—The Board may in its discretion re-issue license to any person, firm or corporation whose license may have been revoked: Provided, three or more members of the Board vote in favor of such re-issuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board. (1955, c. 912, s. 9.)

§ 87-61. **Violations made misdemeanor; employees of licensees excepted.**—Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in

this article, without first having been licensed to engage in such business, or businesses, as required by the provisions of this article; or any person, firm or corporation holding a refrigeration license under the provisions of this article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by said license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this article, shall be guilty of a misdemeanor and upon conviction fined not less than one hundred dollars (\$100.00) or imprisoned for not more than three months, or both, in the discretion of the court. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of this article, shall not be construed to have engaged in the business of refrigeration contracting. (1955, c. 912, s. 10.)

§ 87-62. Only one person in partnership or corporation need have license.—A corporation or partnership may engage in the business of refrigeration contracting provided one or more persons connected with such corporation or partnership is registered and licensed as herein required; and provided such licensed person shall execute all contracts, exercise general supervision over the work done thereunder and be responsible for compliance with all the provisions of this article. Nothing in this article shall prohibit any employee from becoming licensed pursuant to the provisions thereof. (1955, c. 912, s. 11.)

§ 87-63. License fees payable in advance; application of.—All license fees shall be paid in advance as hereafter provided to the secretary and treasurer of the Board and by him held as a fund for the use of the Board. The compensation and expenses of the members of the Board as herein provided, the salaries of its employees, and all expenses incurred in the discharge of its duties under this article shall be paid out of such fund, upon the warrant of the chairman and secretary and treasurer: Provided, upon the payment of the necessary expenses of the Board as herein set out, and the retention by it of twenty-five per centum (25%) of the balance of funds collected hereunder, the residue, if any, shall be paid to the State Treasurer. (1955, c. 912, s. 12.)

§ 87-64. Examination and license fees; annual renewal.—Each applicant for a license by examination shall pay to the secretary and treasurer of the Board an examination fee in an amount not to exceed the sum of twenty-five dollars (\$25.00) before being admitted to the examination. In the event said applicant shall fail to pass the examination, the examination fee so paid shall be refunded by the Board.

The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee of twenty-five dollars (\$25.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows his license to lapse may be reinstated by the Board upon payment of a fee of thirty dollars (\$30.00); provided any person who fails to renew his license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business. (1955, c. 912, s. 13.)

ARTICLE 6.

Water Well Contractors.

§ 87-65. **Short title.**—This article shall be known and may be cited as the “Water Well Contractor’s License Act.” (1961, c. 997, s. 1.)

Editor’s Note. — The Act adding this article is effective as of Jan. 1, 1962.

§ 87-66. **Definitions.**—As used in this article, unless the context otherwise requires:

- (1) “Board” means the Board of Water Well Contractor Examiners created by this article.
- (2) “Drill” and “drilling” mean all acts necessary to the construction of a water well with power equipment including the sealing of unused water well holes.
- (3) “Ground water” means water of underground streams, channels, artesian basins, reservoirs, lakes and other water under the surface of the ground whether percolating or otherwise.
- (4) “License” means a water well contractor’s license required by this article.
- (5) “Person” includes any natural person, partnership, association, trust and public or private corporation.
- (6) “Rig permit” and “permit” mean a permit to operate a water well drilling rig required by this article.
- (7) “Water well” and “well” mean any excavation that is machine drilled, cored, bored, washed, driven, jetted when the intended use of such excavation is for the location, diversion, artificial recharge or acquisition of ground water, but such term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining or quarrying or for inserting media to repressure oil or natural gas bearing formation or for storing petroleum, natural gas or other products.
- (8) “Water well contractor” and “contractor” mean any person who contracts to machine drill, alter or repair any water well.
- (9) “Water well drilling rig” means the power machinery used in drilling a water well. (1961, c. 997, s. 2.)

§ 87-67. **Individuals excepted from article.** — This article shall not apply:

- (1) To an individual who drills a water well on land which is owned or leased by him and is used by him for farming purposes or as his place of abode; or
- (2) To an individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.
- (3) To an individual who hand digs, bores, washes, drives, jets, cores or repairs or cleans wells without the use of power equipment. (1961, c. 997, s. 3.)

§ 87-68. **License required for contractors.**—Subject to the provisions of § 87-67, after January 1, 1962, no contractor shall drill a water well or engage in the occupation of a water well contractor unless he holds a valid license as a water well contractor issued by the Board under this article. Nothing contained herein shall prevent or preclude any person not licensed under this article or his employee from installing or servicing water well pumps, water pumps, water well pumping units, pumping units, pressure tanks and connections thereto after any water well has been drilled. (1961, c. 997, s. 4.)

§ 87-69. **Permit required to operate well drilling rig.**—After January 1, 1962, no water well contractor shall operate a water well drilling rig or permit a well drilling rig owned by him to be operated by any employee unless he holds a valid permit to operate such drilling rig issued by the Board under this article. A separate rate permit shall be obtained for each water well drilling rig operated by a licensed water well contractor during the permit year. (1961, c. 997, s. 5.)

§ 87-70. **Board of Water Well Contractor Examiners; creation; composition; appointment and terms of members; vacancies.**—There is hereby created a State Board of Water Well Contractor Examiners consisting of seven persons to be appointed by the Governor. Four of the members of said Board are to be water well contractors; one is to be an employee of the State Department of Water Resources; one is to be an employee of the State Board of Health; and, one is to be a person to represent the interests of the public at large, and such appointee shall not be a water well contractor or an employee thereof or a member or employee of any State Department. Prior to January 1, 1962, the Governor shall appoint two water well contractors for a term of one year; an employee of the State Board of Health and a person representing the public at large for a term of two years; and, two water well contractors and an employee of the State Department of Water Resources for a term of three years. Thereafter, as the term of an appointed member expires, or as a vacancy in the appointed membership occurs for any reason, the Governor shall appoint a successor for a term of three years, or for the remainder of the unexpired term, as the case may be.

The water well contractors appointed by the Governor must be licensed under the provisions of this article; provided, however, that this requirement shall not apply to members of the original board during their initial terms of office. (1961, c. 997, s. 6.)

§ 87-71. **Compensation and expenses of Board members; employment and compensation of personnel; expenses of administration not to exceed income; no liability of State.**—Members of the Board shall receive ten dollars (\$10.00) per day for each day actually spent in the performance of duties required by this article, plus actual travel expense. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board. The total expense of the administration of this article shall not exceed the total income therefrom; and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina. (1961, c. 997, s. 7.)

§ 87-72. **Organization and meetings of Board; quorum; rules and regulations; seal; administration of oaths; membership by public employees.**—The Board shall annually elect a chairman from among its membership. The Board shall meet annually in the city of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. Four members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board. The Board shall have an official seal and each member shall be empowered to administer oaths in the taking of testimony upon any matters pertaining to the functions of the Board. Membership on the Board of any public employee shall not constitute dual office holding but merely additional duties of such employee. (1961, c. 997, s. 8.)

§ 87-73. **Reports by Board.**—The Board shall file such reports as are required by chapter 93B of the General Statutes of North Carolina. (1961, c. 997, s. 9.)

§ 87-74. **Issuance of licenses and rig permits; qualifications of applicants; examinations; failure to pass examination.** — (a) The Board shall issue a certificate as a licensed water well contractor to any applicant who pays a fee set by the Board but not to exceed the amount specified in this article, who passes an examination to the satisfaction of the Board, and who submits evidence verified by oath and satisfactory to the Board that he:

- (1) Is at least twenty-one years of age;
- (2) Is of good moral character;
- (3) Is a citizen of the United States, or has legally declared his intentions of becoming one; and,

(b) The examination required by subsection (a) of this section shall be in such manner or form as the Board in the exercise of its discretion may determine, and such examination may be either oral or written. The examination for unlicensed applicants shall be held annually, or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. Persons failing to pass the examination shall be refunded one-half of the examination fee. Failure to pass an examination shall not prohibit such person from being examined at a subsequent time.

(c) The Board is to issue rig permits where the applicant therefor has a valid license issued pursuant to this article, has made a proper application, and has paid the required fee. (1961, c. 997, s. 10.)

§ 87-75. **Licensing of contractor working on January 1, 1962.** — Any person who, within six months after January 1, 1962, submits to the Board under oath evidence satisfactory to the Board that he was performing functions as a water well contractor (as defined in § 87-66) on January 1, 1962 shall be licensed as a water well contractor upon the payment of the fee required by this article. (1961, c. 997, s. 11.)

§ 87-76. **Expiration of licenses and permits; renewal without examination.**—All licenses and permits issued under this article shall expire on the last day of January next following the date of issuance. A license may be renewed for an ensuing license year without examination by making application therefor and paying the prescribed fee at least thirty (30) days prior to the expiration date of the current license, and such application shall extend the period of validity of the current license until a new license is received or the Board refuses to issue a new license under the provisions of this article. (1961, c. 997, s. 12.)

Local Modification.—Alamance: 1963, c. 1963, c. 741, s. 2; Halifax: 1963, c. 906, 545, s. 3; Catawba: 1963, c. 557, s. 2; s. 2; Orange: 1963, c. 545, s. 3. Cumberland: 1963, c. 682, s. 2; Davidson:

§ 87-77. **Fees.**—A fee to be determined by the Board, but not to exceed the amount specified herein, shall be paid to the Board at the time an application is made:

For original license	\$50.00
For renewal of license	25.00
For each rig permit	15.00

There shall be no reduction in such fees because a license or rig permit when issued may be valid for less time than a full license or permit year. (1961, c. 997, s. 13.)

§ 87-78. **Display of license and permit; permit to be weatherproof.** —The licensee shall conspicuously display his license at his principal place of business. Each rig permit shall be made of weatherproof material and shall be firmly attached to the drilling rig for which it was issued. (1961, c. 997, s. 14.)

§ 87-79. **Grounds for refusal, suspension or revocation of license.**—The Board may refuse to issue or renew or may suspend or revoke a license on any one or more of the following grounds:

- (1) Material misstatement in the application for license;
- (2) Failure to have or retain the qualifications required by § 87-74;
- (3) Willful disregard or violation of this article or of any rule or regulation promulgated by the Board pursuant thereto; or of any law of the State of North Carolina relating to water wells;
- (4) Willfully aiding or abetting another in the violation of this article or any rule or regulation promulgated by the Board pursuant thereto;
- (5) Incompetency in the performance of the work of a water well contractor;
- (6) Allowing the use of his license by an unlicensed person;
- (7) Conviction of any crime an essential element of which is misstatement, fraud or dishonesty or conviction of any felony; and,
- (8) Making substantial misrepresentations or false promises of a character likely to influence, persuade or induce in connection with the occupation of a water well contractor. (1961, c. 997, s. 15.)

§ 87-80. **Procedure when Board refuses to examine applicant or revokes or suspends certificate.**—The procedure to be followed by the Board when it contemplates refusing to allow an applicant to take an examination, or to revoke or suspend a certificate issued under the provisions of this article, shall be in accordance with the provisions of chapter 150 of the General Statutes of North Carolina. (1961, c. 997, s. 16.)

§ 87-81. **Violation a misdemeanor; injunction to prevent violation.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor and punishable in the discretion of the court. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this article. (1961, c. 997, s. 17.)

§ 87-82. **Counties to which article not applicable; residents can practice in other counties.**—This article shall not apply to the following counties: Alexander, Anson, Ashe, Avery, Beaufort, Bladen, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Harnett, Haywood, Henderson, Hoke, Hyde, Iredell, Johnston, Jones, Lincoln, Macon, Madison, Martin, McDowell, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Tyrrell, Washington, Watauga, Wayne, Wilson and Yancey.

The exclusion of the foregoing counties in the operation of this article applies to the operation of residents of the foregoing counties in every county of this State to the end that they can practice their profession notwithstanding a local resident may be required to have a license. (1961, c. 997, ss. 18½, 18¾; c. 1221; 1963, cc. 179, 250, 272, 461; c. 545, ss. 1, 2; c. 557, s. 1; c. 597; c. 682, s. 1; c. 741, s. 1; c. 879; c. 906, s. 1.)

Local Modification.—Catawba: 1963, c. 557, s. 1½.

Editor's Note.—Session Laws 1961, c. 1221 added Martin County.

The first 1963 amendment inserted Avery County in the list of counties to which the section is not applicable. The second 1963 amendment deleted Nash County, the third 1963 amendment added Buncombe County, the fourth 1963 amendment deleted Wake County, the fifth 1963 amend-

ment deleted Alamance and Orange counties, the sixth 1963 amendment deleted Catawba County, the seventh 1963 amendment deleted Jackson County, and the eighth 1963 amendment deleted Cumberland County, the ninth 1963 amendment, effective Jan. 1, 1964, deleted Davidson County, the tenth 1963 amendment deleted the counties of Lee, Stokes and Union and the eleventh 1963 amendment, effective Jan. 1, 1964, deleted Halifax County.

Chapter 88. Cosmetic Art.

Sec.	Sec.
88-1. Practice of cosmetology regulated.	88-16. Applicants for examination.
88-2. Cosmetic art.	88-17. Regular and special meetings of Board; examinations.
88-3. Cosmetologist.	88-18. Certificate of registration.
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88-5. Manager.	88-20. Registration procedure.
88-6. Operator.	88-21. Fees required.
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88-8. Manicurist.	88-23. Rules and regulations of Board.
88-9. Apprentice.	88-24. Posting of certificates.
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88-11. When apprentice may operate shop.	88-26. Causes for revocation of certificates.
88-12. Qualifications for registered cosmetologist.	88-27. Procedure for refusal, suspension or revocation of certificate.
88-13. State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause.	88-28. Acts made misdemeanors.
88-14. Office in Raleigh; seal; officers and secretary.	88-28.1. Restraining orders against persons engaging in illegal practices.
88-15. Compensation and expenses of Board members; inspectors; reports; budget; audit.	88-29. Records to be kept by Board.
	88-30. Registered manicurist.

§ 88-1. **Practice of cosmetology regulated.**—On and after June thirtieth, one thousand nine hundred and thirty-three, no person or combination of persons shall for pay, or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the State of North Carolina without a certificate of registration, either as a registered apprentice or as a registered “cosmetologist,” issued pursuant to the provisions of this chapter by the State Board of Cosmetic Art Examiners hereinafter established. (1933, c. 179, s. 1.)

§ 88-2. **Cosmetic art.** — Any one or a combination of the following practices, when done for pay, or reward, shall constitute the practice of cosmetic art in the meaning of this chapter:

The systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders and hands; the use of cosmetic preparations and antiseptics; manicuring; cutting, dyeing, cleansing, arranging, dressing, waving, and marcelling of the hair, and the use of electricity for stimulating growth of hair. (1933, c. 179, s. 2.)

§ 88-3. **Cosmetologist.**—“Cosmetologist” is any person who, for compensation, practices cosmetic art, or conducts, or maintains a cosmetic art shop, beauty parlor, or hairdressing establishment. (1933, c. 179, s. 3.)

§ 88-4. **Beauty parlor, etc.** — “Cosmetic art shop,” “beauty parlor,” or “hairdressing establishment” is any building, or part thereof wherein cosmetic art is practiced. (1933, c. 179, s. 4.)

§ 88-5. **Manager.**—“Manager,” or “managing cosmetologist,” as used in this chapter, is defined as any person who has direct supervision over operators, or apprentices in a cosmetic art shop, beauty parlor, or hairdressing establishment. (1933, c. 179, s. 5.)

§ 88-6. **Operator.** — “Operator” is any person who is not a manager, itinerant, or apprentice cosmetologist, who practices cosmetic art under the direction and supervision of a managing cosmetologist. (1933, c. 179, s. 6.)

§ 88-7. **Itinerant cosmetologist; application of chapter.**—“Itinerant cosmetologist” is any person who practices as a business cosmetic art outside of a cosmetic art shop, beauty parlor, or hairdressing establishment, either in going from house to house or from place to place at regular, or irregular intervals: Provided, this chapter shall not apply to persons attending female institutions of learning, who defray the cost or a part of the cost of such attendance by the occasional practice of cosmetic art as defined herein, or to persons practicing the cosmetic art in rural communities without the use of mechanical appliances. (1933, c. 179, s. 7.)

Cross Reference.—As to other persons exempt from this chapter, see § 88-22.

§ 88-8. **Manicurist.**—“Manicurist” means any person who does manicuring or pedicuring and who makes a charge for such service. (1933, c. 179, s. 8; 1963, c. 1257, s. 1.)

Editor’s Note. — The 1963 amendment, effective June 30, 1963, rewrote this section.

§ 88-9. **Apprentice.**—“Apprentice” is any person who is not a manager, itinerant cosmetologist, or operator, who is engaged in learning and acquiring the practice of cosmetic art under the direction and supervision of a licensed managing cosmetologist. (1933, c. 179, s. 9.)

§ 88-10. **Qualifications for certificate of registration.** — No person shall be issued a certificate of registration as a registered apprentice by the State Board of Cosmetic Art Examiners, hereinafter established—

- (1) Unless such person is at least sixteen years of age.
- (2) Unless such person passes a satisfactory physical examination prescribed by the said Board of Cosmetic Art Examiners.
- (3) Unless such person has completed at least twelve hundred hours in classes in a reliable cosmetic art school, or college approved by said Board of Cosmetic Art Examiners.
- (4) Unless such person passes the examination prescribed by the Board of Cosmetic Art Examiners and pays the required fees hereinafter enumerated.
- (5) Unless such person is admitted as an apprentice under the reciprocity section of this chapter. (1933, c. 179, s. 10; 1941, c. 234, s. 1; 1953, c. 1304, ss. 1, 2; 1963, c. 1257, s. 2.)

Editor’s Note. — The 1941 amendment substituted “one thousand” for “four hundred and eighty” formerly appearing in subdivision (3). For comment on the amendment, see 19 N. C. Law Rev. 447.

The 1953 amendment substituted “sixteen” for “eighteen” in subdivision (1), and added subdivision (5).

The 1963 amendment, effective June 30, 1963, substituted “twelve hundred” for “one thousand” in subdivision (3).

Section 5 of c. 1257, Session Laws 1963,

provides that the provisions of chapter 88 of the General Statutes relating to apprentices and the minimum 1,000 hour curriculum shall continue in force until June 30, 1965, with respect to persons who are apprentices on June 30, 1963, and persons who have begun study or training in a cosmetic art school by June 30, 1963, but that no credit shall be allowed after June 30, 1965, for any cosmetic art school study and training which occurred prior to July 1, 1963.

§ 88-11. **When apprentice may operate shop.**—No registered apprentice, registered under the provisions of this chapter, shall operate a cosmetic art beauty shop, beauty parlor, or hairdressing establishment in this State, but must

serve his or her period of apprenticeship under the direct supervision of a registered managing cosmetologist as required by this chapter: Provided, however, that any apprentice who, on June 30, 1933, is regularly employed under the direct supervision of one who is entitled to registration as a managing cosmetologist under the provisions of § 88-19 shall, upon recommendation of such managing cosmetologist, and upon passing a satisfactory physical examination, be entitled to registration as a registered cosmetologist. (1933, c. 179, s. 11.)

§ 88-12. Qualifications for registered cosmetologist.—Any person to practice cosmetic art as a registered cosmetologist must have worked as a registered apprentice for a period of at least six months under the direct supervision of a registered managing cosmetologist, and this fact must be demonstrated to the Board of Cosmetic Art Examiners by the sworn affidavit of three registered cosmetologists, or by such other methods of proof as the Board may prescribe and deem necessary. A certificate of registration as a registered cosmetologist shall be issued by the Board, hereinafter designated, to any person who is qualified under the provisions of this chapter, or meets the following qualifications:

- (1) Who is qualified under the provisions of § 88-10.
- (2) Who is at least seventeen years of age.
- (3) Who passes a satisfactory physical examination as prescribed by said Board.
- (4) Who has practiced as a registered apprentice for a period of six months, under the immediate personal supervision of a registered cosmetologist; and
- (5) Who has passed a satisfactory examination, conducted by the Board, to determine his or her fitness to practice cosmetic art, such examination to be prepared and conducted, as to determine whether or not the applicant is possessed of the requisite skill in such trade, to properly perform all the duties thereof, and services incident thereto, and has sufficient knowledge concerning the diseases of the face, skin, and scalp, to avoid the aggravation and spreading thereof in the practice of said profession. (1933, c. 179, s. 12; 1953, c. 1304, s. 3.)

Editor's Note. — The 1953 amendment substituted "seventeen" for "nineteen" in subdivision (2).

§ 88-13. State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause.—A board to be known as the State Board of Cosmetic Art Examiners is hereby established, to consist of three members appointed by the Governor of the State. Each member shall be an experienced cosmetologist, who has followed the practice of all branches of the cosmetic art in the State of North Carolina for at least five years next preceding his or her appointment, and who, during such period of time, and at the time of appointment, shall be free of connection in any manner with any cosmetic art school or college or academy or training school. The appointment of the Governor shall be for a term of three years. The Governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1933, c. 179, s. 13; 1935, c. 54, s. 2.)

Editor's Note.—The requirement that the appointee shall be free from connection with cosmetic art school or college was new with the 1935 amendment, as was also the requirement for following "all branches" of the cosmetic art. Prior to the amendment the section provided that the first appointees should serve for

three years, two years and one year respectively.

Relator Must Show Interest in Action to Vacate Office.—It is necessary that a relator in an action to vacate an office under this section, have some interest in the action, though it is not required that he be a contestant for the office. *State v.*

Ritchie, 206 N. C. 808, 175 S. E. 308 (1934).
 metic Art Examiners, 221 N. C. 199, 19 S. E. (2d) 635 (1942).

Cited in *Poole v. State Board of Cos-*

§ 88-14. **Office in Raleigh; seal; officers and secretary.** — The Board of Cosmetic Art Examiners shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. Said Board shall elect its own officers and in addition thereto shall employ an executive secretary, who shall not be a member of the Board. The salary of such executive secretary shall be fixed by the Board with the approval of the Director of the Budget of the State of North Carolina. The secretary shall keep and preserve all the records of the Board, issue all necessary notices and perform such other duties, clerical and otherwise, as may be imposed upon such secretary by said Board of Cosmetic Art Examiners. The secretary is hereby authorized and empowered to collect in the name and on behalf of said Board the fees prescribed by this chapter and shall turn over to the State Treasurer all funds collected or received under this chapter, which fund shall be credited to the Board of Cosmetic Art Examiners, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this chapter. The said secretary shall, before entering upon the duties of the office, execute a satisfactory bond with a duly licensed surety or other surety approved by the Director of the Budget, said bond to be in the penal sum of not less than ten thousand dollars (\$10,000.00), and conditioned upon the faithful performance of the duties of the office and the true and correct accounting of all funds received by such secretary by virtue of such office. Nothing in this chapter shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer, derived from fees and fines collected under the provisions of this chapter and received by the State Treasurer in the manner aforesaid. (1933, c. 179, s. 14; 1943, c. 354, s. 1; 1957, c. 1184, s. 1.)

Editor's Note. — The 1943 amendment mer second sentence and inserted the present second and third sentences in lieu of the first sentence.

The 1957 amendment deleted the first sentence thereof.

§ 88-15. **Compensation and expenses of Board members; inspectors; reports; budget; audit.**—Each member of the Board of Cosmetic Art Examiners shall receive for such services an annual salary in an amount to be fixed by the Director of the Budget, and shall be reimbursed for actual necessary expenses incurred in the discharge of such duties, not to exceed eight dollars (\$8.00) per day for subsistence, plus the actual traveling expenses, or an allowance of seven cents (7¢) per mile where such member uses his or her personally owned automobile.

Said Board, with the approval of the Director of the Budget, shall appoint necessary inspectors who shall be experienced in all branches of cosmetic art. The salaries for such inspectors shall be fixed by the Board with the approval of the Director of the Budget of the State of North Carolina. The inspectors or agents so appointed shall perform such duties as may be prescribed by the Board. Any inspector appointed under authority of this section or any member of the Board shall have the authority at all reasonable hours to examine cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies or training schools with respect to and in compliance with the provisions of this chapter. The inspectors and agents appointed under authority of this chapter shall make such reports to the Board of Cosmetic Art Examiners as said Board may require. The said Board shall, on or before June first of each year, submit a budget to the Director of the Budget for the ensuing fiscal year, which shall begin July first of each year. The said budget so submitted shall include

all estimated receipts and expenditures for the ensuing fiscal year including the estimated compensation and expenses of Board members. The said budget shall be subject to the approval of the Director of the Budget and no expenditures shall be made unless the same shall have been set up in the budget adopted by the Board of Cosmetic Art Examiners, and approved by the Director of the Budget of the State of North Carolina; that all salaries and expenses in connection with the administration of this chapter shall be paid upon a warrant drawn on the State Treasurer, said warrants to be drawn by the secretary of the Board and approved by the State Auditor.

The provisions of the Executive Budget Act and the Personnel Act shall fully apply to the administration of this chapter.

There shall be annually made by the Auditor of the State of North Carolina a full audit and examination of the receipts and disbursements of the State Board of Cosmetic Art Examiners. The State Board shall report annually to the Governor a full statement of receipts and disbursements and also a full statement of its work during the year. (1933, c. 179, s. 15; 1935, c. 54, s. 3; 1941, c. 234, s. 2; 1943, c. 354, s. 2; 1957, c. 1184, s. 2.)

Editor's Note. — The 1935 amendment added provisions relating to inspectors and reports, which were rewritten by the 1941 amendment. The 1943 amendment re-wrote this section.

The 1957 amendment changed the amounts in the first paragraph from \$5.00 to \$8.00 and from 5 cents to 7 cents.

§ 88-16. **Applicants for examination.**—Each applicant for an examination shall:

- (1) Make application to the Board of Cosmetic Art Examiners on blank forms prepared and furnished by the full-time secretary, such application to contain proof under the applicant's oath of the particular qualifications of the applicant.
- (2) Pay to the secretary of the said Board the required examination fee, hereinafter established.
- (3) All applications for said examination must be filed with the full-time secretary at least thirty days prior to the actual taking of such examination by applicant. (1933, c. 179, s. 16.)

§ 88-17. **Regular and special meetings of Board; examinations.**—The Board of Cosmetic Art Examiners shall meet four times a year in the months of January, April, July and October on the first Tuesday in each of said months, for the purpose of transacting all business of the Board of Cosmetic Art Examiners and to conduct examinations of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificates of registration to practice as registered apprentices, meetings to be held at such places as the Board may determine to be most convenient for such examinations. The examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be open to all applicants, and shall include such practical demonstration and oral and written tests as the said Board may determine. The chairman of the Board is hereby authorized and empowered to call a meeting of said Board whenever necessary, said meetings to be in addition to the quarterly meetings hereinbefore provided for. (1933, c. 179, s. 17; 1935, c. 54, s. 4.)

Editor's Note. — Prior to the 1935 amendment this section provided for at least three examinations each year. The last sentence was added by the amendment.

§ 88-18. **Certificate of registration.**—Whenever the provisions of this chapter have been complied with, the said Board shall issue or cause to be issued, a certificate of registration as registered cosmetologist, or as a registered apprentice to the applicant, as the case may be. (1933, c. 179, s. 18.)

§ 88-19. Admitting operators from other states. — Any person who has been licensed to practice cosmetic art in another state, either as an apprentice or registered cosmetologist by the examining board of such other state by whatever name called, shall be admitted to practice cosmetic art in North Carolina under the same reciprocity or comity provisions which the state of his or her registration or licensing grants to cosmetologists licensed under the laws of this State. All applicants from states which have no examining, licensing or registering board or agency for cosmetologists and all applicants from states which do not grant reciprocity or comity to cosmetologists licensed under the laws of this State, before being issued a certificate of registration to practice cosmetic art in this State, must have completed at least twelve hundred (1200) hours in classes in a reliable college approved by the Board of Cosmetic Art Examiners and shall be required to take and pass an examination as provided in subdivision (5) of G. S. 88-20 and pay a fee of fifteen dollars (\$15.00) in addition to the regular license fee of five dollars (\$5.00). (1933, c. 179, s. 19; 1953, c. 1304, s. 4; 1957, c. 1184, s. 3; 1963, c. 1257, s. 3.)

Editor's Note. — The 1953 amendment rewrote this section, and the 1957 amendment increased the regular license fee from \$3.50 to \$5.00.

The 1963 amendment, effective July 30, 1963, substituted "twelve hundred (1200)" for "one thousand (1000)" in the last sentence.

Section 5 of c. 1257, Session Laws 1963, provides that the provisions of chapter 88 of the General Statutes relating to ap-

prentices and the minimum 1,000 hour curriculum shall continue in force until June 30, 1965, with respect to persons who are apprentices on June 30, 1963, and persons who have begun study or training in a cosmetic art school by June 30, 1963, but that no credit shall be allowed after June 30, 1965, for any cosmetic art school study and training which occurred prior to July 1, 1963.

§ 88-20. Registration procedure. — The procedure for the registration of present practitioners of cosmetic art shall be as follows:

- (1) Every person who has been practicing cosmetic art in North Carolina and who is practicing such art on June 30, 1933, upon making an affidavit to that effect, and complying with the provisions of this chapter as to physical fitness, and upon paying the required fee to the Board of Cosmetic Art Examiners shall be issued a certificate of registration as a registered cosmetologist.
- (2) Any person who, on June 30, 1933, is operating a shop as a managing cosmetologist, shall, upon making an affidavit to that effect, and complying with the provisions of this chapter as to physical fitness and upon paying the required fee to the Board of Cosmetic Art Examiners be issued a certificate of registration as a managing cosmetologist.
- (3) Any person who, on June 30, 1933, is regularly employed under a person who has registered as a managing cosmetologist shall be entitled to register as a cosmetologist as provided in § 88-11.
- (4) All persons who are not actively engaged in the practice of cosmetic art on June 30, 1933, shall be required to comply with all of the provisions of this chapter.
- (5) All persons, however, who do not make application prior to January 1, 1942, shall be required to take the examination prescribed by the State Board of Cosmetic Art Examiners and otherwise comply with the provisions of this chapter, as amended, before engaging in the practice of cosmetic art. (1933, c. 179, s. 20; 1941, c. 234, s. 3.)

Editor's Note. — The 1941 amendment added subdivision (5).

Subdivision (1) prescribes a mandatory duty, and the Board of Cosmetic Art Examiners has no discretionary power to

refuse to issue the certificate in such instance, and therefore a complaint in suit for mandamus alleging full compliance with the provisions of the statute in this respect and the refusal of the Board to

issue the certificate to plaintiff, is not demurrable. *Poole v. State Board of Cosmetic Art Examiners*, 221 N. C. 199, 19 S. E. (2d) 635 (1942).

§ 88-21. **Fees required.**—The fee to be paid by an applicant for a certificate of registration to practice cosmetic art as an apprentice shall be three dollars. The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered cosmetologist shall be five dollars. The regular or annual license fee of a registered cosmetologist shall be five dollars (\$5.00), and the renewal of the license of a registered cosmetologist shall be five dollars (\$5.00) if renewed before the same becomes delinquent, and if renewed after the same becomes delinquent there shall be charged a penalty of one dollar and fifty cents (\$1.50) in addition to the regular license fee of five dollars (\$5.00); the annual license fee of a registered apprentice shall be two dollars and fifty cents (\$2.50), and all licenses, both for apprentices and for registered cosmetologists, shall be renewed as of the 30th day of June each and every year. All cosmetic art schools shall pay a fee of ten dollars (\$10.00) annually. The fees herein set out shall not be increased by the Board of Cosmetic Art Examiners, but said Board may regulate the payment of said fees and prorate the license fees in such manner as it deems expedient. The fee for registration of an expired certificate for a registered cosmetologist shall be five dollars and registration of an expired certificate of an apprentice shall be three dollars. (1933, c. 179, s. 21; 1955, c. 1265.)

Editor's Note. — The 1955 amendment rewrote the third and fourth sentences.

§ 88-22. **Persons exempt.**—The following persons are exempt from the provisions of this chapter while engaged in the proper discharge of their professional duties:

- (1) Persons authorized under the laws of the State to practice medicine and surgery.
- (2) Commissioned medical or surgical officers of the United States army, navy, or marine hospital services.
- (3) Registered nurses.
- (4) Undertakers.
- (5) Registered barbers.
- (6) Manicurists as herein defined. (1933, c. 179, s. 22.)

Cross Reference.—As to other persons exempt from this chapter, see § 88-7.

§ 88-23. **Rules and regulations of Board.**—The State Board of Cosmetic Art Examiners shall have authority to make reasonable rules and regulations for the sanitary management of cosmetic art shops, beauty parlors, hair-dressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have such rules and regulations enforced. The duly authorized agents of said Board shall have authority to enter upon and inspect any shop or school at any time during business hours. A copy of the rules and regulations adopted by said Board and approved by the State Board of Health shall be furnished from the office of the Board or by the above mentioned authorized agents to the owner or manager of each shop or school in the State, and such copy shall be kept posted in a conspicuous place in each shop and school. (1933, c. 179, s. 23; 1935, c. 54, s. 5.)

Editor's Note. — The 1935 amendment made this section applicable to academies and training schools.

§ 88-24. **Posting of certificates.**—Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his, or her work chair. (1933, c. 179, s. 24.)

§ 88-25. **Annual renewal of certificates.**—Every registered cosmetolo-

gist and every registered apprentice, who continues in active practice or service shall annually, on or before June 30th, of each year, file with the secretary of the Board, a renewal certificate as to physical fitness, renew his, or her certificate of registration which has not been renewed prior to, or during the month of July in any year, and which shall expire on the first day of August in that year. A registered cosmetologist, or a registered apprentice whose certificate of registration has expired may have his or her certificate restored immediately upon payment of the required restoration fee, and furnishing to the secretary of the Board renewal certificate as to physical fitness. Any registered cosmetologist who retires from the practice of cosmetic art for not more than three years may renew his or her certificate of registration upon payment of the required restoration fee, and by paying the license fee for the years that such license fees have not been paid. (1933, c. 179, s. 25; 1957, c. 1184, s. 4.)

Editor's Note. — Prior to the 1957 amendment the part of the last sentence after the comma read: "and by furnishing to the secretary of the Board renewal certificate as to physical fitness."

§ 88-26. **Causes for revocation of certificates.** — The Board of Cosmetic Art Examiners may either refuse to issue or renew, or may suspend, or revoke any certificate of registration for any one, or combination of the following causes:

- (1) Conviction of a felony shown by certified copy of the record of the court of conviction.
- (2) Gross malpractice, or gross incompetency, which shall be determined by the Board of Cosmetic Art Examiners.
- (3) Continued practice by a person knowingly having an infectious, or contagious disease.
- (4) Advertising by means of knowingly false, or deceptive statements.
- (5) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.
- (6) The commission of any of the offenses described in § 88-28, subdivisions (3), (4), (6) and (7). (1933, c. 179, s. 26; 1941, c. 234, s. 4.)

§ 88-27. **Procedure for refusal, suspension or revocation of certificate.**—The Board may neither refuse to issue, nor refuse to renew, nor suspend, nor revoke any certificate of registration, however, for any of these causes, except in accordance with the provisions of chapter 150 of the General Statutes. (1933, c. 179, s. 27; 1939, c. 218, s. 1; 1953, c. 1041, s. 8.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

Editor's Note. — The 1953 amendment added the reference to chapter 150 of the General Statutes, and made other changes.

§ 88-28. **Acts made misdemeanors.**—Each of the following constitutes a misdemeanor punishable upon conviction by a fine of not less than ten dollars (\$10.00) and not more than fifty dollars (\$50.00), or imprisonment for not less than ten days, or more than thirty days:

- (1) The violation of any of the provisions of § 88-1.
- (2) Permitting any person in one's employ, supervision, or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.
- (3) Permitting any person in one's employ, supervision, or control, to practice as a cosmetologist unless that person has a certificate as a registered cosmetologist.
- (4) Obtaining, or attempting to obtain, a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.
- (5) Practicing or attempting to practice by fraudulent misrepresentations.
- (6) The willful failure to display a certificate of registration as required by § 88-24.

(7) The willful violation of the reasonable rules and regulations adopted by the State Board of Cosmetic Art Examiners and approved by the State Board of Health. (1933, c. 179, s. 28; 1949, c. 505, s. 2.)

Editor's Note.—The 1949 amendment rewrote subdivision (7).

Variance.—Where defendant was tried upon a warrant charging that she permitted persons in her employ to practice as apprentices without certificate of registration as registered apprentices or registered cosmetologists, and the jury

returned a special verdict to the effect that defendant permitted unlicensed students to work in her school, there is a fatal variance between the warrant and the special verdict and a failure of proof, and the adjudication that defendant was not guilty is affirmed. *State v. McIver*, 216 N. C. 734, 6 S. E. (2d) 493 (1940).

§ 88-28.1. Restraining orders against persons engaging in illegal practices.—The State Board of Health and/or any county, city or district health officer and/or the State Board of Cosmetic Art Examiners, if it shall be found that any licensed cosmetologist or other person, who is subject to the provisions of this chapter, is violating any of the rules and regulations adopted by the State Board of Cosmetic Art Examiners, as approved by the State Board of Health, or any provisions of chapter 88, section 28, of the General Statutes of North Carolina, may, after notice to such person of such violation, apply to the superior court for a temporary or permanent restraining order to restrain such person from continuing such illegal practices. If, upon such application, it shall appear to the court that such person has violated and/or is violating any of the said rules and regulations or any provisions of chapter 88, section 28, of the General Statutes of North Carolina, the court may issue an order restraining any further violations thereof. All such actions for injunctive relief shall be governed by the provisions of article 37 of chapter 1 of the General Statutes: Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any of the provisions of this chapter. (1949, c. 505, s. 1.)

Editor's Note.—For brief comment on this section, see 27 N. C. Law Rev. 407.

§ 88-29. Records to be kept by board.—The Board of Cosmetic Art Examiners shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business, and residence of each registered cosmetologist and registered apprentice, and the date and number of his certificate of registration. This record shall be open to public inspection during all days, excepting Sundays and legal holidays. (1933, c. 179, s. 29.)

§ 88-30. Registered manicurist.—A person may be licensed to engage in the practice of manicuring or pedicuring in a cosmetic art shop, beauty parlor or hairdressing establishment without being a registered cosmetologist. A certificate of registration as a registered manicurist shall be issued by the Board of Cosmetic Art Examiners to any person who meets the following qualifications:

- (1) Who has completed 150 hours in classes in a cosmetic art school or college approved by the Board;
- (2) Who is at least 17 years of age;
- (3) Who passes a satisfactory physical examination as prescribed by said Board; and
- (4) Who has passed a satisfactory examination, conducted by the Board, to determine his or her fitness to practice manicuring, such examination to be so prepared and conducted as to determine whether or not the applicant is possessed of the requisite skill in such trade to properly perform all the duties thereof and services incident thereto. (1963, c. 1257, s. 4.)

Editor's Note.—The act inserting this section became effective June 30, 1963.

Chapter 89.

Engineering and Land Surveying.

Sec.	Sec.
89-1. Short title.	89-9. Determining charges of malpractice, etc.; reprimand or suspension or revocation of registration; hearing and procedure; re-issuance of certificate.
89-2. Definitions.	89-10. Effect of certification; seals.
89-3. Registration requirements.	89-11. Unauthorized practice of engineering or land surveying; penalties.
89-4. State Board of Registration created; powers; duties; qualifications and compensation; instructional programs.	89-12. Limitations on application of chapter.
89-5. Secretary, duties and liabilities; expenditures.	89-13. Corporate or partnership practice of engineering or land surveying.
89-6. Records and reports of Board; evidence.	89-14. Land surveyors.
89-7. Certification by Board; qualification requirements.	89-15. Existing registration not affected.
89-8. Further as to qualifications; denial or expiration and renewal of certificate.	89-16. Manual of practice for land surveyors.

§ 89-1. **Short title.** — This chapter shall be known by the short title of “The North Carolina Engineering and Land Surveying Act.” (1951, c. 1084, s. 1.)

Editor’s Note.—The 1951 amendment rewrote this chapter which formerly consisted of §§ 89-1 to 89-17.

§ 89-2. **Definitions.**—When used in this chapter, unless the context otherwise requires:

- (1) The term “Board” as used in this chapter shall mean the State Board of Registration for Professional Engineers and Land Surveyors provided for by this chapter.
- (2) The term “engineer” as used in this chapter shall mean a professional engineer as hereinafter defined.
- (3) The term “engineer-in-training” within the meaning and intent of this chapter shall mean a candidate for registration as a professional engineer who is certified as having satisfactorily passed the basic written examination, in the fundamentals of engineering, to be given by the Board, as hereinafter provided in this chapter. The Board is hereby given power to offer this grade of registration, which is designed primarily for graduates just leaving college, when and if the Board considers it expedient.
- (4) The term “land surveyor” as used in this chapter shall mean a person who engages in the practice of land surveying as hereinafter defined.
- (5) The term “practice of land surveying” within the meaning and intent of this chapter includes surveying of areas for their correct determination and for conveyancing, or for the establishment or re-establishment of land boundaries or for the plotting of lands and subdivisions thereof, or the determination of elevations and the drawing descriptions of lands or lines so surveyed.
- (6) The term “practice of professional engineering” within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and super-

vision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures or building incidental to machines, equipment, processes, works or projects, but the practice of engineering under this chapter shall not include, the work ordinarily performed by persons who operate or perform routine maintenance on machinery, equipment and structures or of mechanics in the performance of their established functions; the execution of work as distinguished from the planning or design thereof, and the supervision of construction of such work as a foreman or superintendent; services performed by employees of a company engaged in manufacturing operations, or by employees of laboratory research affiliates of such a manufacturing company which is incidental to the manufacture, sales and installation of the products of the company; inspection and service work done by employees of the State of North Carolina, any political subdivision thereof or any municipality therein, and of insurance companies or insurance agents; services performed by those ordinarily designated as chief operating engineer, locomotive, stationary, marine, power plant, or hoisting and portable engine operators, or electrical maintenance or service engineers, or service engineers employed in connection with street lighting, traffic control signals, police and fire alarm systems, waterworks, steam electric and sewage treatment and disposal plants, or the service ordinarily performed by any workman regularly employed as locomotive, stationary, marine, power plant, or hoisting and portable engine operator, or electrical maintenance or service engineer for any corporation, contractor, or employer; services performed by those persons ordinarily designated as supervising engineer, or superintendent of power, or supervising electrical maintenance or service engineers who supervise the operation of, or who operate machinery or equipment, or who supervise the construction of equipment within a plant which is under their own immediate supervision; services of superintendents, inspectors or foremen employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein, contractors or owners in the construction of engineering works or the installation of equipment.

A person shall be construed to practice engineering, within the intent and meaning of this chapter, who practices or offers to practice any branch of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be, or capable of being, an engineer, or through the use of some other title implies that he is an engineer; or who does perform any engineering service or work or professional service recognized by the profession as engineering.

- (7) The term "professional engineer" within the meaning and intent of this chapter shall mean a person who, by reason of his special knowledge of the mathematical, physical and engineering sciences, and the principles and methods of engineering analysis and design, acquired by professional education, and/or practical experience, is qualified to engage in the practice of professional engineering as hereinafter defined, as attested by his legal registration as a professional engineer. (1951, c. 1084, s. 1; 1953, c. 999, s. 1.)

Editor's Note. — The 1953 amendment inserted subdivision (2).

§ 89-3. Registration requirements. — In order to safeguard life, health, and property, any person practicing or offering to practice engineering or land surveying in this State shall hereafter be required to submit satisfactory evidence

to the Board that he is qualified so to practice, and shall be registered as herein-after provided; and it shall be unlawful for any person to practice or offer to practice engineering or land surveying in this State, as herein defined, unless such person has been duly registered under the provisions of this chapter. (1921, c. 1, s. 1; C. S., s. 6055(b); 1951, c. 1084, s. 1.)

§ 89-4. State Board of Registration created; powers; duties; qualifications and compensation; instructional programs. — To carry out the provisions of this chapter, the State Board of Registration for Professional Engineers and Land Surveyors is hereby created, whose duty it shall be to administer the provisions of this chapter. The Board shall consist of four registered engineers and one registered land surveyor, appointed by the Governor. Each member of the Board shall be a citizen of the United States, a resident of this State, and shall have been a practicing registered engineer, or registered land surveyor, in North Carolina for at least ten years. Each member of the Board shall receive ten dollars (\$10.00) per diem for attending the sessions of the Board or of its committees, and for time spent in necessary travel, and in addition shall be reimbursed for all necessary travel, and incidental and clerical expense incurred, in carrying out the provisions of this chapter. When the terms of office of the present members of the Board expire on 31 December 1957, one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, one member shall be appointed for a term of three years, one member shall be appointed for a term of four years, and one member for a term of five years. Thereafter, as their terms of office expire their successors shall be appointed for terms of five years and shall serve until their successors are appointed and qualified. Each member shall continue in office after the expiration of his term until his successor shall be duly appointed and qualified. The Governor may remove any member of the Board for misconduct, incompetency, neglect of duty or for any other sufficient cause. Vacancies in the membership of the Board, however created, shall be filled by appointment by the Governor for the unexpired term. Each member of the Board shall receive a certificate of appointment from the Governor, and before beginning his term of office he shall file with the Secretary of State the constitutional oath of office. Notwithstanding anything herein contained, the present members of the Board shall continue in office as members of said Board until their present respective terms expire.

The Board shall have power to compel the attendance of witnesses, may administer oaths and may take testimony and proofs concerning all matters within its jurisdiction. The Board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted; and shall make all bylaws and rules, not inconsistent with law, needed in performing its duty.

The Board shall hold at least two regular meetings each year. Special meetings shall be held at such times as the bylaws of the Board may provide. Notice of all meetings shall be given in such manner as the bylaws may provide. The Board shall elect annually from its members a chairman, a vice-chairman, and a secretary. The secretary shall receive compensation at a rate to be determined by the Board. A quorum of the Board shall consist of not less than three members. The Board is authorized and empowered to use its funds to establish and conduct instructional programs for persons who are currently registered to practice engineering or land surveying, as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to practice engineering or land surveying. The Board may expend its funds for these purposes and is authorized and empowered not only to conduct, sponsor and arrange for instructional programs, but also to carry out such programs through extension courses or other media, and the Board may enter into plans or agreements with community colleges, institutions of higher learning, both public and private, State and county boards of education or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging

such courses, instruction, extension courses or in assisting in obtaining courses of study or programs in the fields of engineering and land surveying. For the purpose of carrying out these objectives, the Board is authorized to make and promulgate such rules and regulations as may be necessary for such educational programs, instruction, extension services or for entering into plans or contracts with persons or educational and industrial institutions, but may not require attendance of surveyors at any such programs or make any penalty for failure to attend. Provided that this paragraph shall not apply to Warren County. (1921, c. 1, ss. 3 to 6; C. S., ss. 6055(d) to 6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843.)

Editor's Note.—The 1957 amendment changed the term of office which formerly lasted for a period of four years. The 1963 amendment added the fourth paragraph.

§ 89-5. **Secretary, duties and liabilities; expenditures.** — The secretary of the Board shall receive and account for all moneys derived from the operation of this chapter, and shall deposit them in a special fund in some bank or trust company authorized to do business in North Carolina, which fund shall be designated as the "Fund of the Board of Registration for Professional Engineers and Land Surveyors," which fund shall be drawn against only for the purposes of this chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of said fund on the warrant signed by the chairman and secretary of the Board: Provided, however, that at no time shall the total of warrants issued exceed the total amount of funds accumulated under this chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Registration for Professional Engineers and Land Surveyors, conditioned upon the faithful performance of his duties. The premium on said bond shall be regarded as a proper and necessary expense of the Board. (1921, c. 1, s. 7; C. S., s. 6055(h); 1951, c. 1084, s. 1; 1959, c. 617.)

Editor's Note.—The 1959 amendment, effective from and after November 30, 1959, rewrote this section.

§ 89-6. **Records and reports of Board; evidence.** — The Board shall keep a record of its proceedings and a register of all applicants for registration, showing for each the date of application, name, age, education and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of registration granted, and the date of such action. The books and register of the Board shall be prima facie evidence of all matters recorded therein, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all registered professional engineers and land surveyors shall be prepared by the secretary of the Board during the month of January of each year; such roster shall be printed by the Board out of the fund of the said Board as provided in G. S. 89-5, and distributed as set forth in the bylaws. On or before the first day of March of each year the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of the receipts and expenditures of the Board, attested by the affidavits of the chairman and the secretary, and a copy of the said roster of registered professional engineers and registered land surveyors. (1921, c. 1, s. 8; C. S., s. 6055(i); 1951, c. 1084, s. 1.)

§ 89-7. **Certification by Board; qualification requirements.** — (a) Issuance of Certificates of Registration; Fees.—The Board shall issue a certificate of registration on application therefor on prescribed form, and on payment of a fee not to exceed fifty dollars (\$50.00) by engineer applicants, or on pay-

ment of a fee not to exceed thirty dollars (\$30.00) by land surveying applicants, or on payment of a fee not to exceed fifteen dollars (\$15.00) by engineer-in-training applicants to persons qualified under parts (1) and (2) of this subsection. This fee for candidates required to stand written examination shall be divided at the discretion of the Board between an application fee to be collected at the time application is made, an examination fee to be collected at the time the examination is taken, and a registration fee to be collected upon completion of all requirements for registration. The fee shall cover the cost of one examination and if any examination is failed and a re-examination is given, an additional fee will be required as set forth in G. S. 89-8. A candidate for registration who holds an unexpired certificate of registration in another state or territory of the United States, as set forth in G. S. 89-7 (a) (2), shall be charged the total current registration fee as fixed by the Board.

- (1) To any applicant who, in the opinion of the Board, has satisfactorily met all the requirements of this chapter; or
- (2) To any person who holds an unexpired certificate of registration issued to him by proper authority in any state or territory of the United States in which the requirements for the registration of engineers or land surveyors are of a standard satisfactory to the Board: Provided, however, that the engineering registration board of said states and territories shall grant full and equal reciprocal registration rights and privileges to North Carolina registrants: Provided, however, that no person shall be eligible for registration or certification who is under twenty-one years of age; who is not a citizen of the United States; who does not speak and write the English language; and, who is not of good character and repute, provided no applicant shall be refused the right to examination without being given opportunity to appear before the Board and present evidence in support of his application.

(b) Minimum Evidence of Qualification Requirements. — Unless disqualifying evidence be before the Board in considering an application, filled out as set forth in the bylaws or rules and regulations of the Board, the following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as an engineer or land surveyor or for certification as an engineer-in-training, respectively:

- (1) As an engineer:
 - a. Graduation in an engineering or science curriculum of four scholastic years or more from a school or college approved by the Board, and a specific record of four years or more of progressive experience in engineering work of a nature and level approved by the Board, and satisfactorily passing such basic examination or applied engineering examination, or both, written in the presence of and as required by the Board, all of which shall determine and indicate that the applicant is competent to practice engineering; or
 - b. Graduation in a curriculum from a secondary school or equivalent approved by the Board, and a specific record of ten years or more of progressive experience in engineering work of a nature and level approved by the Board, and satisfactorily passing such basic examination or applied engineering examination, or both, written in the presence of and as required by the Board, all of which shall determine and indicate that the applicant is competent to practice engineering; or
 - c. Rightful possession of an engineer-in-training certificate or equivalent issued in North Carolina or in another state where the requirements for this certificate are fundamentally the same as those in North Carolina, and a specific record of four years or

more of progressive experience in engineering work of a nature and level approved by the Board, and satisfactorily passing such applied engineering examination written in the presence of and as required by the Board, all of which shall determine and indicate that the applicant is competent to practice engineering. At its discretion in evaluating years of experience in progressive engineering work under a, b and c above, the Board may give credit not in excess of one year for graduate study; the Board may give credit not in excess of two years for progressive land surveying work, engineering sales, or construction work; the Board may give credit not in excess of four years for the teaching of advanced engineering or science subjects of courses. In addition the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work executed by him and which he personally accomplished or supervised.

(2) As a registered land surveyor:

- a. Graduation from a school or college approved by the Board and including the satisfactory completion of a program of study in surveying approved by the Board, and a specific record of one year or more of progressive land surveying work of a nature and level approved by the Board, and satisfactorily passing such oral and written examination, written in the presence of and as required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying; or
- b. A specific record of five years or more of progressive land surveying work of a nature and level approved by the Board, and satisfactorily passing such oral and written examination written in the presence of and as required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. At its discretion in evaluating years of experience in land surveying work under (2) a and (2) b above, the Board may give credit not in excess of one year for the teaching of college level courses in land surveying. In addition the Board may require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by him and which he personally accomplished or supervised.

(3) As an engineer-in-training:

- a. Graduation in an engineering or science curriculum of four scholastic years or more from a school or college approved by the Board, and satisfactorily passing such basic examination written in the presence of and as required by the Board; or
- b. Graduation in a curriculum from a secondary school or equivalent approved by the Board, and a specific record of four years or more of progressive experience in engineering work of a nature and level approved by the Board, and satisfactorily passing such basic examination written in the presence of and as required by the Board. (1921, c. 1, s. 9; C. S., s. 6055(j); 1951, c. 1084, s. 1; 1953, c. 999, s. 2; 1957, c. 1060, ss. 2, 3.)

Editor's Note. — The 1957 amendment rewrote this section as changed by the 1953 amendment.

§ 89-8. Further as to qualifications; denial or expiration and renewal of certificate.—The satisfactory completion of each year of a curriculum

in engineering of a school or college approved by the Board, may be considered as equivalent to a year of experience in G. S. 89-7. Graduation in a curriculum other than engineering from a college or university approved by the Board may be considered as equivalent to two years of experience in G. S. 89-7: Provided, however, that no applicant shall receive credit for more than four years of experience in evaluating his undergraduate educational record.

Applicants for registration, in cases where the evidence originally presented in the application does not appear to the Board conclusive or warranting the issuing of a certificate, may present further evidence for consideration of the Board.

In case the Board denies the issuance of a certificate to an applicant, the registration fee deposited shall be returned by the Board to the applicant; and such denial must be in accordance with the provisions of chapter 150 of the General Statutes.

A candidate failing an examination may apply, and be considered by the Board, for re-examination at the end of six months. The Board shall make such re-examination charge as is necessary to defray the cost of the examination provided the charge for any one re-examination shall not exceed twenty dollars (\$20.00).

Certificates for registration shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the Board to notify by mail every person, except engineers-in-training, registered hereunder, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of expiration of such certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ten dollars (\$10.00). Failure on the part of any registrant to renew his certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first thirty-six months immediately following its invalidation on payment of the renewal fee increased ten per cent (10%) for each month or fraction of a month that payment for renewal is delayed. Failure of a registrant to renew his registration for a period of thirty-six months shall require the individual, prior to resuming practice in North Carolina, to submit an application therefor on the prescribed form, and to meet all other requirements for registration as set forth in G. S. 89-7. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all registrants who have not affected [effected] their renewal by the first day of February immediately following the date of their expiration. The Board may enact rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that he has maintained his active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each registrant to inform the Board promptly concerning change in address. (1921, c. 1, s. 9; C. S., s. 6055(k); 1951, c. 1084, s. 1; 1953, c. 1041, s. 9; 1957, c. 1060, s. 4.)

Editor's Note. — The 1953 amendment rewrote the third paragraph of this section, adding the reference to chapter 150 of the General Statutes.

The 1957 amendment rewrote the last two paragraphs.

§ 89-9. Determining charges of malpractice, etc.; reprimand or suspension or revocation of registration; hearing and procedure; re-issuance of certificate.—In the interest of protecting the public, the Board shall have jurisdiction to hear and determine all complaints, allegations, or charges

of malpractice, unprofessional conduct, fraud, deceit, gross negligence, or gross incompetence or gross misconduct in obtaining a certificate of registration or in the practice of engineering or land surveying, made against any engineer, engineer-in-training, or land surveyor registered or certified in North Carolina and may administer the penalty of:

- (1) Reprimand;
- (2) Suspension from practice for a period not exceeding twelve months;
- (3) Revocation of registration; and
- (4) Probationary revocation, upon conditions set by the Board, with revocation upon failure to comply, as the case shall in their judgment warrant, for any of the following causes:
 - a. Commission of a criminal offense showing professional unfitness;
 - b. Conduct involving deceit, fraud, gross negligence, gross incompetence, or gross misconduct, in obtaining a certificate of registration in, or in the practice of, engineering or land surveying.

The Board may invoke the processes of the courts in any case in which they deem it desirable to do so, and shall formulate rules of procedure governing the hearing of charges directed against such person which shall conform as near as may be to the procedure now provided by law for hearings. Provided, however, that the Board in conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of the Board the ends of justice or convenience of witnesses require such removal. Any person may prefer charges against any engineer, an engineer-in-training, or a registered land surveyor; such charges shall be in writing and sworn to by the complainant and submitted to the Board. Charges unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board within three months after the date on which they are preferred. Such Board proceeding shall be in accordance with the provisions of chapter 150 of the General Statutes.

The Board may, by unanimous vote, for reasons they deem sufficient, at any time after the expiration of one year from the date of revocation and upon finding that the cause upon which such revocation was made no longer exists, reissue a certificate of registration to any such person whose certificate has been revoked.

The Board shall immediately notify the Secretary of State and the clerks of the several counties and municipalities in the State of the revocation of a certificate by it or the re-issuance of a certificate to a person whose certificate has previously been revoked. (1921, c. 1, s. 10; C. S., s. 6055(1); 1939, c. 218, s. 2; 1951, c. 1084, s. 1; 1953, c. 1041, s. 10; 1957, c. 1060, s. 5.)

Editor's Note. — The 1953 amendment rewrote this section, inserting therein the reference to chapter 150 of the General Statutes. The 1957 amendment rewrote the first paragraph to appear as the first two paragraphs above.

§ 89-10. Effect of certification; seals.—The Board shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to an applicant who, in the opinion of the Board, has satisfactorily met all the requirements of this chapter. In the case of a professional engineer, the certificate shall authorize the "practice of engineering." In the case of an engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the Board and has been enrolled as an "engineer-in-training." In the case of a land surveyor, the certificate shall authorize the "practice of land surveying." Certificates of registration and certificates as engineer-in-training shall show the full name of the registrant, and shall be signed by the chairman and the secretary of the Board under the seal of the Board.

The issuance of a certificate of registration by this Board shall be evidence that

the person named therein is entitled to all the rights and privileges of a registered engineer, or registered land surveyor, or engineer-in-training, while the said certificate remains unrevoked or unexpired.

Each registrant hereunder shall, upon registration, obtain a seal of the design authorized by the Board, bearing the registrant's name and the legend, "registered engineer," or "registered land surveyor." All plans, specifications, plats, and reports issued by a registrant shall be stamped with said seal during the life of a registrant's certificate, but it shall be unlawful for anyone to stamp or seal any document or documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate has been renewed or reissued. It shall be unlawful for any registrant to stamp or seal with said seal any documents other than those prepared by, or under the direct supervision of, the registrant. (1921, c. 1, s. 11; C. S., s. 6055(m); 1951, c. 1084, s. 1; 1957, c. 1060, s. 6.)

Editor's Note. — The 1957 amendment added the last sentence of the last paragraph.

§ 89-11. Unauthorized practice of engineering or land surveying; penalties.—Any person who is not legally authorized to engage in the practice of engineering or land surveying in this State according to the provisions of this chapter, and who shall so engage or offer to engage in the practice of engineering or land surveying in this State except as provided in G. S. 89-12, and any person presenting or attempting to file as his own the certificate or seal of registration of another, or who shall give false or forged evidence of any kind to the Board, or to any member thereof, in obtaining a certificate of registration, or who shall falsely impersonate any other practitioner of like or different name or who shall use an expired or revoked certificate of registration or seal, or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall for each offense of which he is convicted be punished by a fine of not less than one hundred dollars (\$100.00) or by imprisonment for three months, or by both fine and imprisonment, in the discretion of the court. (1921, c. 1, s. 12; C. S., s. 6055(n); 1951, c. 1084, s. 1.)

§ 89-12. Limitations on application of chapter. — This chapter shall not be construed to prevent or to affect:

- (1) The practice of architecture or contracting or any other legally recognized profession or trade; or
- (2) The practice of engineering or land surveying in this State by any person not a resident of this State and having no established place of business in this State, when this practice does not aggregate more than thirty days in any calendar year: Provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; or
- (3) The practice of engineering or land surveying in this State not to aggregate more than thirty days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration: Provided, however, such person shall have filed an application for registration as a registered engineer or land surveyor and shall have paid the fee provided for in G. S. 89-7: Provided, that such a person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; or
- (4) Engaging in engineering or land surveying as an employee or assistant

to or under the supervision of a registered engineer or a registered land surveyor, or as an employee or assistant of a nonresident engineer or a nonresident land surveyor, provided for in paragraphs (2) and (3) of this section: Provided, that said work as an employee may not include responsible charge of design or supervision; or

- (5) The practice of engineering or land surveying by any person not a resident of, and having no established place of business in, this State, as a consulting associate of an engineer or land surveyor registered under the provisions of this chapter: Provided, the nonresident is qualified for such professional service in his own state or country; or
- (6) At the discretion of the Board a noncitizen of the United States who is professionally qualified for registration may be registered, on an annual renewal basis, for a specific engineering project, subject to revocation as provided in this chapter.
- (7) Practice of engineering and land surveying solely as an officer in the armed forces of the United States government.
- (8) The practice of engineering or land surveying by an individual, firm, or corporation, or by a person employed solely by said individual, firm, or corporation on property owned or leased by said individual, firm, or corporation unless the life, health, or property of the public are endangered, involved, or influenced.
- (9) A registered engineer engaging in the practice of land surveying. (1921, c. 1, s. 13; C. S., s. 6055(o); 1951, c. 1084, s. 1.)

§ 89-13. Corporate or partnership practice of engineering or land surveying.—A corporation or partnership may engage in the practice of engineering or land surveying in this State: Provided, however, the person or persons connected with such corporation or partnership in charge of the designing or supervision which constitutes such practice is or are registered as herein required of professional engineers and land surveyors. The same exemptions shall apply to corporations and partnerships as apply to individuals under this chapter. (1921, c. 1, s. 14; C. S., s. 6055(p); 1951, c. 1084, s. 1.)

§ 89-14. Land surveyors.—At any time prior to July 1, 1960, upon new application therefor and the payment of a registration fee of ten dollars (\$10.00), the Board shall issue a certificate of registration without oral or written examination, when such applicant shall submit evidence under oath, satisfactory to the Board, that he is of good moral character, and has practiced land surveying in North Carolina for at least one year. Any applicant hereunder may request and be given an oral or written examination. (1921, c. 1, s. 15; C. S., s. 6055(q); 1951, c. 1084, s. 1; 1959, c. 1236, s. 1.)

Local Modification. — Ashe: 1963, cc. 327, 1239.

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

§ 89-15. Existing registration not affected. — Nothing in this chapter shall be construed as affecting the status of registration of any engineer or land surveyor who is rightfully in possession of a certificate of registration duly issued by the Board and prior to July 1, 1959. (1951, c. 1084, s. 1; 1959, c. 1236, s. 2.)

Editor's Note. — The 1959 amendment substituted "July 1, 1959" for "April 14, 1951", and deleted the former second paragraph.

§ 89-16. Manual of practice for land surveyors. — Prior to July 1, 1960 the State Board of Registration for Engineers and Land Surveyors, provided for in chapter 89 of the General Statutes of North Carolina, are authorized and directed to prepare or have prepared and approved a manual of practice for the information and guidance of those engaged in the practice of land surveying in North Carolina and shall review said manual annually, and shall revise some

if revisions are deemed advisable or necessary by the Board. The expenses incurred in the preparation and necessary for the distribution of said manual are to be paid from the fund of the Board of Registration for Engineers and Land Surveyors in accordance with the provisions of G. S. 89-7. (1953, c. 1215; 1959, c. 1236, s. 3.)

Editor's Note. — The 1959 amendment inserted at the beginning of the first sentence the words "Prior to July 1, 1960." It also added at the end of the sentence

the following: "and shall review said manual annually, and shall revise same if revisions are deemed advisable or necessary by the Board."

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ARTICLE 1.

Practice of Medicine.

§ 90-1. **North Carolina Medical Society incorporated.**—The association of regularly graduated physicians, calling themselves the State Medical Society, is hereby declared to be a body politic and corporate, to be known and distinguished by the name of The Medical Society of the State of North Carolina. (1858-9, c. 258, s. 1; Code, s. 3121; Rev., s. 4491; C. S., s. 6605.)

§ 90-2. **Board of Examiners.**—In order to properly regulate the practice of medicine and surgery, there shall be established a board of regularly graduated physicians, to be known by the title of The Board of Medical Examiners of the State of North Carolina, which shall consist of seven regularly graduated physicians. (1858-9, c. 258, ss. 3, 4; Code, s. 3123; Rev., s. 4492; C. S., s. 6606; Ex. Sess. 1921, c. 44, s. 1.)

§ 90-3. **Medical Society appoints Board.** — The Medical Society shall have power to appoint the Board of Medical Examiners. (1858-9, c. 258, s. 9; Code, s. 3126; Rev., s. 4493; C. S., s. 6607.)

§ 90-4. **Board elects officers and fills vacancies.**—The Board of Medical Examiners is authorized to elect all such officers and to frame all such bylaws as may be necessary, and in the event of any vacancy by death, resignation, or otherwise, of any member of said Board, the Board, or a quorum thereof, is empowered to fill such vacancy. (1858-9, c. 258, s. 11; Code, s. 3128; Rev., s. 4494; C. S., s. 6608.)

§ 90-5. **Meetings of Board.**—The Board of Medical Examiners may assemble once in every year in the city of Raleigh, and shall remain in session from day to day until all applicants who may present themselves for examination within the first two days of this meeting have been examined and disposed of; other meetings in each year may be held at some suitable point in the State if deemed advisable. (Rev., s. 4495; 1915, c. 220, s. 1; C. S., s. 6609; 1935, c. 363.)

Editor's Note.—The 1935 amendment substituted "may" for "shall" near the beginning of this section.

§ 90-6. **Regulations governing applicants for license, examinations, etc.**—The Board of Medical Examiners is empowered to prescribe such regulations as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper. (C. S., s. 6610; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 2.)

§ 90-7. **Bond of secretary.** — The secretary of the Board of Medical Examiners shall give bond with good surety, to the president of the Board, for the safekeeping and proper payment of all moneys that may come into his hands. (1858-9, c. 258, s. 17; Code, s. 3134; Rev., s. 4497; C. S., s. 6611.)

§ 90-8. **Officers may swear applicants and summon witnesses.**—The president and secretary of the Board of Medical Examiners of this State shall have power to administer oaths to all persons who may apply for examination before the Board, or to any other persons deemed necessary in connection with performing the duties of the Board as imposed by law. The Board shall have power

to summon any witnesses deemed necessary to testify under oath in connection with any cause to be heard before it; or to summon any licentiate against whom charges are preferred in writing, and the failure of the licentiate, against whom charges are preferred, to appear at the stated time and place to answer to the charges, after due notice or summons has been served in writing, shall be deemed a waiver of his right to said hearing, as provided in § 90-14.2. (1913, c. 20, s. 7; C. S., s. 6612; Ex. Sess. 1921, c. 44, s. 3; 1953, c. 1248, s. 1.)

Editor's Note.—The 1953 amendment substituted "90-14.2" for "90-14" at the end of this section.

§ 90-9. Examination for license; scope; conditions and prerequisites.—It shall be the duty of the Board of Medical Examiners to examine for license to practice medicine or surgery, or any of the branches thereof, every applicant who complies with the following provisions: He shall, before he is admitted to examination, satisfy the Board that he has an academic education equal to the entrance requirements of the University of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that he has passed an examination upon his literary attainments to meet the requirements of entrance in the regular course of the State University. He shall exhibit a diploma or furnish satisfactory proof of graduation from a medical college in good standing requiring an attendance of not less than four years, and supplying such facilities for clinical and scientific instruction as shall meet the approval of the Board; but the requirement of four years' attendance at a school shall not apply to those graduating prior to January the first, nineteen hundred.

The examination shall cover the following branches of medical science: anatomy, embryology, histology, physiology, pathology, bacteriology, surgery, pediatrics, medical hygiene, chemistry, pharmacy, materia medica, therapeutics, obstetrics, gynecology, and the practice of medicine.

If on such examination the applicant is found competent, the Board shall grant him a license authorizing him to practice medicine or surgery or any of the branches thereof.

Five members of the Board shall constitute a quorum, and four of those present shall be agreed as to the qualification of the applicant. (Rev., s. 4498; 1913, c. 20, ss. 2, 3, 6; C. S., s. 6613; 1921, c. 47, s. 1.)

Constitutional Discrimination.—That the statute is not in violation of the State Constitution is held in *State v. Van Doran*, 109 N. C. 864, 14 S. E. 32 (1891). It is not to be questioned that the lawmaking power of the State has the right to require an

examination and certificate as to the competency of persons desiring to practice law or medicine. *State v. Call*, 121 N. C. 643, 28 S. E. 517 (1897); *State v. Siler*, 169 N. C. 314, 84 S. E. 1015 (1915).

§ 90-10. Two examinations, preliminary and final, allowed.—It shall be the duty of the State Board of Medical Examiners to examine any applicant for license to practice medicine on the subjects of anatomy, histology, physiology, bacteriology, embryology, pathology, medical hygiene, and chemistry, upon his furnishing satisfactory evidence from a medical school in good standing, and supplying such facilities for anatomical and laboratory instruction as shall meet with the approval of the Board, that he has completed the course of study in the school upon the subjects mentioned. The Board shall set to the credit of such applicant upon its record books the grade made by him upon the examination, which shall stand to the credit of such applicant; and when he has subsequently completed the full course in medicine and presents a diploma of graduation from a medical college in good standing, requiring a four years' course of study of medicine for graduation, and when he has completed the examination upon the further branches of medicine, to wit, pharmacy, materia medica, therapeutics, obstetrics, gynecology, pediatrics, practice of medicine and surgery, he shall have accounted to his credit the grade made upon the former examination, and if then upon such

completed examination he be found competent, said Board shall grant him a license to practice medicine and surgery, and any of the branches thereof. (C. S., s. 6614; 1921, c. 47, s. 2; Ex. Sess. 1921, c. 44, s. 4.)

§ 90-11. **Qualifications of applicant for license.**—Every person making application for a license to practice medicine or surgery in the State shall be not less than twenty-one years of age, and of good moral character, before any license can be granted by the Board of Medical Examiners: Provided, that the age requirement shall not apply to students taking the examinations of the first two years in medicine. (C. S., s. 6615; 1921, c. 47, s. 3; Ex. Sess. 1921, c. 44, s. 5.)

§ 90-12. **Limited license.**—The Board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make such modifications of the requirements of the preceding sections, both as to application for examination and examination for license, as in its judgment the interests of the people living in that locality may demand, and may issue to such applicant a special license, to be entitled a "Limited License," authorizing the holder thereof to practice medicine and surgery within the limits only of the districts specifically described therein. The holder of the limited license practicing medicine or surgery beyond the boundaries of the districts as laid down in said license shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars for each and every offense; and the Board is empowered to revoke such limited license, in its discretion, after due notice. The clerk of the superior court, in registering the holder of a limited license, shall copy upon the certificate of registration and upon his record the description of the district given in the license. (1909, c. 218, s. 1; C. S., s. 6616.)

§ 90-13. **When license without examination allowed.**—The Board of Medical Examiners shall in their discretion issue a license to any applicant to practice medicine and surgery in this State without examination if said applicant exhibits a diploma or satisfactory proof of graduation from a medical college in good standing, requiring an attendance of not less than four years and a license issued to him to practice medicine and surgery by the Board of Medical Examiners of another state. (1907, c. 890; 1913, c. 20, s. 3; C. S., s. 6617.)

§ 90-14. **Board may rescind license.**—The Board shall have the power to revoke and rescind any license granted by it, when, after due notice and hearing, it shall find that any physician licensed by it has been guilty of grossly immoral conduct, or of producing or attempting to produce a criminal abortion, or, by false and fraudulent representations, has obtained or attempted to obtain, practice in his profession, or is habitually addicted to the use of morphine, cocaine or other narcotic drugs, or is habitually addicted to the use of marijuana, barbiturates, demerol or any other habit forming drug or derivative of such drug, or has by false and fraudulent representations of his professional skill obtained, or attempted to obtain, money or any thing of value, or has advertised or held himself out under a name other than his own, or has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he holds a license, or is guilty of any fraud or deceit by which he was admitted to practice, or has been guilty of any unprofessional or dishonorable conduct unworthy of, and affecting, the practice of his profession, or has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude, or has been adjudicated a mental incompetent or whose mental condition renders him unable safely to practice medicine. Upon the hearing before said Board of any charge involving a conviction of such felony or other criminal offense, a transcript of the record thereof certified by the clerk of the court in which such conviction is had, shall be sufficient evidence to justify

the revocation or rescinding of such license. And, for any of the above reasons, the said Board of Medical Examiners may refuse to issue a license to an applicant. The findings and actions of the Board of Medical Examiners in revoking or rescinding and refusing to issue licenses under this section, shall be subject to review upon appeal to the superior court, as hereinafter provided in this article. The said Board of Medical Examiners may, in its discretion, restore a license so revoked and rescinded, upon due notice being given and hearing had, and satisfactory evidence produced of reformation of the licentiate. (C. S., s. 6618; 1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; 1953, c. 1248, s. 2.)

Editor's Note. — The 1933 amendment rewrote this section.

The 1953 amendment inserted in the first sentence the provision as to marijuana, barbiturates, etc., and added the clause as to mental condition at the end of the sentence. It deleted the former provision as to conclusiveness of findings of the Board, and inserted the next to last sentence.

Unprofessional Conduct. — While the Board does not have the power to revoke a license on the sole ground that the holder thereof has been convicted of the violation of a criminal statute in force in the State or in the United States, the Board has the power to revoke a license upon a finding that the holder thereof was guilty of un-

professional conduct in that he had violated the provisions of the statute. *Board of Medical Examiners v. Gardner*, 201 N. C. 123, 159 S. E. 8 (1931).

Appeal. — The appeal from the State Board of Medical Examiners allowed to a physician whose license has been revoked for immoral conduct in the practice of his profession follows the procedure allowed in analogous cases, and the intent of the legislature is interpreted to give a trial de novo in the superior court wherein the jury are to decide upon the evidence adduced before them the facts involved in the issue. *State v. Carroll*, 194 N. C. 37, 138 S. E. 339 (1927).

§ 90-14.1. Judicial review of Board's decision denying issuance of a license.—Whenever the Board of Medical Examiners has determined that a person who has duly made application to take an examination to be given by the Board showing his education, training and other qualifications required by said Board, or that a person who has taken and passed an examination given by the Board, has failed to satisfy the Board of his qualifications to be examined or to be issued a license, for any cause other than failure to pass an examination, the Board shall immediately notify such person of its decision, and indicate in what respect the applicant has so failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the secretary of the Board at Raleigh, North Carolina, within ten days after receipt of the Board's decision, stating the reasons for such request. The Board shall within twenty days of receipt of such request notify such applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of his qualifications for licensure shall be upon the applicant. Following such hearing, the Board shall determine whether the applicant is qualified to be examined or is entitled to be licensed as the case may be. Any such decision of the Board shall be subject to judicial review upon appeal to the Superior Court of Wake County upon the filing with the Board of a written notice of appeal with exceptions taken to the decision of the Board within twenty days after service of notice of the Board's final decision. Within thirty days after receipt of notice of appeal, the secretary of the Board shall certify to the clerk of the Superior Court of Wake County the record of the case which shall include a copy of the notice of hearing, a transcript of the testimony and evidence received at the hearing, a copy of the decision of the Board, and a copy of the notice of appeal and exceptions. Upon appeal the case shall be heard by the judge without a jury, upon the record, except that in cases of alleged omissions or errors in the record, testimony may be taken by the court. The decision of the Board shall be upheld unless the substantial rights of the applicant have been prejudiced because the decision of the Board is in violation of law or is not supported by any evidence admissible under this article, or is arbitrary or capricious. Each party to the review proceeding

may appeal to the Supreme Court as hereinafter provided in section 90-14.11. (1953, c. 1248, s. 3.)

§ 90-14.2. Hearing before revocation or suspension of a license.—Before the Board shall revoke or rescind any license granted by it to any physician, it will give to the physician a written notice indicating the general nature of the charges, accusation or complaints preferred against him and stating that the licensee will be given an opportunity to be heard concerning such charges or complaints at a time and place stated in such notice, or to be thereafter fixed by the Board, and shall hold a public hearing not less than thirty days from the date of the service of such notice upon such licensee, at which he may appear personally or through counsel, may cross-examine witnesses and present evidence in his own behalf. A physician who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the physician has his residence. Such licensee or physician may, if he desires, file written answers to the charges or complaints preferred against him within thirty days after the service of such notice, which answer shall become a part of the record but shall not constitute evidence in the case. (1953, c. 1248, s. 3.)

§ 90-14.3. Service of notices.—Any notice required by this chapter may be served either personally or by an officer authorized by law to serve process, or by registered mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed. Where notice is served by registered mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to addressee or refusal of the addressee to accept the notice. (1953, c. 1248, s. 3.)

§ 90-14.4. Place of hearings for revocation or suspension of license.—Upon written request of the accused physician, given to the secretary of the Board twenty days after service of the charges or complaints against him, a hearing for the purpose of determining revocation or suspension of his license shall be conducted in the county in which such physician maintains his residence, or at the election of the Board, in any county in which the act or acts complained of occurred. In the absence of such request, the hearing shall be held at a place designated by the Board, or as agreed upon by the physician and the Board. (1953, c. 1248, s. 3.)

§ 90-14.5. Use of trial examiner or depositions.—Where the licensee requests that the hearing herein provided for be held by the Board in a county other than the county designated for the holding of the meeting of the Board at which the matter is to be heard, the Board may designate in writing one or more of its members to conduct the hearing as a trial examiner or trial committee, to take evidence and report a written transcript thereof to the Board at a meeting where a majority of the members are present and participating in the decision. Evidence and testimony may also be presented at such hearings and to the Board in the form of depositions taken before any person designated in writing by the Board for such purpose or before any person authorized to administer oaths, in accordance with the procedure for the taking of depositions in civil actions in the superior court. (1953, c. 1248, s. 3.)

§ 90-14.6. Evidence admissible.—In proceedings held pursuant to this article the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil actions. A complete record of such evidence shall be made, together with the other proceedings incident to such hearing. (1953, c. 1248, s. 3.)

§ 90-14.7. **Procedure where person fails to request or appear for hearing.**—If a person who has requested a hearing does not appear, and no continuance has been granted, the Board or its trial examiner or committee may hear the evidence of such witnesses as may have appeared, and the Board may proceed to consider the matter and dispose of it on the basis of the evidence before it. For good cause, the Board may reopen any case for further hearing. (1953, c. 1248, s. 3.)

§ 90-14.8. **Appeal from Board's decision revoking or suspending a license.**—A physician whose license is revoked or suspended by the Board may obtain a review of the decision of the Board in the Superior Court of Wake County or in the superior court in the county in which the hearing was held or upon agreement of the parties to the appeal in any other superior court of the State, upon filing with the secretary of the Board a written notice of appeal within twenty days after the date of the service of the decision of the Board, stating all exceptions taken to the decision of the Board and indicating the court in which the appeal is to be heard.

Within thirty days after the receipt of a notice of appeal as herein provided, either by an applicant or a licensee, the Board shall prepare, certify and file with the clerk of the superior court in the county to which the appeal is directed the record of the case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies of documents or other written evidence produced at the hearing, decision of the Board, and notice of appeal containing exceptions to the decision of the Board. (1953, c. 1248, s. 3.)

§ 90-14.9. **Appeal bond; stay of Board order.** — The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of \$200 at the same time the notice of appeal is filed with the Board. At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the Board decision pending the outcome of the review, which the court may grant or deny in its discretion. (1953, c. 1248, s. 3.)

§ 90-14.10. **Scope of review.**—Upon the review of the Board's decision revoking or suspending a license, the case shall be heard by the judge without a jury, upon the record, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the Board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the accused physician have been prejudiced because the findings or decisions of the Board are in violation of substantive or procedural law, or are not supported by competent, material, and substantial evidence admissible under this article, or are arbitrary or capricious. At any time after the notice of appeal has been filed, the court may remand the case to the Board for the hearing of any additional evidence which is material and is not cumulative and which could not reasonably have been presented at the hearing before the Board. (1953, c. 1248, s. 3.)

§ 90-14.11. **Appeal to Supreme Court; appeal bond.** — Any party to the review proceeding, including the Board, may appeal to the Supreme Court from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the Board. The appealing party may apply to the superior court for a stay of that court's decision or a stay of the Board's decision, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court. (1953, c. 1248, s. 3.)

§ 90-14.12. **Injunctions.** — The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this article and the superior courts shall have power to grant such injunctions re-

ardless of whether criminal prosecution has been or may be instituted as a result of such violations. (1953, c. 1248, s. 3.)

§ 90-15. License fee; salaries, fees, and expenses of Board.—Each applicant for a license by examination shall pay to the treasurer of the Board of Medical Examiners of the State of North Carolina a fee which shall be prescribed by said Board in an amount not exceeding the sum of fifty dollars (\$50.00) before being admitted to the examination: Provided however, that in the case of applicants taking the examination in two halves, as provided in § 90-10, one-half of the prescribed fee shall be paid by the applicant for each of the two half examinations. Whenever any license is granted without examination, as authorized in § 90-13, the applicant shall pay to the treasurer of the Board a fee in an amount to be prescribed by the Board not in excess of one hundred dollars (\$100.00). Whenever a limited license is granted as provided in § 90-12, the applicant shall pay to the treasurer of the Board a fee of fifty dollars (\$50.00), except where a limited license to practice within the confines of a hospital for the purpose of education or training, the applicant shall pay a fee of ten dollars (\$10.00). A fee of ten dollars (\$10.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the treasurer of the Board of Medical Examiners of the State of North Carolina, to be held by him as a fund for the use of said Board. The compensation and expenses of the members and officers of the said Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of said fund, upon the warrant of the said Board and all expenses proper and necessary in the opinion of the officers and members of said Board shall be fixed by the Board but shall not exceed ten dollars (\$10.00) per day per member for time spent in the performance and discharge of his duties as a member of said Board, and reimbursement for travel and other necessary expenses incurred in the performance of his duties as a member of said Board. Any unexpended sum or sums of money remaining in the treasury of said Board at the expiration of the terms of office of the members thereof shall be paid over to their successors in office. (1858-9, c. 258, s. 13; Code, s. 3130; Rev., s. 4501; 1913, c. 20, ss. 4, 5; C. S., s. 6619; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 7; 1953, c. 187.)

Editor's Note. — The 1953 amendment rewrote this section.

§ 90-15.1. Registration every two years with Board.—Every person heretofore or hereafter licensed to practice medicine by said Board of Medical Examiners shall, during the month of January, 1958, and during the month of January in every even-numbered year thereafter, register with the secretary-treasurer of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of five dollars (\$5.00). In the event a physician fails to register as herein provided he shall pay an additional amount of ten dollars (\$10.00) to the Board. Should a physician fail to register and pay the fees imposed, and should such failure continue for a period of thirty days, the license of such physician may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. Upon payment of all fees and penalties which may be due, the license of any such physician shall be reinstated. (1957, c. 597.)

§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence.—The Board of Examiners shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The Board of Examiners shall cause to be entered in a separate book the name of each applicant to whom a license is issued to prac-

tice medicine or surgery, along with any information pertinent to such issuance. The Board of Examiners shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within thirty days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this article, certified under the hand of the secretary and the seals of the Board of Medical Examiners of the State of North Carolina, shall be admitted as evidence in any court of this State when it is otherwise competent. (1858-9, c. 258, s. 12; Code, s. 3129; Rev., s. 4500; C. S., s. 6620; 1921, c. 47, s. 6.)

§ 90-17. **Blanks furnished clerk.**—It shall be the duty of the Medical Society of the State of North Carolina to prescribe proper forms of certificates required by this article and all such blanks and forms as the clerk may need to enable him to perform his duties under this article. (1889, c. 181, s. 7; 1899, c. 93, s. 4; Rev., s. 4505; C. S., s. 6621.)

§ 90-18. **Practicing without license; practicing defined; penalties.**—No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless he shall have been first licensed and registered so to do in the manner provided in this article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this article, he shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100), or imprisoned at the discretion of the court for each and every offense.

Any person shall be regarded as practicing medicine or surgery within the meaning of this article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person: Provided, that the following cases shall not come within the definition above recited:

- (1) The administration of domestic or family remedies in cases of emergency.
- (2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.
- (3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.
- (4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.
- (5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.
- (6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.
- (7) The practice of midwifery by any woman who pursues the vocation of midwife.
- (8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.
- (9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially § 90-129.
- (10) The practice of chiropractic by any legally licensed chiropractor when engaged in the manual adjustment of the twenty-four spinal vertebrae of the human body and without the use of drugs.
- (11) The practice of medicine or surgery by any reputable physician or surgeon in a neighboring state coming into this State for consultation

with a resident registered physician. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

- (12) Physicians who have a diploma from a regular medical college or were practicing medicine and surgery in this State prior to the seventh day of March, one thousand eight hundred and eighty-five, and who are properly registered as required by law.
- (13) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X-rays. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X-rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X-rays; or who treats any disease or condition of the human body by the application of X-rays or radium. Nothing in this subsection shall prevent the practice of radiology by any person licensed under the provisions of articles 2, 7, 8, and 12 of this chapter. (1858-9, c. 258, s. 2; Code, s. 3122; 1885, c. 117, s. 2; c. 261; 1889, c. 181, ss. 1, 2; Rev., ss. 3645, 4502; C. S., s. 6622; 1921, c. 47, s. 7; Ex. Sess. 1921, c. 44, s. 8; 1941, c. 163.)

Cross Reference.—As to indictment and prosecution for violation of section, see note to § 90-21.

Editor's Note. — The 1921 amendments rewrote this section, and the 1941 amendment added subdivision (13).

Before this section was amended in 1921 it provided that an unlicensed practitioner could not maintain an action to collect fees for services. In *Puckett v. Alexander*, 102 N. C. 95, 8 S. E. 767 (1889), it was held that one not licensed to practice could not collect for service. The contract for services in such case was entered into before the act of 1885 which allowed one who graduated from a medical college before 1880 to practice.

Validity.—This statute is not invalid, as it is the exercise of police power to protect the public, and is not the creation of a monopoly. *State v. Call*, 121 N. C. 643, 28 S. E. 517 (1897).

Nonmedical Physicians.—The statute is applicable only to one holding himself out as a medical physician. If one cures by other means he is not subject to this statute. *State v. Biggs*, 133 N. C. 729, 46 S. E. 401 (1903).

A patent medicine vendor cannot hold himself out as a physician, and then avoid the statute by only prescribing his own

products. *State v. Van Doran*, 109 N. C. 864, 14 S. E. 32 (1891).

The distinction between the practice of osteopathy and the practice of medicine and surgery is recognized by articles 1 and 7 of this chapter. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

The legislature has denied to a licensed osteopath the privilege of using drugs in his practice. It necessarily follows that he exceeds the limits of his certificate and is guilty of practicing medicine without being licensed so to do within the purview of this section if he administers or prescribes drugs in treating the ailments of his patients. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948). See § 90-129 and note.

But he is not guilty of practicing medicine without a license in administering violet ray treatments to his patients suffering with skin diseases. Subsection 13 specifically confers upon him the privilege of practicing radiology. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

A person administers drugs when he gives or applies drugs to a patient. Thus, the giving of a hypodermic injection of a drug is administering a drug. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

Or Gives Oral Directions for Their Use or Application.—The giving of oral directions by an osteopath to his patient directly, or indirectly by telephone directions to the druggist, for the use or application by the patient of recommended remedies, is prescribing drugs. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

Meaning of "Drugs."—In so far as the practice of osteopathy is concerned, a "drug" is any substance used as a medicine or in the composition of medicines for internal or external use, and a "medicine" is any substance or preparation used in treating disease. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

The Narcotic Drug Act does not furnish the criterion for determining the meaning of "drugs" in relation to the practice of medicine without a license. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

Laxatives and tonics are "drugs" in so far as the practice of osteopathy is concerned. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

Also Patent or Proprietary Remedies.—A person who holds himself out as an expert in medical affairs and prescribes drugs for his patients and charges fees for so doing practices medicine notwith-

standing the drugs are patent or proprietary remedies purchasable without a prescription, and notwithstanding the fact that the recommendation of such remedies to acquaintances without the charge of a fee would not be unlawful. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

Canned Milk Is Not a Drug.—An osteopath does not practice medicine in advising a client to feed her baby a designated brand of canned milk, since milk is a food and not a drug. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

Whether a vitamin preparation is a drug or a food is ordinarily a question of fact. The same substance may be a drug under one set of circumstances, and not a drug under another. The test is whether it is administered or employed as a medicine. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948), wherein for the purpose of the particular case it was assumed that vitamin preparations were used solely for nourishment, and that the defendant did not transgress the scope of his osteopathic certificate in urging their use by his patients.

Quoted in Crawford v. Crowell-Collier Pub. Co., 87 F. Supp. 509 (1949).

§ 90-19. Practicing without registration; penalties.—Any person desiring to engage in the practice of medicine or surgery shall personally appear before the clerk of the superior court of the county in which he resides or practices, for registration as a physician or surgeon. The person so applying shall produce and exhibit before the clerk of the superior court a license obtained from the Board of Medical Examiners of the State. The clerk shall thereupon register the date of registration, with the name and residence of such applicant, in a book to be kept for this purpose in his office marked "Register of Physicians and Surgeons," and shall issue to him a certificate of registration under the seal of the superior court of the county upon the form furnished him by the Medical Society of North Carolina, for which the clerk shall be entitled to collect from said applicant a fee of twenty-five cents. The person obtaining such certificate shall be entitled to practice medicine or surgery, or both, in the county where the same was obtained, and in any other county in this State; but if he shall remove his residence to another county he shall exhibit said certificate to the clerk of such other county and be registered, which registration shall be made by said clerk without fee or charge.

Any person who practices or attempts to practice medicine or surgery in this State without first having registered and obtained the certificate required in this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned at the discretion of the court, for each and every offense: Provided, this section shall not apply to women pursuing the vocation of midwife, nor to reputable physicians or surgeons resident in a neighboring state coming into this State for consultation with a registered physician of this State. (1889, c. 181, ss. 4, 5; 1891, c. 420; Rev., ss. 3646, 4504; C. S., s. 6623; Ex. Sess. 1921, c. 44, s. 9.)

Cross Reference.—As to indictment and prosecution for violation of section, see note to § 90-21.

Editor's Note.—The 1921 amendment deleted a provision allowing registration upon presentment of a medical diploma

issued prior to March 7, 1885 or making oath that applicant was practicing in this State prior to the last mentioned date.

What Constitutes Practicing.—To constitute the offense of practicing medicine without registration, etc., it is not necessary to allege or prove the person practiced upon; it is sufficient if the defendant held himself out to the public as a physician. *State v. Van Doran*, 109 N. C. 894, 14 S. E. 32 (1891).

Practice of Medicine by Licensed Osteo-

§ 90-20. **Clerk punishable for illegally registering physician.** — If any clerk of the superior court shall register, or issue a certificate to, any person practicing medicine or surgery in any other manner than that prescribed by law, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars and shall be removed from office. (1889, c. 181, s. 6; Rev., s. 3647; C. S., s. 6624.)

Cross Reference.—As to indictment and prosecution for violation of section, see note to § 90-21.

§ 90-21. **Certain offenses prosecuted in superior court; duties of Attorney General.**—In case of the violation of the criminal provisions of §§ 90-18 to 90-20, the Attorney General of the State of North Carolina, upon complaint of the Board of Medical Examiners of the State of North Carolina, shall investigate the charges preferred, and if in his judgment the law has been violated, he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending persons. A solicitor's fee of five dollars shall be allowed and collected in accordance with the provisions of § 6-12. The Board of Medical Examiners may also employ, at their own expense, special counsel to assist the Attorney General or the solicitor.

Exclusive original jurisdiction of all criminal actions instituted for the violations of §§ 90-18 to 90-20 shall be in the superior court, the provisions of any special or local act to the contrary notwithstanding. (1915, c. 220, s. 2; C. S., s. 6625.)

This section merely establishes a method whereby the Board of Medical Examiners may procure an investigation by the Attorney General with respect to alleged violations of §§ 90-18 to 90-20. There is nothing in this chapter which requires the Board of Medical Examiners or the Attorney General to take any action before a criminal prosecution may be instituted for such violations. *State v. Loesch*, 237 N. C. 611, 75 S. E. (2d) 654 (1953).

Indictment Need Not Show Compliance with Section.—The contention that a strict compliance with the procedure outlined in this section is a prerequisite to any prosecution for the violation of §§ 90-18 to 90-20, and that a bill of indictment charging a violation of any such sections must show upon its face that there has been

path. — A licensed osteopathic physician exceeds the limits of his certificate and is guilty of practicing medicine without being registered within the purview of this section, if he administers or prescribes drugs in treating the ailments of his patients. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948). See notes to §§ 90-18, 90-129.

Quoted in *Crawford v. Crowell-Collier Pub. Co.*, 87 F. Supp. 509 (1949).

a compliance with the provisions of this section, is without merit. It would be unnecessary to include these averments as a prerequisite to the validity of a bill of indictment charging a violation of § 90-18 even though the prosecution was instituted pursuant to a complaint filed by the Board of Medical Examiners with the Attorney General. *State v. Loesch*, 237 N. C. 611, 75 S. E. (2d) 654 (1953).

Solicitor Not Deprived of Authority and Duty to Prosecute.—There is nothing in this chapter which would or could deprive the solicitor of a district of his constitutional authority and sworn duty to prosecute violations of the criminal laws of the State. *State v. Loesch*, 237 N. C. 611, 75 S. E. (2d) 654 (1953).

ARTICLE 2.

Dentistry.

§ 90-22. Practice of dentistry regulated in public interest; article liberally construed; Board of Dental Examiners; composition; qualifications and terms of members; vacancies; nominations and elections; compensation; expenditures by Board.—(a) The practice of dentistry in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of North Carolina. This article shall be liberally construed to carry out these objects and purposes.

(b) The North Carolina State Board of Dental Examiners heretofore created by chapter one hundred and thirty-nine, Public Laws, one thousand eight hundred and seventy-nine and by chapter one hundred and seventy-eight, Public Laws one thousand nine hundred and fifteen, is hereby continued as the agency of the State for the regulation of the practice of dentistry in this State. Said Board of Dental Examiners shall consist of six dentists who are licensed to practice dentistry in North Carolina and who possess other qualifications hereinafter specified and who shall have been elected in an election held as is hereinafter provided in which every person licensed to practice dentistry in North Carolina and residing in North Carolina shall be entitled to vote. Each member of said Board shall be elected for a term of three years and until his successor shall be elected and shall qualify. Each year there shall be elected two members for such terms of three years each. Any vacancy occurring on said Board shall be filled for the period of the unexpired term by a majority vote of the remaining members of the Board. No person shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice dentistry in North Carolina and actually engaged in the practice of dentistry in North Carolina and unless he has had such license to practice dentistry in North Carolina for not less than nine consecutive years prior thereto.

(c) Nominations and elections of members of the North Carolina State Board of Dental Examiners shall be as follows:

- (1) An election shall be held each year to elect two members of the Board of Dental Examiners, each to take office on the first day of August following the election and to hold office for a term of three years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by August first of that year, then the said members elected that year shall take office immediately after the completion of the election and shall hold office until the first of August of the third year thereafter and until their successors are elected and qualified.
- (2) Every dentist with a current North Carolina license residing in North Carolina shall be eligible to vote in all elections. The holding of such a license to practice dentistry in North Carolina shall constitute registration to vote in such elections. The list of licensed dentists shall constitute the registration list for elections.
- (3) All elections shall be conducted by the Board of Dental Examiners which is hereby constituted a Board of Dental Elections. If a member of the Board of Dental Examiners whose position is to be filled at any election is nominated to succeed himself, and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Dental Elections for that election and the remaining mem-

bers of the Board of Dental Elections shall proceed and function without his participation.

- (4) Nomination of candidates for election shall be made to the Board of Dental Elections by a written petition signed by not less than ten dentists licensed to practice in North Carolina and residing in North Carolina, and filed with said Board of Dental Elections subsequent to January first of the year in which the election is to be held and not later than midnight of the 20th day of May of such year, or not later than such earlier date (not before April 1) as may be set by the Board of Dental Elections: Provided, that not less than ten days' notice of such earlier date shall be given to all dentists qualified to sign a petition of nomination.
- (5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Dental Elections or its designated secretary at any time prior to the closing of the polls in any election.
- (6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Dental Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Dental Elections. At such time as may be fixed by the Board of Dental Elections a ballot and a return official envelope addressed to said Board shall be mailed to each dentist licensed to practice in North Carolina and residing in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

“Serial No. of Envelope
 Signature of Voter
 Address of Voter

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope).”

The Board of Dental Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless, within the time hereinafter provided, it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

- (7) The date and hour fixed by the Board of Dental Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.
- (8) The said ballots shall be canvassed by the Board of Dental Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed dentists may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter

whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of the ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

- (9) If more than two nominees receive a majority of the votes cast, the two receiving the highest number of votes shall be declared elected. If only two of the nominees receive a majority of the votes cast, they shall be declared elected. If only one of the nominees shall receive a majority of the votes cast, he shall be declared elected and the Board of Dental Elections shall thereupon order a second election to determine a contest between the two remaining nominees receiving the highest number of votes. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the four candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the Board of Dental Examiners, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.
- (10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements: Provided, that if the second election is between four candidates, then the two receiving the highest number of votes shall be declared elected.
- (11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations because of lack of plural or proper nominations or death, or withdrawal, or disqualification or any other reason, there shall be (i) only two candidates for two positions, they shall be declared elected by the Board of Dental Elections, or (ii) only one candidate for one position, he shall be declared elected by the Board of Dental Elections, or (iii) no candidate for two positions, the two positions shall be filled by the Board of Dental Examiners, or (iv) no candidate for one position, the position shall be filled by the Board of Dental Examiners, or (v) one candidate for two positions, the one candidate shall be declared elected by the Board of Dental Elections and one qualified dentist shall be elected to the other position by the Board of Dental Examiners. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the Board of Dental Examiners. In the event of the death or resignation of a member of the Board of Dental Examiners, after taking

office, his position shall be filled for the unexpired term by the Board of Dental Examiners.

- (12) An official list of licensed dentists shall be kept at an office of the Board of Dental Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed dentist. As soon as the voting in any election begins a list of the licensed dentists shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.
- (13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Dental Elections for a period of six months following the close of an election.
- (14) From any decision of the Board of Dental Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by article 33 of chapter 143 of the General Statutes of North Carolina.
- (15) The Board of Dental Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed dentists residing in North Carolina.

(d) For service on the Board of Dental Elections, the members of such Board shall receive the per diem compensation and expenses allowed by this article for service as members of the Board of Dental Examiners. The Board of Dental Elections is authorized and empowered to expend from funds collected under the provisions of this article such sum or sums as it may determine necessary in the performance of its duties as a Board of Dental Elections, said expenditures to be in addition to the authorization contained in G. S. 90-43 and to be disbursed as provided therein.

(e) The Board of Dental Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered dentists, for the issuance and the receipt of envelopes and ballots. (1935, c. 66, s. 1; 1957, c. 592, s. 1; 1961, c. 213, s. 1.)

Editor's Note. — The 1957 amendment added present subsection (a).

The 1961 amendment deleted all of the former second paragraph, now subsection (b), appearing after "in this State" at the end of the first sentence in this subsection and added the rest of the section.

Section 2 of the 1961 amendatory act provides that the first election pursuant

to the act shall be held in the calendar year 1961. Section 3 of the act confirms the present membership of the Board of Dental Examiners and Board of Dental Elections. And section 4 provides that the act shall be construed as fully as may be possible in conformity with existing laws.

§ 90-23. Officers; common seal.—The North Carolina State Board of Dental Examiners shall, at each annual meeting thereof, elect one of its members president and one secretary-treasurer. The common seal which has already been adopted by said Board, pursuant to law, shall be continued as the seal of said Board. (1935, c. 66, s. 2.)

§ 90-24. Quorum; adjourned meetings. — Four (4) members of said Board shall constitute a quorum for the transaction of business and at any meeting of the Board, if four (4) members are not present at the time and the place appointed for the meeting, those members of the Board present may adjourn

from day to day until a quorum is present, and the action of the Board taken at any adjourned meeting thus had shall have the same force and effect as if had upon the day and at the hour of the meeting called and adjourned from day to day. (1935, c. 66, s. 2.)

§ 90-25. **Records and transcripts.**—The said Board shall keep a record of its transactions at all annual or special meetings and shall provide a record book in which shall be entered the names and proficiency of all persons to whom licenses may be granted under the provisions of law. The said book shall show, also, the license number and the date upon which such license was issued and shall show such other matters as in the opinion of the Board may be necessary or proper. Said book shall be deemed a book of record of said Board and a transcript of any entry therein or a certification that there is not entered therein the name, proficiency and license number or date of granting such license, certified under the hand of the secretary-treasurer, attested by the seal of the North Carolina State Board of Dental Examiners, shall be admitted as evidence in any court of this State when the same shall otherwise be competent. (1935, c. 66, s. 2.)

§ 90-26. **Annual and special meetings.** — The North Carolina State Board of Dental Examiners shall meet annually on the fourth Monday in June of each year at such place as may be determined by the Board, and at such other times and places as may be determined by action of the Board or by any four (4) members thereof. Notice of the place of the annual meeting and of the time and place of any special or called meeting shall be given in writing, by registered or certified mail or personally, to each member of the Board at least ten (10) days prior to said meeting; provided the requirements of notice may be waived by any member of the Board. At the annual meeting or at any special or called meeting, the said Board shall have the power to conduct examination of applicants and to transact such other business as may come before it, provided that in case of a special meeting, the purpose for which said meeting is called shall be stated in the notice. (1935, c. 66, s. 3; 1961, c. 446, s. 1.)

Editor's Note. — The 1961 amendment, sentence. Prior to the amendment notice effective July 1, 1961, rewrote the second was given by advertising in newspapers.

§ 90-27. **Judicial powers; additional data for records.**—The president of the North Carolina State Board of Dental Examiners, and/or the secretary-treasurer of said Board, shall have the power to administer oaths, issue subpoenas requiring the attendance of persons and the production of papers and records before said Board in any hearing, investigation or proceeding conducted by it. The sheriff or other proper official of any county of the State shall serve the process issued by said president or secretary-treasurer of said Board pursuant to its requirements and in the same manner as process issued by any court of record. The said Board shall pay for the service of all process, such fees as are provided by law for the service of like process in other cases.

Any person who shall neglect or refuse to obey any subpoena requiring him to attend and testify before said Board or to produce books, records or documents shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

The Board shall have the power, upon the production of any papers, records or data, to authorize certified copies thereof to be substituted in the permanent record of the matter in which such books, records or data shall have been introduced in evidence. (1935, c. 66, s. 4.)

§ 90-28. **Bylaws and regulations.**—The North Carolina State Board of Dental Examiners shall have the power to make necessary bylaws and regulations, not inconsistent with the provisions of this article, regarding any matter

referred to in this article and for the purpose of facilitating the transaction of business by the said Board. (1935, c. 66, s. 5.)

§ 90-29. Necessity for license; dentistry defined; certain practices exempted.—No person shall engage in the practice of dentistry in this State or attempt to do so without first having applied for and obtained a license for such purpose from the said North Carolina State Board of Dental Examiners, or without first having obtained from said Board a certificate of renewal of license for the calendar year in which such person proposes to practice dentistry. The said Board may issue a "limited license" to employees of the Division of Oral Hygiene of the North Carolina Board of Health who are graduates of a reputable dental institution. Limited licenses shall be valid for one year from date of issue, or until the announcement of the results of the next succeeding examination conducted by the said Board, whichever shall first occur. Limited licensees may perform only such dental operations as may be authorized by the said Board and those only in the course of their official duties. No limited license shall confer any right or privilege upon the recipient not stated in such license and no limited license may be renewed after the date of its expiration. A person shall be deemed to practice dentistry in this State within the meaning of this article and this section of this article, who represents himself as being able to remove stains and accretions from teeth, diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or maxillary bones and associated tissues or parts and/or who offers or undertakes by any means or methods to remove stains or accretions from teeth, diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the same, or to take impressions of the teeth or jaws or who uses a Roentgen or X-ray machine for dental treatment, Roentgenograms or for dental diagnostic purposes, (except that a registered dental hygienist shall be permitted to take Roentgenograms), or who owns, maintains or operates an office for the practice of dentistry, or who engages in any of the practices included in the curricular of recognized and approved dental schools or colleges, or who is a manager, proprietor, operator or conductor of a place where dental operations are performed, or who performs dental operations of any kind gratuitously, or for a fee, gift, compensation or reward, paid or to be paid, either to himself or to another person or agency, or who furnishes, supplies, constructs, reproduces or repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures (sometimes known as "plates"), bridges or other substitutes for natural teeth, to the user or prospective user thereof.

The fact that a person uses any dental degree or designation or any card, device, directory, poster, sign or other media, whereby he represents himself to be a dentist practicing in the State, shall constitute prima facie evidence that such person is engaged in the practice of dentistry.

The following practices, acts, and operations, however, shall be exempt from the provisions of this article:

- (1) Any act in the practice of his profession by a duly licensed physician or surgeon.
- (2) The rendering of dental relief in emergency cases in the practice of his profession by a physician or surgeon licensed as such and registered under the laws of this State, unless he undertakes to reproduce or reproduces lost parts of the human teeth in the mouth, or to restore or replace in the human mouth, lost or missing teeth.
- (3) The practice of dentistry in the discharge of their official duties by dentists in the United States army, the United States navy, the United States public health service, the United States veterans bureau, or other federal agency.
- (4) The teaching of dentistry in dental schools or colleges conducted in

this State and approved by the North Carolina State Board of Dental Examiners, by persons licensed to practice dentistry anywhere within the United States, and the practice of dentistry by students in dental schools or colleges so approved when such students are acting under the supervision of registered and licensed dentists acting as instructors or have satisfactorily completed the junior year requirements and, as part of their course of instruction, are assigned to perform dental work, without remuneration, upon the patients or inmates of an institution wholly owned and supported by the State of North Carolina, or a political subdivision thereof, under the supervision of a registered and licensed dentist acting as an instructor.

- (5) The practice of dentistry by licensed dentists of another state, territory or country at meetings of organized dental societies, or component parts thereof, meetings of dental colleges or other like dental organizations while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentist duly licensed under the provisions of this article.
- (6) The practice of dentistry for not to exceed one year, as a bona fide intern under the supervision of the dental staff of a hospital approved by the North Carolina Board of Dental Examiners, by a person who is a graduate of a reputable dental institution. (1935, c. 66, s. 6; 1953, c. 564, s. 3; 1957, c. 592, s. 2; 1961, c. 446, s. 2.)

Editor's Note. — The 1953 amendment rewrote subdivision (4) and added subdivision (6). Prior to the amendment the first paragraph consisted of the present first sentence.

The 1957 amendment deleted "thirty days after" formerly appearing after "until" in the third sentence of the first paragraph, rewrote the latter part of that paragraph and made the section applicable to practices, acts and operations which were formerly exempt.

The 1961 amendment, effective July 1, 1961, substituted "organized dental societies" for the "North Carolina Dental Society" in subdivision (5).

Legislature May Regulate Practice.—

The legislature has constitutional authority to regulate the practice of dentistry. *State v. Hicks*, 143 N. C. 689, 57 S. E. 441 (1907).

The mere want of a license does not raise any inference of negligence. If an unlicensed dentist exercises the requisite skill and care in administering treatment to a patient, he is not liable in damages for injury to the patient, merely because of his want of a license to practice dentistry. The failure to possess such license is immaterial on the question of due care. *Grier v. Phillips*, 230 N. C. 672, 55 S. E. (2d) 485 (1949).

§ 90-29.1. **Extraoral services performed for dentists.** — Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm, or corporation so employed or engaged, when constructing or repairing such dentures, bridges, or replacements, exclusively, directly, and solely on the written work order of a licensed member of the dental profession as hereafter provided, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this article. However, it is unlawful for persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices

therefor. Announcements may also be made by business card, in business and telephone directories and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material or materials used or to be used, or any picture or other reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of the public to their business. Announcements in business and telephone directories shall be limited to name and address and telephone number and shall not occupy more than the number of lines necessary to disclose that information. The lettering on signs shall be no more than seven inches in height and no illuminated or glaring light signs shall be used. (1957, c. 592, s. 3; 1961, c. 446, ss. 3, 4.)

Editor's Note. — The 1961 amendment, tion, prescription or" and inserted the next effective July 1, 1961, substituted in the to last sentence. second sentence "written work" for "direc-

§ 90-29.2. Requirements in respect to written work orders; penalty.

—(a) Any licensed dentist who employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, orthodontic appliance, or other replacements, for a part of a tooth, a tooth or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the North Carolina State Board of Dental Examiners which shall contain:

- (1) The name and address of the person, firm, or corporation to which the work order is directed.
- (2) The patient's name or identification number. If a number is used, the patient's name shall be written upon the duplicate copy of the work order retained by the dentist.
- (3) The date on which the work order was written.
- (4) A description of the work to be done, including diagrams if necessary.
- (5) A specification of the type and quality of materials to be used.
- (6) The signature of the dentist and the number of his license to practice dentistry.

(b) The person, firm or corporation receiving a work order from a licensed dentist shall retain the original work order and the dentist shall retain a duplicate copy thereof for inspection at any reasonable time by the North Carolina State Board of Dental Examiners or its duly authorized agents, for a period of two years in both cases.

(c) If the person, firm or corporation receiving a written work order from a licensed dentist engages another person, firm or corporation (hereinafter referred to as "subcontractor") to perform some of the services relative to such work order, he or it shall furnish a written subwork order with respect thereto on forms prescribed by the North Carolina State Board of Dental Examiners which shall contain:

- (1) The name and address of the subcontractor.
- (2) A number identifying the subwork order with the original work order, which number shall be endorsed on the work order received from the licensed dentist.
- (3) The date on which the subwork order was written.
- (4) A description of the work to be done by the subcontractor, including diagrams if necessary.
- (5) A specification of the type and quality of materials to be used.
- (6) The signature of the person, firm or corporation issuing the subwork order.

The subcontractor shall retain the subwork order and the issuer thereof shall retain a duplicate copy, attached to the work order received from the licensed

dentist, for inspection by the North Carolina State Board of Dental Examiners or its duly authorized agents, for a period of two years in both cases.

(d) Any licensed dentist who:

- (1) Employs or engages the services of any person, firm or corporation to construct or repair extraorally, prosthetic dentures, bridges, or other dental appliances without first providing such person, firm, or corporation with a written work order; or
- (2) Fails to retain a duplicate copy of the work order for two years; or
- (3) Refuses to allow the North Carolina State Board of Dental Examiners to inspect his files of work orders

is guilty of a misdemeanor and the North Carolina State Board of Dental Examiners may revoke or suspend his license therefor.

(e) Any such person, firm, or corporation, who:

- (1) Furnishes such services to any licensed dentist without first obtaining a written work order therefor from such dentist; or
- (2) Acting as a subcontractor as described in (c) above, furnishes such services to any person, firm or corporation, without first obtaining a written subwork order from such person, firm or corporation; or
- (3) Fails to retain the original work order or subwork order, as the case may be, for two years; or
- (4) Refuses to allow the North Carolina State Board of Dental Examiners or its duly authorized agents, to inspect his or its files of work orders or subwork orders shall be guilty of a misdemeanor. (1961, c. 446, s. 5.)

Editor's Note.—The act adding this section is effective as of July 1, 1961.

§ 90-30. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.—The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this article.

The applicant shall be of good moral character, at least twenty-one years of age at the time the application for examination is filed. The application shall be made to the said Board in writing and shall be accompanied by evidence satisfactory to said Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the said Board; that he is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the said Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating, deception or fraud during such examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic education.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect. (1935, c. 66, s. 7.)

Mandamus to Procure License.—Under former § 6631 of the Consolidated Statutes it was held that the courts cannot by a mandamus compel the Board of Dental Examiners to certify contrary to what they have declared to be true. If the Board refuses to examine an applicant, upon his compliance with the regulations, the court could by mandamus compel them

to examine him, but not to issue him a certificate, when the preliminary qualification required by law, that the applicant shall be found proficient and competent by the examining board, is lacking. *Burton v. Furman*, 115 N. C. 166, 20 S. E. 443 (1894); *Loughran v. Hickory*, 129 N. C. 281, 40 S. E. 46 (1901); *Ewbank v. Turner*, 134 N. C. 77, 46 S. E. 508 (1903).

§ 90-31. **Annual renewal of licenses.**—The laws of North Carolina now in force, having provided for the annual renewal of any license issued by the North Carolina State Board of Dental Examiners, it is hereby declared to be the policy of this State, that all licenses heretofore issued by the North Carolina State Board of Dental Examiners or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Dental Examiners is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each dentist engaged in the practice of dentistry in North Carolina shall make application to the North Carolina State Board of Dental Examiners and receive from said Board, subject to the further provisions of this section and of this article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe, at least six months prior to January first of any year.

If the application for such renewal certificate, accompanied by the fee required by this article, is not received by the Board before January 31 of each year, an additional fee of five dollars (\$5.00) shall be charged for renewal certificate. If such application, accompanied by the renewal fee, plus the additional fee, is not received by the Board before March 31 of each year, every person thereafter continuing to practice dentistry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of dentistry and shall be subject to the penalties prescribed by G. S. 90-40. (1935, c. 66, s. 8; 1953, c. 564, s. 5; 1961, c. 446, s. 6.)

Editor's Note. — The 1953 amendment added the last paragraph.

The 1961 amendment, effective July 1,

1961, substituted "March 31" for "June 30" in the second sentence of the last paragraph.

§ 90-32. **Contents of original license.**—The original license granted by the North Carolina State Board of Dental Examiners shall bear a serial number, the full name of the applicant, the date of issuance and shall be signed by the president and the majority of the members of the said Board and attested by the seal of said Board and the secretary thereof. The certificate of renewal of license shall bear a serial number which need not be the serial number of the original license issued, the full name of the applicant and the date of issuance. (1935, c. 66, s. 8.)

§ 90-33. **Displaying license and current certificate of renewal.**—The license and the current certificate of renewal of license to practice dentistry issued, as herein provided, shall at all times be displayed in a conspicuous place in the office of the holder thereof and whenever requested the license and the current certificate of renewal shall be exhibited to or produced before the North Carolina State Board of Dental Examiners or to its authorized agents. (1935, c. 66, s. 8.)

§ 90-34. **Refusal to grant renewal of license.**—For cause satisfactory to it or to a majority thereof, the North Carolina State Board of Dental Examiners may refuse to issue a certificate of renewal of license upon any application made to it therefor, and the applicant whose certificate of renewal of license is refused, for cause by said Board, shall not be authorized to practice dentistry in North Carolina until said Board shall, in its discretion, renew the license of the applicant. (1935, c. 66, s. 8.)

§ 90-35. **Duplicate licenses.**—When a person is a holder of a license to practice dentistry in North Carolina or the holder of a certificate of renewal of license, he may make application to the North Carolina State Board of Dental Examiners for the issuance of a copy or a duplicate thereof accompanied by a fee of five dollars. Upon the filing of the application and the payment of the fee, the said Board shall issue a copy or duplicate. (1935, c. 66, s. 8; 1961, c. 446, s. 7.)

Editor's Note. — The 1961 amendment, effective July 1, 1961, substituted “five dol- lars” for “two dollars” at the end of the first sentence.

§ 90-36. **Licensing practitioners of other states.**—The North Carolina State Board of Dental Examiners may, in its discretion, issue a license to practice dentistry in this State without an examination other than clinical to a legal and ethical practitioner of dentistry who moves into North Carolina from another state or territory of the United States, whose standard of requirements is equal to that of the State of North Carolina and in which such applicant has conducted a legal and ethical practice of dentistry for at least five (5) years, next preceding his or her removal and who has not, during his period of practice, been charged with violation of the ethics of his profession, nor with the violation of the laws of the state which issued license to him, or of the criminal laws of the United States, or whose license to practice dentistry has been revoked or suspended by a duly constituted authority.

Application for license to be issued under the provisions of this section shall be accompanied by a certificate from the dental board or like board of the state from which said applicant removed, certifying that the applicant is the legal holder of a license to practice dentistry in that state, and for a period of five (5) years immediately preceding the application has engaged in the practice of dentistry; is of good moral character and that during the period of his practice no charges have been filed with said board against the applicant for the violation of the laws of the state or of the United States, or for the violation of the ethics of the profession of dentistry.

Application for a license under this section shall be made to the North Carolina State Board of Dental Examiners within the six (6) months of the date of the issuance of the certificate hereinbefore required, and said certificate shall be accompanied by the diploma or other evidence of the graduation from a reputable, recognized and approved dental college, school or dental department of a college or university.

Any license issued upon the application of any dentist from any other state or territory shall be subject to all of the provisions of this article with reference to the license issued by the North Carolina State Board of Dental Examiners upon examination of applicants and the rights and privileges to practice the profession of dentistry under any license so issued shall be subject to the same duties, obligations, restrictions and the conditions as imposed by this article on dentists originally examined by the North Carolina State Board of Dental Examiners. (1935, c. 66, s. 9.)

§ 90-37. **Certificate issued to dentist moving out of State.**—Any dentist duly licensed by the North Carolina State Board of Dental Examiners, desiring to move from North Carolina to another state, territory or foreign country, if a holder of a certificate of renewal of license from said Board, upon

application to said Board and the payment to it of the fee in this article provided, shall be issued a certificate showing his full name and address, the date of license originally issued to him, the date and number of his renewal of license, and whether any charges have been filed with the Board against him. The Board may provide forms for such certificate, requiring such additional information as it may determine proper. (1935, c. 66, s. 10.)

§ 90-38. Licensing former dentists who have moved back into State or resumed practice.—Any person who shall have been licensed by the North Carolina State Board of Dental Examiners to practice dentistry in this State who shall have retired from practice or who shall have moved from the State and shall have returned to the State, may, upon a satisfactory showing to said Board of his proficiency in the profession of dentistry and his good moral character during the period of his retirement, be granted by said Board a license to resume the practice of dentistry upon making application to the said Board in such form as it may require. The license to resume practice, after issuance thereof, shall be subject to all the provisions of this article. (1935, c. 66, s. 11; 1953, c. 564, s. 2.)

Editor's Note. — The 1953 amendment struck out the former provision relating to payment of fee.

This section is constitutional and valid as an exercise of the police power of the State for the good and welfare of the people. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809 (1936).

And its provisions bear alike upon all classes of persons referred to. Hence the requirement made by the Board that the plaintiff make to it a satisfactory showing of his proficiency in the profession of dentistry is no discrimination against the plaintiff. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809 (1936).

Mandamus will not lie to control the decision of the Board in the exercise of its discretionary power under this section, the extent of mandamus in such cases being

limited to compel the exercise of the discretionary power, but not to control the decision reached in its exercise. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809 (1936).

Licensed Dentist Removing from State Must Take Second Examination upon Return. — A dentist licensed by the State Board of Dental Examiners, who thereafter moves from this State and practices his profession successively in other states, upon examination and license by them, and then returns to this State, must obtain a license to resume practice here by passing a second examination by the State Board of Dental Examiners, although such dentist has continuously practiced dentistry since he was first licensed by the State Board. *Allen v. Carr*, 210 N. C. 513, 187 S. E. 809 (1936).

§ 90-39. Fees collectible by Board.—In order to provide the means of carrying out and enforcing the provisions of this article and the duties devolving upon the North Carolina State Board of Dental Examiners, it shall charge and collect for:

- (1) Each applicant for examination, a fee of thirty dollars (\$30.00);
- (2) Each certificate of renewal of license, a fee of eight dollars (\$8.00);
- (3) Each certificate of practice to a resident dentist desiring to change to another state or territory, a fee of five dollars (\$5.00);
- (4) Each license issued to a legal practitioner of another state or territory to practice in this State, a fee of thirty dollars (\$30.00);
- (5) Each license to resume the practice issued to a dentist who has retired from the practice of dentistry, or has removed from and returned to the State, a fee of thirty dollars (\$30.00). (1935, c. 66, s. 12; 1953, c. 564, s. 1; 1961, c. 446, s. 8.)

Editor's Note. — The 1953 amendment rewrote this section and increased the fees. The 1961 amendment, effective July 1, 1961, substituted "eight dollars (\$8.00)" for "five dollars (\$5.00)" in subdivision (2).

§ 90-40. Unauthorized practice; penalty.—If any person shall practice or attempt to practice dentistry in this State without first having passed the

examination and obtained a license from the North Carolina Board of Dental Examiners; or if he shall practice dentistry after June 30 of each year without applying for a certificate of renewal of license, as provided in § 90-31; or shall practice or attempt to practice dentistry while his license is revoked, or suspended, or when a certificate of renewal of license has been refused; or shall violate any of the provisions of this article for which no specific penalty has been provided; or shall practice or attempt to practice, dentistry in violation of the provisions of this article; or shall practice dentistry under any name other than his own name, said person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or imprisonment, or both, in the discretion of the court. Each day's violation of this article shall constitute a separate offense. (1935, c. 66, s. 13; 1953, c. 564, s. 6; 1957, c. 592, s. 4.)

Cross Reference. — See note under § 90-29.

Editor's Note. — The 1957 amendment rewrote this section as changed by the 1953 amendment.

Conviction Held Proper.—The legislature has constitutional authority to regu-

late the practice of dentistry, and a conviction for violating former law of similar import was held proper. *State v. Hicks*, 143 N. C. 689, 57 S. E. 441 (1907).

Cited in *Grier v. Phillips*, 230 N. C. 672, 55 S. E. (2d) 485 (1949).

§ 90-40.1. **Enjoining unlawful acts.**—(a) The practice of dentistry by any person who has not been duly licensed so as to practice or whose license has been suspended or revoked, or the doing, committing or continuing of any of the acts prohibited by this article by any person or persons, whether licensed dentists or not, is hereby declared to be inimical to public health and welfare and to constitute a public nuisance. The Attorney General for the State of North Carolina, the solicitor of any of the superior courts, the North Carolina State Board of Dental Examiners in its own name, or any resident citizen may maintain an action in the name of the State of North Carolina to perpetually enjoin any person from so unlawfully practicing dentistry and from the doing, committing or continuing of such unlawful act. This proceeding shall be in addition to and not in lieu of criminal prosecutions or proceedings to revoke or suspend licenses as authorized by this article.

(b) In an action brought under this section the final judgment, if in favor of the plaintiff, shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of dentistry. The provisions of the statutes or rules relating generally to injunctions as provisional remedies in actions shall apply to such a temporary injunction and the proceedings thereunder.

(c) The venue for actions brought under this section shall be the superior court of any county in which such acts constituting unlicensed or unlawful practice of dentistry are alleged to have been committed or in which there appear reasonable grounds to believe that they will be committed or in the county where the defendants in such action reside.

(d) The plaintiff in such action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for the examination of the parties. (1957, c. 592, s. 5.)

§ 90-41. **Revocation or suspension of license.**—Whenever it shall appear to the North Carolina State Board of Dental Examiners that any dentist who has received license to practice dentistry in this State, or who has received from the said Board of Dental Examiners a certificate of renewal of license, has been guilty of fraud, deceit or misrepresentation in obtaining his license, or of gross immorality, or is an habitual user of intoxicants or drugs, rendering him

unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent or has been guilty of willful neglect in the practice of dentistry, or has had a professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this article, or has permitted the use of his name by another for the illegal practice of dentistry by such person, or has been employing unlicensed persons to perform work which, under this article, can be legally done or performed only by persons holding a license to practice dentistry in this State, or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice, or has been guilty of fraudulent and/or misleading statements of his art, skill or knowledge, or of his method of treatment or practice, or has been convicted of or entered a plea of guilty to a felony charge, or any offense involving moral turpitude, or has by himself or another, solicited or advertised in any manner for professional business, or has been guilty of any other unprofessional conduct in the practice of dentistry, or in the procurement of license has filed, as his own, a diploma or license of another, or a forged diploma or a forged or false affidavit of identification or qualification, the Board may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed: Provided, however, it shall not be considered advertising within the meaning of this article for a dentist, duly authorized to practice in this State, to place a card containing his name, telephone number and office address and office hours in a registry or other publication, or to place upon the window or door of his office his name followed by the word, "dentist."

The North Carolina State Board of Dental Examiners is authorized and empowered to appoint an investigator to ascertain the facts with reference to any information coming to the attention of the said Board respecting the violation of any of the provisions of this article, or of any act heretofore in effect in this State.

Such investigator so appointed by the North Carolina State Board of Dental Examiners is thereupon authorized and directed to make an investigation as to any information coming to his attention with reference to the violation of the provisions of this article or any act in force at the time of said violation, and formulate a statement of charges which the said Board, upon presentation by the said investigator, shall cause to be served upon the dentist so accused. Said notice shall contain the statement of a time and place at which the charges against the accused shall be heard before the Board or a quorum thereof, which time shall not be less than ten (10) days from the date of service of said statement and notice.

At the time and place named in said notice, the said Board shall proceed to hear the charges against the accused upon competent evidence, oral or by deposition, and at said hearing said accused shall have the right to be present in person and/or represented by counsel. After hearing all the evidence, including such evidence as the accused may present, the Board shall determine its action and announce the same.

From any action of the Board depriving the accused of his license, or certificate of renewal of license, the accused shall have the right of appeal to the superior court of the county wherein the hearing was held, upon filing notice of appeal within ten days of the decision of the Board. The record of the hearing before the North Carolina State Board of Dental Examiners shall constitute the record upon appeal in the superior court and the same shall be heard in the superior court as in the case of consent references. (1935, c. 66, s. 14; 1957, c. 592, s. 7.)

Editor's Note. — The 1957 amendment a professional connection or association inserted in the first sentence "or has had with any person, firm or corporation in

any manner in an effort to avoid and circumvent the provisions of this article, or has permitted the use of his name by another for the illegal practice of dentistry by such person," and several lines later inserted the words "or has been convicted

of or entered a plea of guilty to a felony charge."

As to advertising under former law, see *In re Owen*, 207 N. C. 445, 177 S. E. 403 (1934).

§ 90-42. **Restoration of revoked license.**—Whenever any dentist has been deprived of his license, the North Carolina State Board of Dental Examiners, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licensee, before restoration. (1935, c. 66, s. 14.)

§ 90-43. **Compensation and expenses of Board.**—Each member of the North Carolina State Board of Dental Examiners shall receive as compensation for his services in the performance of his duties under this article a sum not exceeding ten dollars for each day actually engaged in the performance of the duties of his office, said per diem to be fixed by said Board, and all legitimate and necessary expenses incurred in attending meetings of the said Board.

The secretary-treasurer shall, as compensation for his services, both as secretary-treasurer of the Board and a member thereof, be allowed a reasonable annual salary to be fixed by the Board and shall, in addition thereto, receive all legitimate and necessary expenses incurred by him in attending meetings of the Board and in the discharge of the duties of his office.

All per diem allowances and all expenses paid as herein provided shall be paid upon voucher drawn by the secretary-treasurer of the Board who shall likewise draw voucher payable to himself for the salary fixed for him by the Board.

The Board is authorized and empowered to expend from funds collected hereunder such additional sum or sums as it may determine necessary in the administration and enforcement of this article. (1935, c. 66, s. 15.)

§ 90-44. **Annual report of Board.**—Said Board shall, on or before the fifteenth day of February in each year, make an annual report as of the thirty-first day of December of the year preceding, of its proceedings, showing therein the examinations given, the fees received, the expenses incurred, the hearings conducted and the result thereof, which said report shall be filed with the Governor of the State of North Carolina. (1935, c. 66, s. 15.)

§ 90-45. **Exemption from jury duty.**—All dentists duly licensed by the North Carolina State Board of Dental Examiners and/or the holders of certificate of renewal of license from said Board shall be exempt from service as jurors in any of the courts of this State. (1935, c. 66, s. 16.)

§ 90-46. **Filling prescriptions.**—Legally licensed druggists of this State may fill prescriptions of dentists duly licensed by the North Carolina State Board of Dental Examiners. (1935, c. 66, s. 17.)

§ 90-47. **Restrictions on lectures and teaching.** — Lectures on the science of dentistry shall not be made in North Carolina in connection with the demonstration, promotion or distribution of any product or products used or claimed to be useful in the promotion of the health of the oral cavity, except after specific authority has been granted by the North Carolina State Board of Dental Examiners, nor shall the science of dentistry be taught in North Carolina except by persons licensed to practice dentistry within the United States acting as teachers in a duly organized school or college of dentistry or a dental department of a college or university or dental department of a hospital approved by the North Carolina State Board of Dental Examiners. (1935, c. 66, s. 18; 1953, c. 564, s. 4.)

Editor's Note. — The 1953 amendment substituted near the middle of the section "persons licensed to practice dentistry with-

in the United States" for "duly licensed dentists" and added the provision as to dental department of hospital.

§ 90-48. **Rules and regulations of Board; violation a misdemeanor.** — The North Carolina State Board of Dental Examiners shall be and is hereby vested, as an agency of the State, with full power and authority to enact rules and regulations governing the practice of dentistry within the State, provided such rules and regulations are not inconsistent with the provisions of this article. Such rules and regulations shall become effective thirty days after passage, and the same may be proven, as evidence, by the president and/or the secretary-treasurer of the Board, and/or by certified copy under the hand and official seal of the secretary-treasurer. A certified copy of any rule or regulation shall be receivable in all courts as prima facie evidence thereof if otherwise competent, and any person, firm, or corporation violating any such rule, regulation, or bylaw shall be guilty of a misdemeanor, subject to a fine of not more than two hundred dollars (\$200.00) or imprisonment for not more than ninety (90) days for each offense, and each day that this section is violated shall be considered a separate offense. (1935, c. 66, s. 19; 1957, c. 592, s. 6.)

Editor's Note. — The 1957 amendment increased the maximum fine from \$50 to \$200 and the maximum imprisonment from

30 to 90 days and added the provision that each day of violation is a separate offense.

ARTICLE 3.

The Licensing of Mouth Hygienists to Teach and Practice Mouth Hygiene in Public Institutions.

§§ 90-49 to 90-52: Repealed by Session Laws 1945, c. 639, s. 14.

Cross Reference.—As to dental hygiene, see §§ 90-221 to 90-233.

ARTICLE 4.

Pharmacy.

Part 1. Practice of Pharmacy.

§ 90-53. **North Carolina Pharmaceutical Association.** — The North Carolina Pharmaceutical Association, and the persons composing the same, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by said name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do such other things and perform such other acts as appertain to bodies corporate and politic not inconsistent with the Constitution and laws of the State. (1881, c. 355, s. 1; Code, s. 3135; Rev., s. 4471; C. S., s. 6650.)

§ 90-54. **Object of Pharmaceutical Association.** — The object of the Association is to unite the pharmacists and druggists of this State for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent, to elevate the standard of professional thought, and ultimately restrict the practice of pharmacy to properly qualified druggists and apothecaries. (1881, c. 355, s. 2; Code, s. 3136; Rev., s. 4472; C. S., s. 6651.)

§ 90-55. **Board of Pharmacy; election; terms; vacancies.** — The Board of Pharmacy shall consist of five persons licensed as pharmacists within this State, who shall be elected and commissioned by the Governor as hereinafter provided. The members of the present Board of Pharmacy shall continue in office until the expiration of their respective terms, and the rules, regulations, and bylaws of said Board, so far as they are not inconsistent with the provisions

of this article, shall continue in effect. The North Carolina Pharmaceutical Association shall annually elect a resident pharmacist from its number to fill the vacancy annually occurring in said Board, and the pharmacist so elected shall be commissioned by the Governor and shall hold office for the term of five years and until his successor has been duly elected and qualified. In case of death, resignation, or removal from the State of any member of said Board of Pharmacy, the said Board shall elect in his place a pharmacist who is a member of said North Carolina Pharmaceutical Association, who shall be commissioned by the Governor as a member of the said Board of Pharmacy for the remainder of the term. It shall be the duty of a member of the Board of Pharmacy, within ten days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law. (1905, c. 108, ss. 5-7; Rev., s. 4473; C. S., s. 6652.)

§ 90-56. **Election of officers; bonds; annual meetings.** — The Board of Pharmacy shall elect two officers, a president and a secretary-treasurer, who shall hold their offices until their successors shall have been elected and qualified. The president shall be elected from the membership of the Board. The secretary-treasurer may or may not be a member of the Board, as the Board shall determine. The secretary-treasurer shall give bond in such sum as may be prescribed by the Board, conditioned for the faithful discharge of the duties of his office according to law, and said bond shall be made payable to the North Carolina Board of Pharmacy and approved by said Board. The said Board shall hold an annual meeting at such time and place as it may provide by rule for the examination of candidates and for the discharge of such other business as may legally come before it, and said Board may hold such additional meetings as may be necessary for the examination of candidates and for the discharge of any other business. (1905, c. 108, s. 8; Rev., s. 4474; C. S., s. 6653; 1923, c. 82.)

§ 90-57. **Powers of Board; reports; quorum; records.**—The Board of Pharmacy shall have a common seal, and shall have the power and authority to define and designate nonpoisonous domestic remedies, to adopt such rules, regulations, and bylaws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this article, and shall have power and authority to employ inspectors, chemists, and an attorney to conduct prosecutions and to assist in the conduct of prosecutions under this article, and for any other purposes which said Board may deem necessary. The said Board of Pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists and permits have been issued, and of all renewals thereof; and the books and register of the said Board, or a copy of any part thereof, certified by the secretary, attested by the seal of said Board, shall be taken and accepted as competent evidence in all the courts of the State. The said Board of Pharmacy shall make annually to the Governor and to the North Carolina Pharmaceutical Association written reports of its proceedings and of its receipts and disbursements under this article, and of all persons licensed to practice as pharmacists in this State. A majority of the Board shall constitute a quorum for the transaction of all business. (1905, c. 108, s. 9; Rev., s. 4475; 1907, c. 113, s. 1; C. S., s. 6654; 1945, c. 572, s. 1.)

Editor's Note. — The 1945 amendment authorized the employment of inspectors and chemists.

§ 90-58. **Compensation of secretary and Board.**—The secretary of the Board of Pharmacy shall receive such salary as may be prescribed by the Board, and shall be paid his necessary expenses while engaged in the performance of his official duties. The other members of the said Board shall receive the sum of ten

dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein: Provided, that the compensation and expenses of the secretary and members of the said Board of Pharmacy and all disbursements for expenses incurred by the said Board in carrying into effect and executing the provisions of this article shall be paid out of the fees received by the said Board. (1905, c. 108, s. 10; Rev., s. 4476; C. S., s. 6655; 1921, c. 57, s. 2.)

§ 90-59. Secretary to investigate and prosecute.—Upon information that any provision of this article has been or is being violated by any member, the secretary of the Board of Pharmacy or anyone appointed by the said Board of Pharmacy shall promptly make investigations of such matters, and, upon probable cause appearing, shall file complaint and prosecute the offender. All fines and penalties prescribed in this article shall be recoverable by suit in the name of the people of the State. In all prosecutions for the violation of any of the provisions of this article, a certificate under oath by the secretary of the Board of Pharmacy shall be competent and admissible as evidence in any court of the State that the person so charged with the violation of this article is not a registered pharmacist or assistant pharmacist, as required by law. (1905, c. 108, s. 11; Rev., s. 4477; C. S., s. 6656; 1923, c. 74, s. 1.)

Editor's Note.—Prior to the 1923 amendment investigation and prosecution were restricted to the secretary of the Board and there was no provision for admission as evidence of a certificate of the secretary under oath. See 1 N. C. Law Rev. 300.

§ 90-60. Fees collectible by Board.—The Board of Pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist, ten dollars; for renewing the license as a pharmacist or an assistant pharmacist, ten dollars; for licenses without examination as provided in § 90-64, original, twenty-five dollars, and renewal thereof, five dollars; for original registration of a drugstore, twenty-five dollars, and renewal thereof, fifteen dollars; for issuing a permit to a physician to conduct a drugstore in a village of not more than five hundred inhabitants, ten dollars; for the renewal of permit to a physician to conduct a drugstore in a village of not more than five hundred inhabitants, five dollars. All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the Board. (1905, c. 108, s. 12; Rev., s. 4478; C. S., s. 6657; 1921, c. 57, s. 3; 1945, c. 572, s. 3; 1953, c. 183, s. 1.)

Editor's Note.—The 1945 amendment inserted the provision as to fees for licenses without examination. for pharmacists from five dollars to ten dollars and the renewal fee for drugstores from ten dollars to fifteen dollars.

The 1953 amendment increased the fee

§ 90-61. Application and examination for license, prerequisites.—Every person licensed or registered as a pharmacist on February 4, 1905, under the laws of this State shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist shall file with the secretary of the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the Board of Pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. The application referred to above shall be prepared and furnished by the Board of Pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article,

an applicant shall be not less than twenty-one years of age, he shall present to the Board of Pharmacy satisfactory evidence that he has had four years experience in pharmacy under the instruction of a licensed pharmacist, and that he is a graduate of a reputable school or college of pharmacy, and he shall also pass a satisfactory examination of the Board of Pharmacy: Provided, however, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed three years, may be deducted from the time of experience required. Provided, further, that any person legally registered or licensed as a pharmacist by another state board of pharmacy, and who has had fifteen years continuous experience in North Carolina under the instruction of a licensed pharmacist next preceding his application shall be permitted to stand the examination to practice pharmacy in North Carolina upon application filed with said Board. Any person who has had two years of college training and has been filling prescriptions in a drugstore or stores for twenty years or longer may take the examination as provided in the above proviso. (1905, c. 108, s. 13; Rev., ss. 4479, 4480; 1915, c. 165; C. S., s. 6658; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94.)

Editor's Note.—The 1933 amendment inserted the second proviso in the second paragraph relative to pharmacists in another state taking the examination in North Carolina, and the 1937 amendment abolished the time restriction formerly appearing in the proviso. The 1935 amendment increased the maximum deductible time in the first proviso of the second paragraph from two to three years.

For decision under the 1933 amendment,

see *McNair v. North Carolina Board of Pharmacy*, 208 N. C. 279, 180 S. E. 78 (1935).

The General Assembly has prescribed the requirements an applicant must meet to become licensed as a registered pharmacist in this section and §§ 90-63 and 90-64. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 90-62. When license issued. — If an applicant for license as pharmacist has complied with all the requirements of §§ 90-60 and 90-61, the Board of Pharmacy shall enroll his name upon the register of pharmacists and issue to him a license, which shall entitle him to practice as a pharmacist up to the first day of January next ensuing, as provided in this article for the annual renewal of every registration. (1905, c. 108, s. 15; Rev., s. 4481; C. S., s. 6659; 1921, c. 68, s. 1.)

§ 90-63. Certain assistant pharmacists may take registered pharmacist's examination; no original assistants' certificates issued after January 1, 1939.—Every person who is the holder of a certificate as a registered assistant pharmacist, issued prior to January first, one thousand nine hundred and thirty-nine, shall be admitted to the registered pharmacist examination. After January first, one thousand nine hundred and thirty-nine, the Board shall not issue an original certificate to any person as a registered assistant pharmacist: Provided, however, that nothing in this section shall prevent any person who was registered as an assistant pharmacist prior to January first, one thousand nine hundred and thirty-nine, from continuing to practice as a registered assistant pharmacist. (1937, c. 402.)

Cross Reference.—See note to § 90-61.

§ 90-64. When license without examination issued. — The Board of Pharmacy may issue licenses to practice as pharmacists in this State, without examination, to such persons as have been legally registered or licensed as pharmacists by other boards of pharmacy, if the applicant for such license shall present satisfactory evidence of the same qualifications as are required from licentiates in this State, and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such board of pharmacy is not lower than that required in this State. All

applicants for license under this section shall, with their application, forward to the secretary of the Board of Pharmacy a fee of twenty-five dollars (\$25.00). (1905, c. 108, s. 16; Rev., s. 4482; C. S., s. 6660; 1945, c. 572, s. 2.)

Cross Reference.—See note to § 90-61. (\$25.00) at the end of the section for

Editor's Note.—The 1945 amendment substituted "a fee of twenty-five dollars" "the same fees as are required of other candidates for license."

§ 90-65. When license refused or revoked; fraud. — The Board of Pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the Board of Pharmacy may, after due notice and hearing, revoke a license for like cause, or any license which has been procured by fraud. Any license or permit, or renewal thereof, obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law. (1905, c. 108, ss. 17, 25; Rev., s. 4483; C. S., s. 6661.)

§ 90-66. Expiration and renewal of license; failure to renew misdemeanor.—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession, and every physician holding a permit to sell drugs in a village of not more than eight hundred inhabitants, shall within thirty days next preceding the expiration of his license or permit, file with the secretary and treasurer of the Board of Pharmacy an application for the renewal thereof, which application shall be accompanied by the fee hereinbefore prescribed. If the Board of Pharmacy shall find that an applicant has been legally licensed in this State, and is entitled to a renewal thereof, or to a renewal of a permit, it shall issue to him a certificate attesting that fact. And if any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the Board for its renewal, his name shall be erased from the register of licensed pharmacists and assistant pharmacists and such person, in order to again become registered as a licensed pharmacist or assistant pharmacist shall be required to pay the same fee as in the case of original registration. And if any holder of a permit to sell drugs in a village of not more than six hundred inhabitants shall fail, for a period of sixty days after the expiration of his permit, to make application for the renewal thereof, his name shall be erased from the register of persons holding such permits, and he may be restored thereto only upon the payment of the fee required for the granting of original permit. The registration of every license and every permit issued by the Board shall expire on the thirty-first day of December next ensuing the granting thereof: Provided that the Board of Pharmacy, in its discretion, shall have the power to issue a license or permit, or renewals thereof, to any person whose license or permit has been revoked by operation of law or by the Board of Pharmacy, or whose renewal thereof has been refused by the Board of Pharmacy, after the expiration of one year from the date of such revocation of license or permit, or refusal of a renewal thereof, upon satisfactory proof that such person is entitled to such license, or permit, or to a renewal thereof.

Every holder of a license or permit as a pharmacist or assistant pharmacist, who after the expiration thereof continues to carry on the business for which the license or permit was granted, without renewing the same as required by this section, shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars. (1905, c. 108, ss. 18, 19, 27; Rev., ss. 3653, 4484; 1911, c. 48; C. S., s. 6662; 1921, c. 68, s. 2; 1947, c. 781; 1953, c. 1051.)

Editor's Note.—The 1947 amendment substituted "sixty days" for "six days" near the beginning of the third sentence. hundred" for "six hundred" in the first sentence.

The 1953 amendment substituted "eight changes in §§ 90-67 and 90-71, stated that

it was the purpose of the act to increase from six hundred inhabitants to eight hundred inhabitants the size village in which the board of pharmacy may grant

permits to legally registered practicing physicians to conduct drugstores and pharmacies.

§ 90-67. License to be displayed; penalty.—Every certificate or license to practice as a pharmacist or assistant pharmacist and every permit to a practicing physician to conduct a pharmacy or drugstore in a village of not more than eight hundred inhabitants, and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drugstore or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.

The holder of such license, permit, or renewal who fails to expose it as required by this section shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars, and each day that such license, permit, or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense. (1905, c. 108, ss. 18, 26; Rev., ss. 3651, 4485; C. S., s. 6663; 1921, c. 68, s. 3; 1953, c. 1051.)

Editor's Note.—The 1953 amendment substituted "eight hundred" for "six hundred" near the middle of the first sen-

tence. As to purpose of amendment, see note to § 90-66.

§ 90-68. Unlicensed person not to use title of pharmacist; penalty.—It shall be unlawful for any person not legally licensed as a pharmacist or assistant pharmacist to take, use or exhibit the title of pharmacist or assistant pharmacist or licensed or registered pharmacist, or the title druggist or apothecary, or any other title, name, or description of like import.

Every person who violates this section shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars. (1905, c. 108, ss. 22, 29; Rev., ss. 3652, 4486; C. S., s. 6664; 1921, c. 68, s. 4.)

§ 90-69. Purity of drugs protected; seller responsible; adulteration misdemeanor.—Every person who shall engage in the sale of drugs, chemicals, and medicines shall be held responsible for the quality of all drugs, chemicals, and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."

If any person engaged in the sale of drugs, chemicals, and medicines shall intentionally adulterate, or cause to be adulterated, or exposed to sale knowing the same to be adulterated, any drugs, chemicals, or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and if he is a licensed pharmacist or assistant pharmacist his name shall be stricken from the register of licensed pharmacists and assistant pharmacists. (1881, c. 355, s. 11; Code, s. 3145; 1897, c. 182, s. 7; 1905, c. 108, s. 3; Rev., ss. 3648, 4488; C. S., s. 6665; 1921, c. 68, s. 5.)

§ 90-70. Prescriptions preserved; copies furnished.—Every proprietor or manager of a drugstore or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drugstore or pharmacy. Upon the request of the prescribing physician, or of the person for whom such prescription was compounded or dispensed, the proprietor or manager of such drugstore or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the Board of Pharmacy to make such inspection and examination. (1905, c. 108, s. 21; Rev., s. 4490; C. S., s. 6666.)

§ 90-71. Selling drugs without license prohibited; drug trade regulated.—It shall be unlawful for any person not licensed as a pharmacist or assistant pharmacist within the meaning of this article to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poison, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail any drugs, chemicals, or poison, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this article to compound, dispense, or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article. Provided, that during the temporary absence of the licensed pharmacist in charge of any pharmacy, drug or chemical store, a licensed assistant pharmacist may conduct or have charge of said store. And it shall be unlawful for any owner or manager of a pharmacy or drugstore or other place of business to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any drug, medicine, or poison, except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor, except in cities and towns wherein there is located an established drugstore, and except in the counties of Bertie, Cabarrus, Cleveland, Cumberland, Duplin, Forsyth, Gaston, Guilford, Halifax, Harnett, Henderson, Iredell, Mecklenburg, Montgomery, Moore, New Hanover, Orange, Pender, Richmond, Robeson, Rockingham, Rowan, Scotland and Wilson, shall this section be construed to interfere with the sale of paregoric, Godfrey's Cordial, aspirin, alum, borax, bicarbonate of soda, calomel tablets, castor oil, compound cathartic pills, copperas, cough remedies which contain no poison or narcotic drugs, cream of tartar, distilled extract witen hazel, epsom salts, harlem oil, gum asafetida, gum camphor, glycerin, peroxide of hydrogen, petroleum jelly, saltpetre, spirit of turpentine, spirit of camphor, sweet oil, and sulphate of quinine, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

In any village of not more than eight hundred inhabitants the Board of Pharmacy may, after due investigation, grant any legally registered practicing physician a permit to conduct a drugstore or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than eight hundred. (1905, c. 108, s. 4; Rev., s. 4487; C. S., s. 6667; 1921, c. 68, s. 6; Ex. Sess. 1924, c. 116; 1953, c. 1051; 1957, c. 617; 1959, c. 1222.)

Local Modification.—Johnston: 1929, c. 249; McDowell, Onslow: 1925, c. 27.

Editor's Note.—For comment on this section and the 1924 amendment, see 3 N. C. Law Rev. 29.

The 1953 amendment substituted "eight

hundred" for "six hundred" in the last paragraph, and the 1957 amendment deleted "Nash" from the list of counties in the second paragraph.

For purpose of the 1953 amendatory act, see note to § 90-66.

The 1959 amendment deleted "Avery" from the list of counties in the second paragraph.

This Section and § 90-72 Construed in Pari Materia.—This section and § 90-72, which relate to the same subject matter, are to be construed in *pari materia*. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Dispensing of Drugs by Unlicensed Person—Drug Prepared by Manufacturer and Prescribed by Trade Name.—It is immaterial to the application of this section and § 90-72 that the drug is prescribed by the trade name of the manufacturer and that an unlicensed person, in dispensing the drug to a customer on prescription in the absence of a licensed pharmacist or assistant pharmacist, merely takes the designated number of tablets prepared by the manufacturer from a duly labeled stock bottle and places them in a small container and delivers them to the customer. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Same—"As an Aid to and under the Immediate Supervision of" Licensed Person.—This section and § 90-72, construed in *pari materia*, provide that it shall be unlawful under this section and a misdemeanor under § 90-72 for any person not licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail any drug, etc., upon the prescription of a physician or otherwise, "or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article." Although the punctuation is inexact, it is clear that the exception applies

to dispensing drugs and selling drugs at retail as well as to compounding physicians' prescriptions. This view is supported by the last sentence of the first paragraph of this section. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

This section and § 90-72 make it unlawful for an unlicensed person either to compound or to dispense or to sell at retail any drug, either upon a physician's prescription or otherwise, unless he acts in the immediate physical presence of a licensed pharmacist or assistant pharmacist and under his personal supervision and direction. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

The fact that an unlicensed person, in the absence of any licensed pharmacist or assistant pharmacist, in dispensing drugs on a prescription to a customer, has access by telephone to licensed pharmacists in other stores owned by the same employer, does not render his dispensing the drugs permissible under this section. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Same—During Temporary Absence of Licensed Pharmacist in Charge.—The proviso to this section "that during the temporary absence of the licensed pharmacist in charge of any pharmacy, drug, or chemical store, a licensed assistant pharmacist may conduct or have charge of said store" cannot be construed to the effect that during the temporary absence of the licensed pharmacist an unlicensed person may conduct or have charge of the store. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 90-72. Compounding prescriptions without license.—If any person, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense, or sell at retail any drug, medicine, poison, or pharmaceutical preparation, either upon a physician's prescription or otherwise, and if any person being the owner or manager of a drugstore, pharmacy, or other place of business, shall cause or permit anyone not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail, or compound any drug, medicine, poison, or physician's prescription contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. (1905, c. 108, s. 24; Rev., s. 3649; C. S., s. 6668; 1921, c. 68, s. 7.)

Cross Reference.—See note to § 90-71.

Editor's Note.—The 1921 amendment made this section applicable to assistant pharmacists.

Sale by Clerk.—Where a clerk in a drugstore unlawfully sells intoxicating liquor without the knowledge and against the orders of the owner, the owner is not

liable for the act of the clerk. *State v. Neal*, 133 N. C. 689, 45 S. E. 756 (1903), distinguishing *State v. Kittelle*, 110 N. C. 560, 15 S. E. 103 (1892).

Stated in McNair v. North Carolina Board of Pharmacy, 208 N. C. 279, 180 S. E. 78 (1935).

§ 90-73. **Conducting pharmacy without license.** — If any person, not being licensed as a pharmacist, shall conduct or manage any drugstore, pharmacy, or other place of business for the compounding, dispensing, or sale at retail of any drugs, medicines, or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drugstore or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. (1905, c. 108, s. 23; Rev., s. 3650; C. S., s. 6669.)

§ 90-74. **Pharmacist obtaining license fraudulently.** — If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars; and if any person shall willfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as is now prescribed for the crime of perjury. (1905, c. 108, s. 25; Rev., s. 3654; C. S., s. 6670.)

§ 90-75. **Registration of drugstores and pharmacies.**—The Board of Pharmacy shall require and provide for the annual registration of every drugstore and pharmacy doing business in this State. The proprietor of every drugstore or pharmacy opening for business after January 1, 1928, shall apply to the Board of Pharmacy for registration, and it shall be unlawful for any drugstore or pharmacy to do business until so registered. All permits issued under this section shall expire on December thirty-first of each year.

The terms "drugstore" and "pharmacy" as used herein shall mean any store or other place in which drugs, medicines, chemicals, poisons, or prescriptions are compounded, dispensed, or sold at retail, or which uses the title "drugstore," "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import: Provided, that nothing in this section shall apply to the sale of domestic remedies, patent and proprietary preparations, and insecticides as set out and provided for in paragraph two of § 90-71. (1927, c. 28, s. 1; 1953, c. 183, s. 2.)

Editor's Note.—The 1953 amendment deleted the former provision of the first paragraph providing for a registration fee.

§ 90-76. **Substitution of drugs, etc., prohibited.**—Any person or corporation engaged in the business of selling drugs, medicines, chemicals, or preparations for medical use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopœia and National Formulary, or prepared according to the private formula of some individual or firm, other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopœia and National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, at the discretion of the court: Provided, that this section shall apply to registered drugstores and their employees only. (1937, c. 59.)

Part 2. Dealing in Specific Drugs Regulated.

§ 90-77. **Poisons; sales regulated; label; penalties.**—It shall be unlawful for any person to sell or deliver to any person any of the following described substances or any poisonous compound, combination, or preparation thereof, to wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbonic acid, the essential oils of almonds, pennyroyal, tansy and savine, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum, cotton root, conium, cannabis indica, digitalis, hyoscyamus, nux vomica, opium, ergot, cannabis stramonius, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall first be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled with the name of the substance, the word "Poison," and the name of the person or firm dispensing the substance.

Before a delivery is made of any of the following substances, to wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnine and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper offices of the law: Provided, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: Provided, also, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale; but the box, bottle, or other package containing such substances, when sold at wholesale, shall be properly labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler: Provided further, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphide of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or Paris green, when dispensed in the original package of the manufacturer or wholesaler, or calomel, paregoric, or other preparation of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a single box, bottle, or other package, or when the bulk of two fluid ounces or the weight of two avoirdupois ounces does not contain more than an adult medicinal dose of such poisonous substance:

If any person shall sell or deliver to any person any poisonous substance specified in this section without labeling the same and recording the delivery thereof in the manner prescribed, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. (1905, c. 108, ss. 20, 28; Rev., ss. 3655, 4489; C. S., s. 6671.)

Section Is Restricted to Pharmaceutics.—The history of this section considered in context as shown by the original act, and subsequent codifications, on which it is founded, indicate a legislative intent to restrict its provisions to the profession of pharmacy, and its relation to pharmaceutics—the science of preparing, using and dispensing of medicines—, and not to manufacture and sale of paint products for

commercial purposes. The intent and spirit of an act controls in its construction. *Porter v. Yoder & Gordon Co.*, 246 N. C. 398, 98 S. E. (2d) 497 (1957). For comment, see 36 N. C. Law Rev. 361.

And Does Not Apply to Sale and Delivery of Commercial Paints.—The sale and delivery of a lead compound, such as lead monoxide or litharge, used in commercial paints, does not come within the

purview of the provisions of this statute requiring the labeling of containers in which it is sold by the manufacturer

with the word "Poison." *Porter v. Yoder & Gordon Co.*, 246 N. C. 398, 98 S. E. (2d) 497 (1957).

§ 90-78. Certain patent cures and devices; sale and advertising forbidden.—It shall be unlawful for any person, firm, association, or corporation in the State, or any agent thereof, to sell or offer for sale any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device whose claims for the cure or treatment of disease are false or fraudulent; and it shall be unlawful for any person, firm, association, or corporation in the State, or agent thereof, to publish in any manner, or by any means, or cause to be published, circulated, or in any way placed before the public any advertisement in a newspaper or other publication or in the form of books, pamphlets, handbills, circulars, either printed or written, or by any drawing, map, print, tag, or by any other means whatsoever, any advertisement of any kind or description offering for sale or commending to the public any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device for the treatment of disease, when the North Carolina Board of Health shall declare that such device is without value in the treatment of disease.

Any person, firm, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense. Each sale, offer for sale, or publication of any advertisement for sale of any of the medicines, remedies, or devices mentioned in this section shall constitute a separate offense. (1917, c. 27, ss. 1, 2, 3; C. S., s. 6684.)

§ 90-79. Certain patent cures and devices; enforcement of law.—To provide for the efficient enforcement of § 90-78, the same shall be under the supervision and management of the North Carolina Board of Pharmacy, and it shall be the duty of all registered pharmacists to report immediately any violations thereof to the secretary of the Board of Pharmacy, and any willful failure to make such report shall have the effect of revoking his license to practice pharmacy in this State. (1917, c. 27, ss. 4, 5; C. S., s. 6685.)

§ 90-80. Department of Agriculture to analyze patent medicines.—The chemists and other experts of the Department of Agriculture shall, under such rules and regulations as may be prescribed by the Board of Pharmacy, and upon request of the secretary of said Board, make an analytical examination of all samples of drugs, preparations, and compounds sold or offered for sale in violation of §§ 90-78 and 90-79. (1917, c. 27, s. 6; C. S., s. 6686.)

§ 90-80.1. Unauthorized sale of Salk vaccine.—The sale of Salk vaccine is prohibited except when sold by wholesale drug distributors, licensed medical doctors, registered pharmacists or the State Board of Health.

Any person found guilty of violating the provisions of this section by selling authentic vaccines shall be fined five hundred dollars (\$500.00) or shall be imprisoned in the State Prison or county jail not less than four months nor more than ten years, or both. Any persons found guilty of violating the provisions of this section by selling substances that are misrepresented as being authentic vaccines shall be fined one thousand dollars (\$1,000.00), or be imprisoned in the State Prison or county jail not less than four months nor more than ten years, or both. (1955, c. 1358.)

§§ 90-81 to 90-85: Repealed by Session Laws 1955, c. 1330, s. 8.

§ 90-85.1. Enjoining illegal practices.—The Board of Pharmacy may,

if it shall find that any person is violating any of the provisions of this article, and after notice to such person of such violation, apply to the superior court for a temporary or permanent restraining order or injunction to restrain such person from continuing such illegal practices. If upon such application, it shall appear to the court that such person has violated, or is violating, the provisions of this article, the court may issue an order restraining any further violations thereof. All such actions by the Board for injunctive relief shall be governed by the provisions of article 37 of the chapter on "Civil Procedure": Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any of the provisions of this article. (1947, c. 229.)

Editor's Note.—For brief comment on this section, see 25 N. C. Law Rev. 429.

Constitutionality. — The validity of this section is not impaired by the fact that the same acts that would constitute wilful violations of the injunction would also constitute a basis for criminal prosecutions. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Although this section expressly provides that the violation of its provisions shall constitute a misdemeanor and also provides that the acts therein prescribed may

be enjoined, the contention that the violation of an injunction issued under the statute would subject the offender to punishment for a criminal offense without the constitutional safeguards of indictment, trial by jury, etc., under N. C. Const., art. 1, §§ 12 and 13, is untenable, since the punishment for violation of the injunction would be for violating an order of the court and not punishment for a crime. *North Carolina Board of Pharmacy v. Lane*, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

ARTICLE 5.

Narcotic Drug Act.

§ 90-86. **Title of article.**—This article may be cited as the Uniform Narcotic Drug Act. (1935, c. 477, s. 26.)

§ 90-87. **Definitions.** — The following words and phrases as used in this article shall have the following meanings unless the context otherwise requires:

- (1) "Cannabis" includes the following substances under whatever means they may be designated:
 - a. The dried flowering or fruiting tops of the pistillate plant *cannabis sativa* L. from which the resin has not been extracted;
 - b. The resin extracted from such tops; and
 - c. Every compound, manufacture, salt, derivative, mixture, or preparation of such resin or of such tops from which the resin has not been extracted; and
 - d. Peyote or marihuana.
- (2) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.
- (3) "Dentist" means any person authorized by law to practice dentistry in this State.
- (4) "Dispense" includes distribute, leave with, give away, dispose of or deliver.
- (5) "Federal narcotic law" means the laws of the United States relating to opium, coca leaves and other narcotic drugs.
- (6) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the State Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

- (7) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific, experimental and medical purposes and for purposes of instruction approved by the State Board of Pharmacy.
- (8) "Manufacturer" means a person who by compounding, mixing, cultivating, growing or other process produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescription.
- (9) "Narcotic drugs" means coca leaves, opium, cannabis, and every other substance neither chemically nor physically distinguishable from them; any other drugs to which the federal narcotic laws may now apply; and any drug found by the State Board of Health, after reasonable notice and opportunity for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the effective date of determination of such finding by said State Board of Health.
- (10) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law.
- (11) "Opium" includes morphine, codeine and heroin and any compound, manufacture, salt, derivative, mixture, or preparation of opium.
- (12) "Person" includes any corporation, association, copartnership or one or more individuals.
- (13) "Pharmacist" means a registered pharmacist of this State.
- (14) "Pharmacy owner" means the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a registered pharmacist; but nothing in this article contained shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this State.
- (15) "Physician" means any person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use narcotic drugs in connection with such treatment.
- (16) "Registry number" means the number assigned to each person registered under the federal narcotic laws.
- (17) "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.
- (18) "Veterinarian" means any person authorized by law to practice veterinary in this State.
- (19) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written order, but not on prescription. (1935, c. 477, s. 1; 1953, c. 909, s. 1; c. 1321.)

Editor's Note.—For analysis of article, see 13 N. C. Law Rev. 403.

Applied in *State v. Williams*, 210 N. C. 159, 185 S. E. 661 (1936).

The 1953 amendments rewrote subdivision (9).

§ 90-88. Manufacture, sale, etc., of narcotic drugs regulated.—It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this article. (1935, c. 477, s. 2.)

Indictment Quashed for Uncertainty.—Where the defendant was indicted under this section, the indictment following the

words of the section and charging defendant in one count with the commission of the several acts forbidden, the several

offenses being charged by the use of the disjunctive "or," it was held that it was impossible to ascertain from the indictment which of the several separate offenses defendant was charged with committing, the indictment failing to charge the commission of each of them, since the disjunctive "or," is used, and defendant's motion to quash the indictment for uncertainty should have been allowed.

State v. Williams, 210 N. C. 159, 185 S. E. 661 (1936).

Applied in State v. Miller, 237 N. C. 427, 75 S. E. (2d) 242 (1953).

Cited in State v. McPeak, 243 N. C. 243, 90 S. E. (2d) 501 (1955); State v. Helms, 247 N. C. 740, 102 S. E. (2d) 241 (1958); State v. Thompson, 257 N. C. 452, 126 S. E. (2d) 58 (1962).

§ 90-89. **Conditions of sale of drugs.**—(a) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons but only on official written orders:

- (1) To a manufacturer, wholesaler, pharmacist or pharmacy owner.
- (2) To a physician, dentist or veterinarian.
- (3) To a person in charge of a hospital, but only for use by or in that hospital.
- (4) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medicinal purposes.

(b) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

- (1) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territory, district, county, municipality, or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.
- (2) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed for the actual medical needs of persons on board such ship or aircraft when not in port, provided such narcotic drug shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special order form approved by a commanding medical officer or acting assistant surgeon of the United States Public Health Service.
- (3) To a person in a foreign country if the provisions of the federal narcotic laws are complied with. (1935, c. 477, s. 3.)

§ 90-90. **Execution of written orders; use in purchase; preserving copies for inspection.**—An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In the event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years, in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms. (1935, c. 477, s. 4.)

§ 90-91. **Lawful possession of drugs.**—Possession of or control of narcotic drugs obtained as authorized in this article shall be lawful if obtained in the regular course of business, occupation, profession, employment or duty of the possessor. (1935, c. 477, s. 5.)

§ 90-92. **Dispensing of drugs regulated.**—A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivisions thereof, and the master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this article or otherwise shall not administer, nor dispose, nor otherwise use such drugs within

this State except within the scope of his employment or official duty and then only for scientific or medicinal purposes and subject to the provisions of this article. (1935, c. 477, s. 6.)

§ 90-93. Sale of drugs on prescription of physician, dentist or veterinarian.—A pharmacist in good faith may sell and dispense narcotic drugs to any person upon the written prescription, or an oral prescription in pursuance to regulations promulgated by the United States Commissioner of Narcotics under federal narcotic statutes, of a physician, dentist or veterinarian, provided written prescriptions are properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person so prescribing if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. A person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years so as to be readily accessible for the inspection of any officers engaged in the enforcement of this article. The prescription shall not be refilled.

The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, pharmacist or pharmacy owner but only upon an official written order.

A pharmacist, only upon an official written order, may sell to a physician, dentist or veterinarian in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per centum (20%) of the complete solution, to be used for medicinal purposes. (1935, c. 477, s. 7; 1955, c. 278, s. 1.)

Editor's Note.—The 1955 amendment inserted in the first sentence the words "or an oral prescription in pursuance to regulations promulgated by the United States Commissioner of Narcotics under federal narcotic statutes." The amendment also substituted in said sentence the words "written prescriptions are" for the words "it is."

Liability to Husband for Injury to Wife.

—Under former § 6677 of the Consolidated Statutes, relating to the subject matter of this section, it was held that one who, despite the protests and warnings of a husband, persistently sold drugs to the latter's wife, was liable in damages to the husband for the injuries so sustained. *Holleman v. Harward*, 119 N. C. 150, 25 S. E. 927 (1896).

§ 90-94. Prescribing, administering or dispensing by physicians or dentists.—A physician or a dentist, in good faith and in the course of his professional practice, only, may prescribe on a written prescription, or an oral prescription in pursuance to regulations promulgated by the United States Commissioner of Narcotics under federal narcotic statutes, administer, or dispense narcotic drugs or may cause the same to be administered by a nurse or interne under his direction and supervision. Such a written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, providing he is required by those laws to be so registered. (1935, c. 477, s. 8; 1955, c. 278, s. 2.)

Editor's Note.—The 1955 amendment inserted in the first sentence "or an oral prescription in pursuance to regulations promulgated by the United States Com-

missioner of Narcotics under federal narcotic statutes." It also inserted "written" before "prescription" near the beginning of the second sentence.

§ 90-95. Prescribing, administering or dispensing by veterinarians.—A veterinarian, in good faith and in the course of his professional practice

only not for use by a human being, may prescribe on a written prescription or an oral prescription in pursuance to regulations promulgated by the United States Commissioner of Narcotics under federal narcotic statutes, administer and dispense narcotic drugs and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal, the species of the animal for which the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. (1935, c. 477, s. 8; 1955, c. 278, s. 3.)

Editor's Note.—The 1955 amendment inserted in the first sentence “or an oral prescription in pursuance to regulations promulgated by the United States Com-

missioner of Narcotics unde. federal narcotic statutes.” It also inserted “written” before “prescription” near the beginning of the second sentence.

§ 90-96. Returning unused portions of drugs.—Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian shall return to such physician, dentist or veterinarian any unused portion of such drug when it is no longer required by the patient. (1935, c. 477, s. 8.)

§ 90-97. Article not applicable in certain cases.—(a) Except as otherwise in this article specifically provided, this article shall not apply to the administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if solid or semi-solid preparation, in one avoirdupois ounce,

- (1) Not more than one grain of codeine or of any of its salts, or
- (2) Not more than one-sixth grain of dihydrocodeinone or any of its salts, or
- (3) Not more than one-fourth grain of morphine or any of its salts,
- (4) Not more than two grains of opium, or
- (5) Not more than two grains of papaverine or any of its salts, or
- (6) Not more than two grains of noscapine or any of its salts, or
- (7) Not more than one-fourth grain of ethylmorphine or any of its salts, or
- (8) Not more than one-half grain of dihydrocodeine or any of its salts.

(b) The exemption authorized by this section shall be subject to the following conditions:

- (1) That the medicinal preparation administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and
- (2) That such preparation shall be administered, dispensed, and sold in good faith as a medicine and not for the purpose of evading the provisions of this article.

(c) Nothing in this section shall be construed to limit the quantity of codeine, dihydrocodeine, or morphine or of any of their salts that may be prescribed, administered, dispensed, or sold, in compliance with the general provisions of the article. (1935, c. 477, s. 9; 1953, c. 909, s. 2; 1955, c. 278, s. 4; 1957, c. 542.)

Editor's Note.—The 1953 amendment rewrote this section.

The 1955 amendment substituted “dihydrocodeinone” for “dihydrocodeine” in subdivision (2) of subsection (a).

The 1957 amendment added subdivisions (4) through (8) to subsection (a). It would seem that the matter added by the 1957 amendment should have been preceded by an “or”.

§ 90-98. Records of drugs dispensed; records of manufacturers and wholesalers; records of pharmacists; written orders unnecessary for certain drugs; invoices rendered with sales.—Every physician, dentist,

veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed as a sufficient compliance with this section if any such person using small quantities or solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of this section.

Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of this article.

The keeping of a record required by or under the federal narcotic law shall constitute the only record required to be kept by every person who purchases for resale or who sells narcotic drug preparations exempted.

Written orders shall not be required for the sale of cannabis indica or cannabis sativa, or peyote and marihuana, and the provisions of the article in respect to written orders and records shall not apply to cannabis indica, cannabis sativa, peyote and marihuana, but manufacturers and wholesalers of cannabis indica, cannabis sativa, peyote and marihuana shall be required to render with every sale of cannabis indica or cannabis sativa, peyote and marihuana, an invoice, whether such sale be for cash or on credit; and such invoice shall contain the date of such sale, the name and address of the purchaser, and the amount of cannabis indica or cannabis sativa or peyote and marihuana so sold.

Every purchaser of cannabis indica, cannabis sativa or peyote and marihuana from a wholesaler or manufacturer shall be required to keep the invoice rendered with such purchase for a period of two years. (1935, c. 477, s. 10.)

§ 90-99. Labeling packages containing drugs.—Whenever a manufacturer sells or disposes of a narcotic drug and whenever a wholesaler sells and dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except a pharmacist for the purpose of filling a prescription under this article, shall alter, deface or remove any label so affixed. (1935, c. 477, s. 11.)

§ 90-100. Labeling containers of drugs dispensed on prescriptions.—Whenever a pharmacist sells or dispenses any narcotic drug on prescription issued by a physician, dentist, or veterinarian he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address and registry number of the pharmacist or pharmacy owner for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed as long as any of the original contents remain. (1935, c. 477, s. 11.)

§ 90-101. Lawful possession in original containers.—A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, pharmacist, or other person authorized under the provisions of this article, the owner of any animal for which any such drug has been

prescribed, sold, or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (1935, c. 477, s. 12.)

§ 90-102. Common carriers and warehousemen excepted; other persons exempt.—The provisions of this article restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employees of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (1935, c. 477, s. 13.)

§ 90-103. Places unlawfully possessing drugs declared nuisances.—Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. No person shall keep or maintain such common nuisance. (1935, c. 477, s. 14.)

Suit to Abate Will Not Lie.—A suit cannot be maintained to abate a public nuisance as defined by this section, since §§ 19-2 to 19-8 are not applicable, and the

Narcotic Drug Act does not provide the remedy of abatement. *State v. Townsend*, 227 N. C. 642, 44 S. E. (2d) 36 (1947).

§ 90-104. Forfeiture and disposition of drugs unlawfully possessed.—All narcotic drugs the lawful possession of which is not established, or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

- (1) The court or magistrate having jurisdiction shall immediately notify the State Board of Pharmacy and unless otherwise requested within fifteen days by the State Board of Pharmacy in accordance with subdivision (2) of this section shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.
- (2) Upon written application by the State Board of Pharmacy the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of them except heroin and its salts and derivatives to said State Board of Pharmacy for distribution or destruction, as hereinafter provided.
- (3) Upon application by any hospital within this State, not operated for private gain, the State Board of Pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The State Board of Pharmacy may from time to time deliver excess stocks of such drugs to the United States Commissioner of Narcotics, or shall destroy the same.
- (4) The State Board of Pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal, or de-

struction, which record shall be open to inspection by all federal and State officers charged with the enforcement of federal and State narcotic laws. (1935, c. 477, s. 15.)

§ 90-105. Prescriptions, stocks, etc., open to inspection by officials.—Prescriptions, orders and records, required by this article, and stocks of narcotic drugs shall be open for inspection only to federal, State, county and municipal officers, whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party. (1935, c. 477, s. 16.)

§ 90-106. Fraudulent attempts to obtain drugs prohibited.—(a) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug

(1) By fraud, deceit, misrepresentation, or subterfuge; or

(2) By the forgery or alteration of a prescription or of any written order;
or

(3) By the concealment of a material fact; or

(4) By the use of false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall willfully make a false statement in any prescription, order, report, or record, required by this article.

(d) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, veterinarian, or other authorized person.

(e) No person shall make or utter any false or forged prescription or written order.

(f) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs. (1935, c. 477, s. 17.)

Means and Manner of Procuring Drug Are Essentials of Crime.—Under this section, it is not a crime either to obtain or to attempt to obtain a narcotic drug; and it is not a crime either to procure or to attempt to procure the administration of a narcotic drug. To do so by the means and in the manner set forth in the section constitutes the criminal offense. Thus, the means and manner are essentials of the crime. *State v. Helms*, 247 N. C. 740, 102 S. E. (2d) 241 (1958).

Indictment Fatally Defective.—Where an indictment under this section alleges no facts tending to identify any particular

transaction or the means and manner employed by the accused except in the "mere general or generic terms" of this section, and there are no factual averments as to the nature of the alleged "fraud, deceit, misrepresentation, or subterfuge," or as to the identity or contents of a prescription or other written order alleged to have been forged or altered, or as to what material fact is alleged to have been concealed, or as to what false name was used or what false address was given, the indictment is fatally defective. *State v. Helms*, 247 N. C. 740, 102 S. E. (2d) 241 (1958).

§ 90-107. Application of certain restrictions.—The provisions of § 90-106 shall apply to all transactions relating to narcotic drugs under the provisions of § 90-97 in the same way as they apply to transactions under all other sections. (1935, c. 477, s. 18.)

§ 90-108. Possession of hypodermic syringes and needles regulated.—No person except a manufacturer or a wholesaler or a retail dealer in surgical instruments, pharmacist, physician, dentist, veterinarian, nurse or interne shall at any time have or possess a hypodermic syringe or needle or any instrument

or implement adapted for the use of habit-forming drugs by subcutaneous injections and which is possessed for the purpose of administering habit-forming drugs, unless such possession be authorized by the certificate of a physician issued within the period of one year prior hereto. (1935, c. 477, s. 19.)

Evidence Insufficient to Support Conviction.—Evidence that a hypodermic syringe, needles, gauze, and a bottle of water labeled for use in injections were found in the glove compartment of defendant's car was insufficient to support a conviction of violation of this section, since there was no evidence that the articles found had

been used and possessed for the purpose of administering habit-forming drugs other than their bare presence in the glove compartment. *State v. Dunn*, 245 N. C. 102, 95 S. E. (2d) 274 (1956).

Applied in *State v. Miller*, 237 N. C. 427, 75 S. E. (2d) 242 (1953).

§ 90-109. **Burden on defendant to prove exemption.** — In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. (1935, c. 477, s. 20.)

§ 90-110. **State Board of Pharmacy and peace officers to enforce article.**—It is hereby made the duty of the State Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the State, including the State Bureau of Investigation, and of all State's attorneys, to enforce all provisions of this article, except those specifically delegated, and to co-operate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states, relating to narcotic drugs. The State Bureau of Investigation is hereby authorized to make initial investigations of all violations of this article, and is given original but not exclusive jurisdiction in respect thereto with all other law enforcement officers of the State. (1935, c. 477, s. 21; 1953, c. 909, s. 3.)

Editor's Note.—The 1953 amendment "Investigation" in the first sentence and inserted "including the State Bureau of" added the second sentence.

§ 90-111. **Penalties for violation.**—(a) Any person violating any provision of this article or any person who conspires, aids, abets, or procures others to do such acts shall upon conviction be punished, for the first offense, by a fine of not more than one thousand dollars (\$1,000.00) or be imprisoned in the penitentiary for not more than five years, or both, in the discretion of the court. For a second violation of this article, or where in case of a first conviction of violation of this article, the defendant shall previously have been convicted of a violation of any law of the United States, or of this or any other state, territory, or district, relating to the sale or use or possession of narcotic drugs or marijuana, and such violation would have been punishable in this State if the offending act had been committed in this State, the defendant shall be fined not more than two thousand dollars (\$2,000.00) and be imprisoned not less than five nor more than ten years. For a third or subsequent violation of this article, or where the defendant shall previously have been convicted two or more times in the aggregate of a violation of any law of the United States, or of this or any other state, territory, or district relating to the sale, use or possession of narcotic drugs or marijuana, and such violation would have been punishable in this State, the defendant shall be fined not more than three thousand dollars (\$3,000.00) and be imprisoned in the penitentiary not less than fifteen (15) years nor more than life imprisonment.

(b) Upon conviction for a second or subsequent offense the sentence provided by this section shall not be suspended and probation shall not be granted unless the presiding judge shall find that the violation for which the defendant was convicted did not consist of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this article, or the possession of narcotics for

the purpose of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this article. For the purpose of making the finding provided in this subsection before a sentence may be suspended, the defendant shall have the burden of proving that the violation for which he was convicted did not consist of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this article or the possession of narcotics for the purpose of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this article. The charge contained in the warrant or bill of indictment shall not be considered in making such finding for the purpose of suspending the sentence.

(c) If the offense shall consist of the sale, barter, peddling, exchange, dispensing or supplying of marijuana or a narcotic drug to a minor by an adult in violation of any provision of this article, such person shall upon conviction be punished by a term of not less than ten years nor more than life imprisonment and shall be fined not more than three thousand dollars (\$3,000.00) for the first and all subsequent violations of this article, and the imposition or execution of sentence shall not be suspended, and probation shall not be granted. (1935, c. 477, s. 22; 1953, c. 909, s. 4.)

Editor's Note.—The 1953 amendment rewrote this section.

Under this section as it stood before the 1953 amendment it was observed that since violations of the section were not punishable by either death or imprisonment in the State's prison, such violations must be punished as misdemeanors rather than as felonies. See *State v. Miller*, 237 N. C. 427, 75 S. E. (2d) 242 (1953).

Indictment and Punishment for Second or Subsequent Offense.—Where, in a prosecution for violation of §§ 90-88 and 90-108, the indictment does not allege that

either of the offenses charged was a second or subsequent offense, the court is without power to impose a punishment in excess of that prescribed by this section for the first offense, and sentence in excess thereof upon the court's findings that defendant had theretofore been repeatedly convicted of violations of the Uniform Narcotics Drug Act must be vacated. *State v. Miller*, 237 N. C. 427, 75 S. E. (2d) 242 (1953).

Cited in *State v. White*, 246 N. C. 587, 99 S. E. (2d) 772 (1957).

§ 90-111.1. Growing of narcotic plant known as marijuana by unlicensed persons.—A person who without being licensed to do so under the federal narcotic laws, grows the narcotic plant known as marijuana or knowingly allows it to grow on his land without destroying the same shall be guilty of a felony and shall be punished according to the provisions of this article. (1953, c. 909, s. 5.)

§ 90-111.2. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport narcotics.—(a) Except under circumstances authorized in this article, it shall be unlawful to

- (1) Transport, carry, or convey any narcotic drug in, upon, or by means of any vehicle, vessel or aircraft; or
- (2) To conceal or possess any narcotic drug in or upon any vehicle, vessel or aircraft, or upon the person of anyone in or upon any vehicle, vessel or aircraft; or
- (3) To use any vehicle, vessel or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any narcotic drug.

(b) Any vehicle, vessel or aircraft which has been or is being used in violation of subsection (a), except a vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such common carrier, shall be seized by any peace officer, and forfeited as in the case of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport intoxicating beverages. (1953, c. 909, s. 5.)

What Owner Must Prove to Defeat Forfeiture.—The forfeiture of a car for illegal transportation of narcotics can be defeated and the car recovered by the true owner only if he can establish his title and

show that the transportation of contraband was without his knowledge or consent. *State v. McPeak*, 243 N. C. 273, 90 S. E. (2d) 505 (1955).

§ 90-111.3. **Reports by physicians.**—It shall be the duty of every attending or consulting physician to report to the State Board of Health, promptly, the name and, if possible, the address of any person under treatment if it appears that such person is an habitual user of any narcotic drug. Such reports shall be open for inspection only to federal and State officers whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs, or who are concerned with the commitment, care, treatment and rehabilitation of persons addicted to the use of narcotic drugs. No such officers having knowledge by virtue of his office of any such report shall divulge such knowledge except in connection with his duties. (1953, c. 909, s. 5.)

§ 90-112. **Double jeopardy.**—No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal narcotic laws of the same act or commission, which, it is alleged, constitutes a violation of this article. (1935, c. 477, s. 23.)

§ 90-113. **Construction of article.**—This article shall be so interpreted and construed as to effectuate its general purpose and to make uniform the laws of those states which enact it. (1935, c. 477, s. 25.)

ARTICLE 5A.

Barbiturate and Stimulant Drugs.

§ 90-113.1. **Definitions.**—As used in this article:

- (1) The term "barbiturate drug" means:
 - a. Barbituric acid, the salts and derivatives of barbituric acid, or compounds, preparations or mixtures thereof; and
 - b. Drugs, compounds, preparations or mixtures which have a hypnotic or somnifacient effect on the body of a human or animal, to be found by the State Board of Pharmacy and duly promulgated by rule or regulation;

except that the term "barbiturate drug" shall not include any drug the manufacture or delivery of which is regulated by the narcotic drug laws of this State: Provided, however, that the term "barbiturate drug" shall not include compounds, mixtures, or preparations containing barbituric acid, salts or derivatives of barbituric acid, when such compounds, mixtures, or preparations contain a sufficient quantity of another drug or drugs, in addition to such acid, salts or derivatives, to cause the resultant product to produce an action other than its hypnotic or somnifacient action.
- (2) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.
- (3) The term "manufacturer" means a person who manufactures barbiturate or stimulant drugs, and includes persons who prepare such barbiturate or stimulant drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, but does not include pharmacists so preparing such barbiturate or stimulant drugs solely for dispensing on prescriptions received or to be received by them.
- (4) The term "patient" means, as the case may be:
 - a. The individual for whom a barbiturate or stimulant drug is prescribed or to whom a barbiturate or stimulant drug is administered; or

- b. The owner or the agent of the owner of the animal for which a barbiturate or stimulant drug is prescribed or to which a barbiturate or stimulant drug is administered, provided that the prescribing or administering referred to in subdivisions a and b hereof is in good faith and in the course of professional practice only.
- (5) The term "person" includes individual, corporation, partnership and association.
 - (6) The term "pharmacist" means a person duly registered with the State Board of Pharmacy pursuant to chapter 90, article 4 of the General Statutes of North Carolina.
 - (7) The term "practitioner" means a person licensed in this State to prescribe and administer barbiturate or stimulant drugs, as herein defined, in the course of his professional practice; professional practice of a practitioner means treatment of patients under a bona fide practitioner-patient relationship.
 - (8) The term "prescription" means a written order issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a barbiturate or stimulant drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient or if such barbiturate or stimulant drug is prescribed for an animal, the species of such animal, the barbiturate or stimulant drug and quantity of the barbiturate or stimulant drug prescribed, the directions for use of such barbiturate or stimulant drug, and the signature of such practitioner, or an oral order therefor made by such practitioner and promptly reduced to writing, and filed, by the pharmacist. The written statement of the oral order shall be signed by the pharmacist and shall include the name of the issuing practitioner and all information required in a written order.
 - (9) The term "stimulant drug" means any drug consisting of amphetamine, desoxyephedrine (methamphetamine), mephentermine, pipradol, phenmetrazine, methylphenidate, or any salt, mixture or optical isomer of any of them, which drug, salt, mixture or optical isomer has a stimulating effect on the central nervous system, but shall not include preparations containing any of the aforementioned drugs, salts, mixtures or optical isomers thereof which is compounded, mixed or prepared with another drug so as to cause the resultant product to produce an action other than that of predominantly stimulating the central nervous system.
 - (10) The term "warehouseman" means a person who, in the usual course of business, stores barbiturate or stimulant drugs for others lawfully entitled to possess them and who has no control over the disposition of such barbiturate or stimulant drugs except for the purpose of such storage.
 - (11) The term "wholesaler" means a person engaged in the business of distributing barbiturate or stimulant drugs to persons included in any of the cases named in subdivisions a to e inclusive of G. S. 90-113.3 (a) (3). (1955, c. 1330, s. 1; 1959, c. 1215, s. 1.)

Editor's Note.—Session Laws 1959, c. 1215, rewriting this article, is effective as of Oct. 1, 1959.

§ 90-113.2. Prohibited acts.—It shall be unlawful:

- (1) To deliver any barbiturate or stimulant drugs unless:
 - a. Such barbiturate or stimulant drug is delivered by a pharmacist in good faith upon prescription and there is affixed to the im-

mediate container in which such barbiturate or stimulant drug is delivered a label bearing

1. The name and address of the establishment from which such barbiturate or stimulant drug was delivered;
 2. The date on which the prescription for such barbiturate or stimulant drug was filled;
 3. The number of such prescription as filed in the description files of the pharmacist who filled such prescription;
 4. The name of the practitioner who prescribed such barbiturate or stimulant drug;
 5. The name of the patient, and if such barbiturate or stimulant drug was prescribed for an animal, a statement showing the species of the animal; and
 6. The direction for use of the barbiturate or stimulant drug and cautionary statements, if any, as contained in the prescription; and
- b. In the event that such delivery is pursuant to oral order, such prescription shall be promptly reduced to writing and filed by the pharmacist;
- c. Such barbiturate or stimulant drug is delivered by a practitioner in good faith in the course of his professional practice only and upon a prescription written by such practitioner and there is affixed to the immediate container in which such barbiturate or stimulant drug is delivered a label bearing the same information required in subdivision (1) a above for pharmacists. Provided, however, that the practitioner may keep a record of the barbiturate or stimulant drugs dispensed or administered by him in lieu of writing a prescription for same. Such record shall show:
1. The kind and amount of barbiturate or stimulant drug administered or dispensed;
 2. The date such barbiturate or stimulant drug was administered or dispensed; and
 3. The name and address of the person to whom such barbiturate or stimulant drug was administered or dispensed. Provided, however, that the foregoing requirement for the writing of a prescription or the keeping of a record shall not apply to barbiturate or stimulant drugs delivered by such a practitioner in a quantity necessary for the immediate needs of his patient.
- (2) To refill any prescription for a barbiturate or stimulant drug unless such refilling is specifically authorized by the practitioner.
- (3) For any person to possess a barbiturate or stimulant drug unless such person obtained such barbiturate or stimulant drug in good faith on the prescription of a practitioner in accordance with subdivision (1) a or in accordance with subdivision (1) c of this section or in good faith from a person licensed by the laws of any other state or the District of Columbia to prescribe or dispense barbiturate or stimulant drugs.
- (4) For any person to obtain or attempt to obtain a barbiturate or stimulant drug by fraud, deceit, misrepresentation or subterfuge, or by the forgery or alteration of a prescription, or by the use of a false name or the giving of a false address. (1955, c. 1330, s. 2; 1959, c. 1215, s. 1.)

§ 90-113.3. Exemptions.—(a) The provisions of subdivisions (1) and (3) of § 90-113.2 shall not be applicable:

- (1) To the delivery of barbiturate or stimulant drugs for medical or scientific purposes only to persons included in any of the classes named in subdivision (3) below, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or
- (2) To the possession of barbiturate or stimulant drugs by such persons named in subdivision (3) below or their agents or employees for such use.
- (3) The classes of persons to whom the above-mentioned delivery or possession provisions shall not apply are:
 - a. Pharmacists;
 - b. Practitioners;
 - c. Persons who procure barbiturate or stimulant drugs:
 1. For disposition by or under the supervision of pharmacists or practitioners employed by them, or
 2. For the purpose of lawful research, teaching or testing and not for resale;
 - d. Hospitals and other institutions which procure barbiturate or stimulant drugs for lawful administration by or under the supervision of practitioners;
 - e. Manufacturers and wholesalers; and
 - f. Carriers and warehousemen.

(b) Nothing contained in § 90-113.2 shall make it unlawful for a public officer, agent or employee, or persons aiding such public officer in performing his official duties to possess, obtain, or attempt to obtain a barbiturate or stimulant drug for the purpose of enforcing the provisions of any law of this State or of the United States relating to the regulation of the handling, sale or distribution of barbiturate or stimulant drugs. (1955, c. 1330, s. 3; 1959, c. 1215, s. 1.)

§ 90-113.4. Complaints, etc., need not negative exceptions, excuses or exemptions; burden of proof.—In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. (1955, c. 1330, s. 4; 1959, c. 1215, s. 1.)

§ 90-113.5. Retention of invoices by persons within exemptions.—Persons, other than carriers, to whom the exemptions to this article are applicable shall retain all invoices relating to barbiturate or stimulant drugs manufactured, purchased, sold or handled for not less than two calendar years after the date of the transaction shown by such invoice. (1955, c. 1330, s. 4½; 1959, c. 1215, s. 1.)

§ 90-113.6. Enforcement of article; co-operation with federal authorities; investigations.—It is hereby made the duty of the State Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers, within the State, including the State Bureau of Investigation, and of all State's attorneys, to enforce all provisions of this article, except those specifically delegated, and to co-operate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states, relating to barbiturate or stimulant drugs. The State Bureau of Investigation is hereby authorized to make initial investigations of all violations of this article, and is given original but not exclusive jurisdiction in respect thereto with all other law enforcement officers of the State. (1955, c. 1330, s. 5; 1959, c. 1215, s. 1.)

§ 90-113.7. Penalties.—Any person violating any provision of this article or any person who conspires, aids, abets, or procures others to violate any provi-

sion of this article shall for the first offense be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than two years, or both, in the discretion of the court. For a second violation of this article, or in case of a first conviction of a violation of this article by a defendant who shall previously have been convicted of a violation of any law of the United States, or of this or any other state, territory or district, relating to the possession, delivery or use of the drugs defined in this article which violation would have been punishable under this article if the offending act had been committed in this State, the defendant shall be guilty of a felony and fined or imprisoned, or both, in the discretion of the court. (1955, c. 1330, s. 6; 1959, c. 1215, s. 1.)

ARTICLE 6.

Optometry.

§ 90-114. **Optometry defined.**—The practice of optometry is hereby defined to be the employment of any means, other than the use of drugs, medicines, or surgery, for the measurement of the powers of vision and the adaptation of lenses for the aid thereof; and in such practices as above defined, the optometrist may prescribe, give directions or advice as to the fitness or adaptation of a pair of spectacles, eyeglasses or lenses for another person to wear for the correction or relief of any condition for which a pair of spectacles, eyeglasses or lenses are used, or to use or permit or allow the use of instruments, test cards, test types, test lenses, spectacles or eyeglasses or anything containing lenses, or any device for the purpose of aiding any person to select any spectacles, eyeglasses or lenses to be used or worn by such last mentioned person or by any other person. (1909, c. 444, s. 1; C. S., s. 6687; 1923, c. 42, s. 1.)

Editor's Note.—The 1923 amendment added the part of this section following the semicolon.

For comment on article, see 1 N. C. Law Rev. 300.

This article was intended to regulate the practice of optometry, and not the optical trade. *Palmer v. Smith*, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

This section is in substantial accord with the definitions given in other jurisdictions. *Palmer v. Smith*, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

The duplication of an ophthalmic lens, or the duplication or replacement of a frame or mounting for such lenses, does not constitute the practice of optometry as defined in this section. *Palmer v. Smith*, 229 N. C. 612, 51 S. E. (2d) 8 (1948). See note to § 90-115.

Neither an optician nor an optometrist is permitted to use any medicine to treat the eye in order to relieve irritation or for any other trouble which requires the use of drugs. *High v. Ridgeway's Opticians*, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

Fitting Contact Lenses.—It is apparent from an examination of the statutes defining the practice of optometry and the business of a dispensing optician that the General Assembly has not expressly authorized either the optometrist or the optician to fit contact lenses to the human eye, but that the general terms of the statutes governing both are broad enough to authorize the optometrist to do so and to authorize the dispensing optician to do so upon prescription of a physician, oculist or optometrist. *High v. Ridgeway's Opticians*, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-115. **Practice without registration unlawful.**—After the passage of this article it shall be unlawful for any person to practice optometry in the State unless he has first obtained a certificate of registration and filed the same, or a certified copy thereof, with the clerk of the superior court of his residence, as hereinafter provided. Within the meaning of this article, a person shall be deemed as practicing optometry who does, or attempts to, sell, furnish, replace, or duplicate, a lens, frame, or mounting, or furnishes any kind of material or apparatus for ophthalmic use, without a written prescription from a person authorized under the laws of the State of North Carolina to practice optometry, or from a person authorized under the laws of North Carolina to practice medicine:

Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles, without advice or aid as to the selection thereof, as merchandise from permanently located or established places of business, nor shall it prohibit persons or corporations from making mechanical repairs to frames for spectacles; nor shall it prohibit any person, firm, or corporation engaged in grinding lenses and filling prescriptions from replacing or duplicating lenses on original prescriptions issued by a duly licensed optometrist, and oculist. (1909, c. 444, s. 2; C. S., s. 6688; 1935, c. 63.)

Editor's Note.—The 1935 amendment added all of this section beginning with the second sentence.

Section Is Invalid in Part.—This section is invalid in so far as it declares that a person is practicing optometry when he replaces or duplicates an ophthalmic lens, or replaces or duplicates the frame or mounting for such lens, for these acts do not constitute the practice of optometry as defined by § 90-114, and the prescription has no reasonable relation to the public health, safety or welfare. *Palmer v. Smith*, 229 N. C. 612, 51 S. E. (2d) 8 (1948). See Const., Art. I, §§ 1, 17, 31.

Effect of Definition in § 90-114.—The mere fact that this section provides that a person shall be deemed to be practicing optometry if he duplicates a lens or replaces or duplicates a frame or mounting, without a prescription, does not make it

so, unless such duplication or replacement constitutes the practice of optometry within the definition thereof in § 90-114. *Palmer v. Smith*, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

What Optician May Do.—So long as an optician confines his work to the mere mechanical process of duplicating lenses, replacing or duplicating frames and mountings, "making mechanical repairs to frames for spectacles," and filling prescriptions issued by a duly licensed optometrist or oculist, and does not in any manner undertake "the measurement of the powers of vision and the adaptation of lenses for the aid thereof," he is not practicing optometry. *Palmer v. Smith*, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

Cited in *High v. Ridgeway's Opticians*, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-116. Board of Examiners in Optometry.—There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this article, and which shall be styled the "North Carolina State Board of Examiners in Optometry." This Board shall be elected by the North Carolina State Optometric Society and commissioned by the Governor and shall consist of five regular optometrists who are members of the North Carolina State Optometric Society and who have been engaged in the practice of optometry in the State for five years. The terms of the members shall be as follows: One for one year, one for two years, one for three years, one for four years, one for five years. The terms of members thereafter appointed shall be for five years. The members of the Board, before entering upon their duties, shall respectively take all oaths taken and prescribed for other State officers, in the manner provided by law, which shall be filed in the office of the Secretary of State, and the Board shall have a common seal. The North Carolina State Optometric Society shall have the power to fill all vacancies on said Board for unexpired terms, and members so elected shall be commissioned by the Governor. (1909, c. 444, s. 3; 1915, c. 21, s. 1; C. S., s. 6689; 1935, c. 63.)

Editor's Note.—The 1935 amendment added the last two sentences of the section.

§ 90-117. Organization; meetings and powers thereat; records, witnesses and evidence.—The Board of Examiners shall choose, at the first regular meeting and annually thereafter, one of its members as president and one as secretary and treasurer. The Board shall make such rules and regulations, not inconsistent with law, as may be necessary to the proper performance of its duties, and each member may administer oaths and take testimony concerning any matter within the jurisdiction of the Board. A majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the times and places of meeting to be designated by the president and secretary. The secretary of the

Board shall keep a full record of its proceedings, which shall at all reasonable times be open to public inspection. The president, secretary-treasurer, or any member of the Board shall have power in connection with any matter within the jurisdiction of the Board to summon and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by it necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary-treasurer or the president of the Board and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to contempt charges in the manner set forth in G. S. 150-17. Said Board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held. (1909, c. 444, s. 4; C. S., s. 6690; 1935, c. 63; 1953, c. 1041, s. 11.)

Editor's Note.—The 1935 amendment reduced the number of meetings from two to one a year and added the last three sentences.

The 1953 amendment substituted "to

contempt charges in the manner set forth in G. S. 150-17" for "to punishment for contempt by the Board" at the end of the next to last sentence.

§ 90-118. Examination for practice; prerequisites; registration.—

Every person, before beginning to practice optometry in this State after the passage of this article, shall pass an examination before the Board of Examiners. The examination shall be confined to such knowledge as is essential to practice of optometry. Every applicant for examination at the time of examination must comply with the following conditions:

- (1) He must be twenty-one years of age: Provided, that the examination may be given to any applicant who will be twenty-one years of age before the next regular period for giving examinations: Provided, further, that no license shall be issued until the applicant reaches twenty-one years of age.
- (2) He shall present to the Board evidence satisfactory to the Board that the applicant is a person of good moral character.
- (3) He shall satisfy the Board that he has been in actual attendance in approved school of optometry, and that he holds a certificate of graduation from said school, which school shall be approved by the North Carolina Board of Examiners in Optometry.
- (4) He must pay to the Board for the use of the Board the sum of twenty dollars, and if he shall successfully pass the examination he shall pay to the secretary for the use of the Board a further sum of five dollars on the issuance to him of the certificate: Provided, the applicant may stand any subsequent examination by paying an additional fee of five dollars.

Every person successfully passing the examination shall be registered in the Board registry, which shall be kept by the secretary, as licensed to practice optometry, and he shall also receive a certificate of registration, to be signed by the president and secretary of the Board: Provided, that any person holding a certificate by examination to practice optometry in another state where the qualifications prescribed are equal to the qualifications required in this State may be licensed without examination on the same conditions and on the payment of the same fees as are required of other applicants. (1909, c. 444, s. 5; 1915, c. 21, ss. 2, 3, 4; C. S., s. 6691; 1923, c. 42, ss. 2, 3; 1935, c. 63; 1949, c. 357; 1959, c. 464.)

Editor's Note.—The 1935 amendment changed the requirements of subdivision

(3) and substituted at the end of subdivision (4) "by paying an additional fee of

five dollars" for "without paying another fee." The 1949 amendment added the proviso to subdivision (1).

The 1959 amendment rewrote subdivision (2).

Discontinuing the practice of optometry for eighteen years will not constitute an abandonment of the license to practice so as to make the optometrist a "beginner" within the meaning of this section when

no action was taken by the Board as provided in § 90-123, since such revocation of the certificate is the only method prescribed by statute for foreclosing the right to practice the profession after an optometrist has been admitted to such practice. *Mann v. North Carolina State Board of Examiners*, 206 N. C. 853, 175 S. E. 281 (1934).

§ 90-119. Persons in practice before passage of statute. — Every person who had been engaged in the practice of optometry in the State for two years prior to the date of the passage of this article shall hereafter file an affidavit as proof thereof with the Board. The secretary shall keep a record of such persons who shall be exempt from the provisions of the preceding section. Upon payment of three dollars he shall issue to each of them certificates of registration without the necessity of an examination. Failure on the part of a person so entitled within six months of the enactment of this article to make written application to the Board for the certificate of registration accompanied by a written statement, signed by him and duly verified before an officer authorized to administer oaths within this State, fully setting forth the grounds upon which he claims such certificate, shall be deemed a waiver of his right to a certificate under the provisions of this section. A person who has thus waived his right may obtain a certificate thereafter by successfully passing examination and paying a fee as provided herein. (1909, c. 444, ss. 6, 7, 9; C. S., s. 6692.)

§ 90-120. Filing of certificate by licensee; fees; failure to file; certified copies.—Each recipient of the certificate of registration shall present the same for record to the clerk of the superior court of the county in which he resides, and shall pay a fee of fifty cents for recording the same. The clerk shall record it in a book to be provided by him for that purpose. Any person so licensed, before engaging in the practice of optometry in any other county, shall file the certificate for record with the clerk of the superior court of the county in which he desires to practice, and pay the clerk for recording it a fee of fifty cents. Any failure, neglect, or refusal on the part of a person holding a certificate to file it for record, for thirty days after the issuance thereof, shall forfeit the certificate and it shall become null and void. Upon the request of any person entitled to a certificate of registration the Board shall issue a certified copy thereof, and upon the fact of the loss of the original being made to appear, the certified copy shall be recorded in lieu of the original, and the Board shall be entitled to a fee of one dollar for recording such certified copy. (1909, c. 444, s. 8; C. S., s. 6693.)

§ 90-121. Certificate to be displayed at office.—Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted. (1909, c. 444, s. 10; C. S., s. 6694.)

§ 90-122. Compensation of Board; surplus funds.—Out of the funds coming into possession of said Board each member thereof may receive as compensation the sum of ten dollars for each day he is actually engaged in the duties of his office and reimbursement for travel and other expenses, which in the opinion of the Board are properly and necessarily incurred in the performance of his or her duties as a member of said Board. Such expenses shall be paid from the fees and assessments received by the Board under the provisions of this article, and no part of the salary or other expenses of the Board shall ever be paid out of the State treasury. All moneys received in excess of per diem allowance and mileage, as above provided, shall be held by the secretary as a special fund for

meeting expenses of the Board and carrying out the provisions of this article, and he shall give the State such bond as the Board shall from time to time direct for the faithful performance of his duties, and the Board shall make an annual report of its proceedings to the Governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this article. The secretary-treasurer shall receive from the funds of the Board such salary as may be determined by the Board. (1909, c. 444, s. 11; C. S., s. 6695; 1923, c. 42, s. 4; 1935, c. 63; 1959, c. 574.)

Editor's Note.—The 1935 amendment added the last sentence of this section. The 1959 amendment rewrote the latter part of the first sentence dealing with reimbursement for travel and other expenses.

§ 90-123. Annual fees; failure to pay; revocation of license; collection by suit.—For the use of the Board in performing its duties under this article, every registered optometrist shall, in every year after the year 1959 pay to the Board of Examiners the sum of not exceeding twenty-five dollars (\$25.00), the amount to be fixed by the Board, as a license fee for the year. Such payments shall be made prior to the first day of April in each year, and in case of default in payment by any registered optometrist his certificate may be revoked by the Board at the next regular meeting of the Board after notice as herein provided. But no license shall be revoked for nonpayment if the person so notified shall pay, before or at the time of consideration, his fee and such penalty as may be imposed by the Board. The penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed ten and no/100 dollars (\$10.00). The Board of Examiners may collect any dues or fees provided for in this section by suit in the name of the Board. The notice hereinbefore mentioned shall be in writing, addressed to the person in default in the payment of dues or fees herein mentioned at his last known address as shown by the records of the Board, and shall be sent by the secretary of the Board by registered mail, with proper postage attached, at least twenty (20) days before the date upon which revocation of license is considered, and the secretary shall keep a record of the fact and of the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of the license of the person to whom such notice is addressed. (1909, c. 444, s. 12; C. S., s. 6696; 1923, c. 42, s. 5; 1933, c. 492; 1937, c. 362, s. 1; 1959, c. 477.)

Editor's Note.—The 1933 amendment rewrote this section. The 1937 amendment changed the date in the first sentence from 1932 to 1937 and increased the annual license fee from five to fifteen dollars

The 1959 amendment changed the date in the first sentence from 1937 to 1959, increased the annual fee from not exceeding fifteen dollars to not exceeding twenty-

five dollars and increased the penalty from not exceeding five dollars to not exceeding ten dollars.

The method of revoking a license as provided by this section is exclusive and must be first resorted to and in the manner specified therein. *Mann v. North Carolina State Board of Examiners*, 206 N. C. 853, 175 S. E. 281 (1934).

§ 90-124. Rules and regulations; discipline, suspension, revocation and regrant of certificate.—The Board shall have the power to make, adopt, and promulgate such rules, regulations and ethics as may be necessary and proper for the regulation of the practice of the profession of optometry, and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules, regulations and ethics made against any optometrist licensed to practice in North Carolina; may administer the punishment of private reprimand, suspension from the practice of optometry for a period not exceeding twelve months and revocation of license as the case shall in their judgment warrant for violation of the rules, regulations and ethics made, adopted and promulgated by the Board and also any of the following causes:

- (1) Commission of a criminal offense showing professional unfitness;
- (2) Habitual drunkenness;
- (3) Gross incompetence;
- (4) Being afflicted with a contagious or infectious disease;
- (5) Conduct involving wilful deceit;
- (6) Conduct involving fraud or any other conduct involving moral turpitude;
- (7) Advertising the "free examination of the eyes," "free consultation," "consultation without obligation," "free advice" or any other words or phrases of similar import which convey or are calculated to convey the impression to the public that the eyes are examined free;
- (8) Advertising of a character or nature tending to deceive or mislead the public, or in the nature of "bait advertising," or advertising declared to be unethical by the Board and as prescribed in the Code of Ethics promulgated and established by the North Carolina State Board of Examiners in Optometry;
- (9) Use of advertising, directly or indirectly, whether printed, radio, display, or of any other nature which seeks or solicits practice on any installment payment plan;
- (10) House-to-house canvassing or peddling directly or through any agent or employee for the purpose of selling, fitting, or supplying frames, mounting, lenses, or other ophthalmic products.

Board action in revoking a certificate of registration shall be in accordance with the provisions of chapter 150 of the General Statutes. Any person whose certificate has been revoked for any of the grounds or reasons herein set forth, or on account of nonpayment of dues, may, after the expiration of ninety days, and within two years, apply to the Board to have same regranted, and upon a showing satisfactory to said Board, and at the discretion of the Board, license to practice optometry may be restored to such person. (1909, c. 444, s. 13; C. S., s. 6697; 1935, c. 63; 1953, c. 189; c. 1041, s. 12; 1955, c. 996.)

Editor's Note.—The 1935 amendment rewrote this section.

The first 1953 amendment made changes in the former second sentence of the introductory paragraph. And the second 1953 amendment rewrote the first part of the last paragraph, inserting therein the refer-

ence to chapter 150 of the General Statutes.

The 1955 amendment rewrote and extended the scope of the section.

For comment on the 1955 amendment, see 33 N. C. Law Rev. 519.

§ 90-125. Practicing under other than own name or as a salaried or commissioned employee.—It shall be unlawful for any person licensed to practice optometry under the provisions of this article to advertise, practice, or attempt to practice under a name other than his own, except as an associate of or assistant to an optometrist licensed under the laws of the State of North Carolina; and it shall be likewise unlawful for any corporation, lay body, organization, group, or lay individuals to engage, or undertake to engage, in the practice of optometry through means of engaging the services, upon a salary or commission basis, of one licensed to practice optometry or medicine in any of its branches in this State. Likewise, it shall be unlawful for any optometrist licensed under the provisions of this article to undertake to engage in the practice of optometry as a salaried or commissioned employee of any corporation, lay body, organization, group, or lay individual. (1935, c. 63; 1937, c. 362, s. 2.)

Editor's Note.—The 1937 amendment inserted the words "or medicine in any of its branches" near the end of the first sentence.

Suit to Enjoin Enforcement of Section Not Allowed by Federal Court.—Defendants had been enjoined by a State court

for an alleged violation of this section. In a suit brought in the federal district court to enjoin the enforcement of this section, as violating the commerce clause and due process and equal protection clauses of the Constitution, it was held that this was a suit to enjoin the decree of a State court

and was prohibited by a federal statute. *Cited in High v. Ridgeway's Opticians, Ritholz v. North Carolina State Board of Examiners, 18 F. Supp. 409 (1937).* *Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. 301 (1963).*

§ 90-126. **Violation of article forbidden.**—Any person who shall violate any of the provisions of this article, and any person who shall hold himself out to the public as a practitioner of optometry without a certificate of registration provided for herein, shall be deemed guilty of a misdemeanor, and upon conviction may be punished by a fine of not more than one hundred dollars or imprisonment for not more than four months, or both, in the discretion of the court. (1909, c. 444, s. 14; C. S., s. 6698.)

Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-126.1. **Board may enjoin illegal practices.**—In view of the fact that the illegal practice of optometry imminently endangers the public health and welfare, and is a public nuisance, the North Carolina State Board of Optometry may, if it shall find that any person is violating any of the provisions of this article, apply to the superior court for a temporary or permanent restraining order or injunction to restrain such person from continuing such illegal practices. If upon such application, it shall appear to the court that such person has violated, or is violating, the provisions of this article, the court shall issue an order restraining any further violations thereof. All such actions by the Board for injunctive relief shall be governed by the provisions of article thirty-seven of the chapter on "Civil Procedure": Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under the provisions of § 90-126. (1943, c. 444.)

Editor's Note.—For comment on section, see 21 N. C. Law Rev. 324. *Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).*

§ 90-127. **Application of article.**—Nothing in this article shall be construed to apply to physicians and surgeons authorized to practice under the laws of North Carolina, except the provisions contained in § 90-125, or prohibit persons to sell spectacles, eyeglasses, or lenses as merchandise from permanently located and established places of business. (1909, c. 444, s. 15; C. S., s. 6699; 1937, c. 362, s. 3.)

Editor's Note.—The 1937 amendment inserted the reference to § 90-125.

§ 90-128. **Repeal of laws; exception.** — Nothing in the provisions amending §§ 90-114, 90-118, 90-122, and 90-123, shall repeal any of the provisions of § 90-127. (1923, c. 42, s. 7; C. S., s. 6699(b).)

ARTICLE 7.

Osteopathy.

§ 90-129. **Osteopathy defined.** — For the purpose of this article osteopathy is defined to be the science of healing without the use of drugs, as taught by the various colleges of osteopathy recognized by the North Carolina Osteopathic Society, Incorporated. (1907, c. 764, s. 8; 1913, c. 92, s. 3; C. S., s. 6700.)

Cross Reference.—As to what constitutes illegal practice of medicine by licensed osteopath, see §§ 90-18, 90-19 and notes.

Purpose of Article.—In all probability, the General Assembly enacted the statutes relating to the practice of osteopathy now embodied in this article because of the de-

cision in *State v. McKnight, 131 N. C. 717, 42 S. E. 580, 59 L. R. A. 187 (1902)*, which recognized that osteopathy is a "mode of treatment which absolutely excludes medicines and surgery from its pathology" and held that for this reason the statutes requiring examination and license "before beginning the practice of medicine or sur-

gery" did not apply to osteopaths. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

The distinction between the practice of osteopathy and the practice of medicine and surgery is recognized by articles 1 and 7 of this chapter. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

"Osteopathy" Does Not Involve Use of Drugs.—"Osteopathy" is the very antithesis of any science of medicine involving the use of drugs. It is a system of treating diseases of the human body without drugs or surgery. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

The words "as taught by the various colleges of osteopathy" do not set at large the signification of "osteopathy," permitting the colleges to give it any meaning

they choose. The legislature merely authorizes the colleges to determine, select, and teach the most desirable methods of doing what is comprehended within the term "osteopathy." The colleges cannot widen the scope of the osteopath's certificate so as to permit him to practice other systems of healing by the simple expedient of varying their curricula. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

In a prosecution of an osteopath for practicing medicine without a license, the State does not have the burden of showing that the administration or prescription of medicines with which defendant is charged was not taught in the recognized colleges of osteopathy. *State v. Baker*, 229 N. C. 73, 48 S. E. (2d) 61 (1948).

§ 90-130. Board of Examiners; membership; officers; meetings.—There shall be a State Board of Osteopathic Examination and Registration, consisting of five members appointed by the Governor, in the following manner, to wit: within thirty days after this article goes into effect the Governor shall appoint five persons who are reputable practitioners of osteopathy, selected from a number of not less than ten who are recommended by the North Carolina Osteopathic Society, and this number may be increased to fifteen, upon the request of the Governor; the recommendation of the president and secretary being sufficient proof of the appointees' standing in the profession; and said appointees shall constitute the first Board of Osteopathic Examination and Registration. Their term of office shall be so designated by the Governor that the term of one member shall expire each year. Thereafter in each year the Governor shall in like manner appoint one person to fill the vacancy in the Board thus created, from a number of not less than five, who are recommended by the State Osteopathic Society; the term of said appointee to be for five years. A vacancy occurring from any other cause shall be filled by the Governor for the unexpired term in the same manner as above stated. The Board shall, within thirty days after its appointment, meet in the city of Raleigh, and organize by electing a president, secretary and treasurer, each to serve for one year. Thereafter the election of said officers shall occur annually. The treasurer and secretary shall each give bond, approved by the Board, for the faithful performance of their respective duties, in such sum as the Board may from time to time determine. The Board shall have a common seal, and shall formulate rules to govern its actions; and the president and secretary shall be empowered to administer oaths. The Board shall meet in the city of Raleigh at the call of the president, in the month following the election of its officers, and in July of each succeeding year, and at such other times and places as a majority of the Board may designate. Three members of the Board shall constitute a quorum, but no certificate to practice osteopathy shall be granted on an affirmative vote of less than three. The Board shall keep a record of its proceedings, and a register of all applicants for certificates, giving the name and location of the institution granting the applicant the degree of doctor of or diploma in osteopathy, the date of his or her diploma, and also whether the applicant was rejected or a certificate granted. The record and registers shall be prima facie evidence of all matters recorded therein. (1907, c. 764, s. 1; 1913, c. 92, s. 1; C. S., s. 6701; 1937, c. 301, s. 1.)

Editor's Note.—The 1937 amendment after "osteopathy" in the next to the last struck out "or other nondrug-giving school of medical practice" formerly appearing sentence.

§ 90-131. Educational requirements, examination and certification of applicants.—Any person, before engaging in the practice of osteopathy in this State, after June 3, 1959, shall, upon the payment of a fee of twenty-five dollars (\$25.00), make application for a certificate to practice osteopathy to the Board of Osteopathic Examination and Registration on a form prescribed by the Board, giving, first, his name, age (which shall not be less than twenty-one years), and residence; second, evidence that such applicant is of good character and shall have, previous to the beginning of his course in osteopathy, obtained a diploma from a high school, or academy, or its equivalent, and evidence of having completed not less than two years if he matriculated in an osteopathic college before October 1, 1952, and if thereafter three years pre-osteopathic education in an accredited college or university approved by the Board; third, the date of his diploma, and evidence that such diploma was granted on personal attendance and completion of a course of not less than four academic years conforming to the minimum standards for osteopathic colleges established by the American Osteopathic Association. The Board may require the applicant to file an affidavit as to any facts pertaining to his application for a license to practice osteopathy and shall, except as otherwise provided, give to applicants a written examination in the subjects of anatomy, physiology, biochemistry, toxicology, chemistry, osteopathic pathology, bacteriology, histology, diagnosis, hygiene, osteopathic obstetrics and gynecology, minor surgery, principles and practice of osteopathy, and such other like subjects as the Board may require. An applicant passing said examination with a minimum grade in each subject of seventy per cent (70%) and a minimum general average of seventy-five per cent (75%) in all subjects and who otherwise meets the requirements of this article shall be licensed to practice osteopathy as defined in § 90-129. The Board is authorized to promulgate rules and regulations to carry out the provisions of this article; and to employ qualified personnel including persons or organizations specially qualified in preparing, giving and grading examinations to assist or advise the Board. The Board may refuse to grant a certificate to any person convicted of a felony, or a crime involving moral turpitude or who engages in gross unprofessional or immoral conduct, or who is addicted to any vice to such a degree as to render him unfit to practice osteopathy, and may, after due notice and hearing, revoke such certificate for like cause. (1907, c. 764, s. 2; 1913, c. 92, s. 1; C. S., s. 6702; 1959, c. 705, s. 1.)

Editor's Note.—The 1959 amendment rewrote this section. Section 3 of the amendatory act provides that no person who was authorized to practice osteopathy in this State on June 3, 1959, shall be compelled to take and pass a new examination by reason of the rewriting of G. S. 90-131.

Necessity for Examination.—Those who practice and receive pay for the treatment of human diseases without the use of drugs, and who are not licensed osteopaths, are required to take the examination and receive the license provided for by statute. *State v. Siler*, 169 N. C. 314, 84 S. E. 1015 (1915).

§ 90-132. When examination dispensed with; temporary permit; annual registration.—The Board may, in its discretion, dispense with an examination in the case of an osteopathic physician duly authorized to practice osteopathy in any other state or territory, or the District of Columbia, who presents a certificate of license issued after an examination by the legally constituted board of such state, territory, or District of Columbia, accorded only to applicants of equal grade with those required in this State or who presents a certificate issued by the National Board of Examiners for Osteopathic Physicians and Surgeons, and who makes application on a form to be prescribed by the Board, accompanied by a fee of seventy-five dollars (\$75.00).

The secretary of the Board may grant a temporary permit until a regular meeting of the Board, or to such time as the Board can conveniently meet, to one whom he considers eligible to practice in the State, and who may desire to com-

mence the practice immediately. Such permit shall only be valid until legal action of the Board can be taken. In all the above cases the fee shall be the same as charged to applicants for examination.

Every person heretofore or hereafter licensed to practice osteopathy by said Board of Osteopathic Examination and Registration shall, during the month of January of each year, register with the secretary of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of five dollars (\$5.00). An annual registration receipt shall be issued and mailed to each license holder, upon payment of the registration fee, which shall be placed in a conspicuous position in the licensee's office, if he practices in this State. In the event an osteopath fails to register as herein provided he shall pay an additional amount of ten dollars (\$10.00) to the Board. Should an osteopath fail to register and pay the fees imposed, and should such failure continue for a period of thirty days, the license of such osteopath may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. Upon payment of all fees and penalties which may be due, the license of such osteopath shall be reinstated. (1907, c. 764, s. 2; C. S., s. 6703; 1959, c. 705, s. 2.)

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

§ 90-133. Fees held by Board; salaries; payment of expenses.—All fees shall be paid in advance to the treasurer of the Board, to be by him held as a fund for the use of the State Board of Osteopathic Examination and Registration. The compensation and expenses of the members and officers of said Board, and all expenses proper and necessary, in the opinion of said Board, to discharge its duties under and to enforce the law, shall be paid out of such fund, upon the warrant of the president and secretary of said Board, and no expense shall be created to exceed the income of fees or fines as herein provided. The salaries shall be fixed by the Board, but shall not exceed ten dollars per day per member, and railroad and hotel expenses. (1907, c. 764, s. 3; C. S., s. 6705.)

§ 90-134. Subject to State and municipal regulations.—Osteopathic physicians shall observe and be subject to all State and municipal regulations relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health, the same as physicians of other schools of medicine, and such reports shall be accepted by the officers or department to whom the same are made. (1907, c. 764, s. 4; C. S., s. 6706.)

§ 90-135. Record of certificates; fees.—Every person holding a certificate from the State Board of Examination and Registration shall have it recorded in the office of the county clerk of the county in which he or she expects to practice. Until such certificate is filed for record, the holder shall exercise none of the rights or privileges therein conferred. Said clerk of the county shall keep in a book for that purpose a complete list of all certificates recorded by him, with the date of the recording of each certificate. Each holder of a certificate shall pay to said clerk a fee of one dollar for making such record. (1907, c. 764, s. 5; C. S., s. 6707.)

§ 90-136. Refusal, revocation or suspension of license; misdemeanors.—The North Carolina State Board of Osteopathic Examination and Registration may refuse to issue a license to anyone otherwise qualified, and may suspend or revoke any license issued by it to any osteopathic physician, who is not of good moral character, and/or for any one or any combination of the following causes:

- (1) Conviction of a felony, as shown by a certified copy of the record of the court of conviction;

- (2) The obtaining of or an attempt to obtain a license, or practice in the profession, or money, or any other thing of value, by fraudulent misrepresentations;
- (3) Gross malpractice;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Advertising, practicing, or attempting to practice under a name other than one's own;
- (6) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.

Each of the following acts constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars; or imprisonment for not less than thirty days nor more than one year, or both in the discretion of the court:

- (1) The practice of osteopathy or an attempt to practice osteopathy, or professing to do so without a license;
- (2) The obtaining of or an attempt to obtain a license, or practice in the profession, or money, or any other thing of value by fraudulent misrepresentation;
- (3) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this article;
- (4) Advertising, practicing or attempting to practice osteopathy under a name other than one's own.

The board may neither suspend nor revoke any license, however, for any of the causes hereinabove set forth except in accordance with the provisions of chapter 150 of the General Statutes. (1937, c. 301, s. 3; 1953, c. 1041, s. 13.)

Editor's Note.—The 1953 amendment of this section, inserting in lieu thereof the struck out the former last three paragraphs present last paragraph.

§ 90-137. Restoration of revoked license.—Whenever any osteopath has been deprived of his license, the North Carolina State Board of Osteopathic Examination and Registration, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licentiate before restoration. (1937, c. 301, s. 3.)

§ 90-138. Objects of North Carolina Osteopathic Society.—The objects of the North Carolina Osteopathic Society shall be to unite the osteopaths of this State for mutual aid, encouragement, and improvements; to encourage scientific research in the laws of health and treatment of diseases of the human family; to elevate the standard of professional thought and conduct in the practice of osteopathy and to restrict the practice of osteopathy to persons educated and trained in the science and possessing a diploma from a reputable college of osteopathy. (1907, c. 764, s. 7; C. S., s. 6709.)

ARTICLE 8.

Chiropractic.

§ 90-139. Creation and membership of Board of Examiners.—There is hereby created and established a board to be known by the name and style of the State Board of Chiropractic Examiners. The Board shall be composed of three practicing chiropractors of integrity and ability, who shall be residents of the State, and no more than two members of said Board shall be graduates from the same school or college of chiropractic. (1917, c. 73, s. 1; C. S., s. 6710.)

Editor's Note.—For brief comment on 381, 85 S. E. 7 (1915), decided before this article was passed, applied the rule laid down in § 90-131 to all nondrug-giving practitioners.

The case of *State v. Gibson*, 169 N. C.

§ 90-140. **Appointment; term; successors; recommendations.** — The Governor shall appoint the members of the State Board of Chiropractic Examiners, whose terms of office shall be as follows: One member shall be appointed for a term of one year from the close of the next regular annual meeting of the North Carolina Chiropractic Association; one member shall be appointed for a term of two years from such time, and one member shall be appointed for a term of three years from such time. Annually thereafter, at the time of the annual meeting or immediately thereafter the Governor shall appoint one member of the State Board of Chiropractic Examiners, whose term of office shall be three years, and such members of the Board of Examiners shall be appointed from a number of not less than five who shall be recommended by the North Carolina Chiropractic Association. The term of office of any member of the Board of Examiners shall continue until his successor is appointed and qualified. (1917, c. 73, s. 2; C. S., s. 6711; 1933, c. 442, s. 1; 1963, c. 646, s. 1.)

Editor's Note.—The 1933 amendment changed "North Carolina Board of Chiropractors" to "North Carolina Chiropractic Association." The 1963 amendment added the last sentence of this section.

§ 90-141. **Organization and vacancies.** — The Board of Chiropractic Examiners shall elect such officers as they may deem necessary, and in case of a vacancy, caused by death or in any other manner, a majority of the Board shall have the right to fill the vacancy by the election of some other member of the North Carolina Chiropractic Association. (1917, c. 73, s. 4; C. S., s. 6713; 1933, c. 442, s. 1.)

Editor's Note.—The 1933 amendment changed "North Carolina Board of Chiropractors" to "North Carolina Chiropractic Association."

§ 90-142. **Rules and regulations.** — The State Board of Chiropractic Examiners may adopt suitable rules and regulations for the performance of their duties. (1919, c. 148, s. 4; C. S., s. 6714.)

§ 90-143. **Definitions of chiropractic; examinations; educational requirements.**—Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the twenty-four moveable vertebrae of the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the Board of Examiners to examine all applicants who shall furnish satisfactory proof of good character and of graduation from a regular chiropractic school of good standing, and such examination shall embrace such branches of study as are usually included in the regular course of study for chiropractors in chiropractic schools or colleges of good standing, including especially an examination of each applicant in the science of chiropractic as herein defined. Every applicant for license shall furnish to said Board of Examiners sufficient and satisfactory evidence that, prior to the beginning of his course in chiropractic, he had obtained a high school education, or what is equivalent thereto, entitling him to admission in a reputable college or university; he shall satisfy Board of Examiners that he has completed two years of college work and received credits for a minimum of forty-eight semester hours or the equivalent thereof, provided persons now enrolled in, or who have already completed a course at, a reputable chiropractic college shall be exempt from this requirement; and he shall also exhibit to said Board of Chiropractic Examiners, or satisfy them that he holds, a diploma from a reputable chiropractic college, and not a correspondence school, and that said diploma was granted to him on a personal attendance and completion of a regular four years' course in such chiropractic college, and such applicant shall be examined in the following studies: Chiropractic analysis, chiropractic philosophy, chiropractic neurology, palpation, nerve tracing, microscopy, histology, anatomy, gynecology, juris-

prudence, chemistry, pathology, hygiene, physiology, embryology, eye, ear, nose, and throat, dermatology, symptomology, spinography, chiropractic orthopedy, and the theory, teaching and practicing of chiropractic.

Provided further, that the said State Board of Chiropractic Examiners may license by reciprocity, upon application, any chiropractor holding a license issued to him by a regular board of chiropractic examiners in another state when said Board is satisfied that such applicant has educational qualifications, or the equivalent thereof, equal to those prescribed by said Board for admission to practice chiropractic in this State, and upon proof of good moral character and that he has practiced chiropractic under such license for at least one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; C. S., s. 6715; 1933, c. 442, s. 1; 1937, c. 293, s. 1; 1963, c. 646, s. 2.)

Editor's Note.—The 1933 amendment changed "North Carolina Board of Chiropractors" to "North Carolina Chiropractic Association." It also raised the personal attendance course from three to four years. The 1937 amendment struck out the former last sentence and inserted the second paragraph in lieu thereof.

The 1963 amendment inserted in the first paragraph the requirement of two years of college work.

Discretionary Power of Board.—Chapter 73, Public Laws 1917, establishing a Board of Chiropractic Examiners, gave the Board large discretionary powers to examine and license applicants to practice this science, and to pass upon their other qualifications specified therein. The act, construed with

the 1919 amendatory act, provided that those practicing chiropractic in the State prior to 1918 could receive their licenses upon proof of good character and proper proficiency upon examination. It was also provided that those so practicing prior to 1917 should be granted a license without examination. Neither of the acts dispensed with the discretionary power of the Board to pass upon the requisites of good character, or the fact as to whether the applicants thereunder had been bona fide practitioners for the requisite time. It was held that the courts would not inquire into such matters and that a mandamus would not lie to compel the Board to issue a license under said acts. *Hamlin v. Carlson*, 178 N. C. 431, 101 S. E. 22 (1919).

§ 90-144. **Meetings of Association and Board of Examiners.**—The North Carolina Chiropractic Association shall meet at least once a year at such time and place as said Association shall determine. The North Carolina Board of Chiropractic Examiners shall meet at least once a year at such time and place as said Board shall determine at which meetings applicants for license shall be examined. (1917, c. 73, s. 6; C. S., s. 6716; 1933, c. 442, s. 1; 1949, c. 785, s. 1.)

Editor's Note. — The 1933 amendment changed "North Carolina Board of Chiropractors" to "North Carolina Chiropractic Association."

The 1949 amendment rewrote this sec-

tion. Prior to the amendment the annual meetings of the Association and the Board of Examiners were required to be held at the same time and place.

§ 90-145. **Grant of license; temporary license.**—The Board of Chiropractic Examiners shall grant to each applicant who is found to be competent, upon examination, a license authorizing him or her to practice chiropractic in North Carolina. Said Board may grant a temporary license to any applicant who shall comply with the requirements of this article as to proof of good character and of graduation from a chiropractic school or college as prescribed in this article; but such temporary license shall not continue in force longer than until the next meeting of said Board, and in no case shall a temporary license be granted to an applicant who has already been refused a license by said Board. (1917, c. 73, s. 7; C. S., s. 6717; 1949, c. 785, s. 2.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 90-146. **Graduates from other states.** — A graduate of a regular chiropractic school who comes into this State from another state may be granted

a license by the Board of Examiners as required in this article. (1917, c. 73, s. 8; C. S., s. 6718.)

§ 90-147. **Practice without license a misdemeanor.** — Any person practicing chiropractic in this State without having first obtained a license as provided in this article shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court. (1917, c. 73, s. 9; C. S., s. 6719.)

§ 90-148. **Records of Board.** — The secretary of the Board of Chiropractic Examiners shall keep a record of the proceedings of the Board, giving the name of each applicant for license, and the name of each applicant licensed and the date of such license. (1917, c. 73, s. 10; C. S., s. 6720.)

§ 90-149. **Application fee.** — Each applicant shall pay the secretary of said Board a fee of twenty-five dollars. (1917, c. 73, s. 11; C. S., s. 6721.)

§ 90-150. **Exempt from jury service.**—All duly licensed chiropractors of this State shall be exempt from service as jurors in any of the courts of this State. (1933, c. 442, s. 2.)

§ 90-151. **Extent and limitation of license.**—Any person obtaining a license from the Board of Chiropractic Examiners shall have the right to practice the science known as chiropractic, in accordance with the method, thought, and practice of chiropractors, as taught in recognized chiropractic schools and colleges, but shall not prescribe for or administer to any person any medicine or drugs, nor practice osteopathy or surgery. (1917, c. 73, s. 12; C. S., s. 6722; 1933, c. 442, s. 3.)

Editor's Note.—The 1933 amendment "as taught in recognized chiropractic inserted near the middle of this section schools and colleges."

§ 90-152. **Registration of license.**—Any person desiring to engage in the practice of chiropractic, having first obtained a license as herein provided, shall appear before the clerk of the superior court of the county in which he resides, or proposes to practice, for registration as a chiropractor. He shall produce and exhibit to the said clerk a license obtained from the Board of Chiropractic Examiners, and upon such exhibition the clerk shall register the name and residence of the applicant, giving the date of such registration, in a book to be kept for the purpose of registering chiropractors, and shall issue to him a certification of such registration under the seal of the superior court of such county, for which the clerk shall be entitled to collect from said applicant a fee of fifty cents. The person obtaining such certificate shall be entitled to practice chiropractic anywhere in this State; but if he shall remove his residence to another county, he shall exhibit said certificate to the clerk of the superior court of such other county and be registered. Anyone receiving a temporary license as provided in this article shall not be entitled to register, but may practice anywhere in this State during the time such temporary license shall be in force. (1917, c. 73, s. 13; C. S., s. 6723.)

§ 90-153. **Licensed chiropractors may practice in public hospitals.**—A licensed chiropractor in this State may have access to and practice chiropractic in any hospital or sanitarium in this State that receives aid or support from the public. (1919, c. 148, s. 3; C. S., s. 6724.)

§ 90-154. **Grounds for refusal, suspension or revocation of license.**—The Board of Chiropractic Examiners may suspend or refuse to grant or may revoke a license to practice chiropractic in this State, upon the following grounds: Immoral conduct, bad character, the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate him or her for the performance of such professional duties, unethical advertising, unprofessional or dishonorable conduct un-

worthy of and affecting the practice of his profession. (1917, c. 73, s. 14; C. S., s. 6725; 1949, c. 785, s. 3; 1963, c. 646, s. 3.)

Editor's Note.—The 1949 amendment added at the end of the section the following: “unethical advertising, unprofessional or dishonorable conduct unworthy of and affecting the practice of his profession.”

The 1963 amendment inserted “suspend or” near the beginning of the section.

§ 90-155. Annual fee for renewal of license.—Any person practicing chiropractic in this State, in order to renew his license, shall, on or before the first Tuesday after the first Monday in January in each year after a license is issued to him as herein provided, pay to the secretary of the Board of Chiropractic Examiners a renewal license fee of ten dollars (\$10.00), and shall furnish the Board evidence that he has attended two days of educational sessions or programs approved by the Board during the preceding twelve months, provided the Board may waive this educational requirement due to sickness or other hardship of applicant.

Any license or certificate granted by the Board under this article shall automatically be cancelled if the holder thereof fails to secure a renewal within thirty (30) days from the time herein provided; but any license thus cancelled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of fifteen dollars (\$15.00). (1917, c. 73, s. 15; C. S., s. 6726; 1933, c. 442, s. 4; 1937, c. 293, s. 2; 1963, c. 646, s. 4.)

Editor's Note. — Prior to the 1937 amendment the fee specified in the first paragraph was two dollars and the fee in the second paragraph was ten dollars.

The 1963 amendment rewrote the first paragraph and substituted “thirty (30) days” for “three months” in the second paragraph.

§ 90-156. Pay of Board and authorized expenditures.—The members of the Board of Chiropractic Examiners shall receive their actual expenses, including railroad fare and hotel bills, when meeting for the purpose of holding examinations, and performing any other duties placed upon them by this article, such expenses to be paid by the treasurer of the Board out of the moneys received by him as license fees, or from renewal fees. The Board shall also expend out of such fund so much as may be necessary for preparing licenses, securing seal, providing for programs for licensed doctors of chiropractic in North Carolina, and all other necessary expenses in connection with the duties of the Board. (1917, c. 73, s. 16; C. S., s. 6727; 1949, c. 785, s. 4.)

Editor's Note.—The 1949 amendment inserted in the second sentence “providing

for programs for licensed doctors of chiropractic in North Carolina.”

§ 90-157. Chiropractors subject to State and municipal regulations. — Chiropractors shall observe and be subject to all State and municipal regulations relating to the control of contagious and infectious diseases. (1917, c. 73, s. 17; C. S., s. 6728.)

ARTICLE 9.

Registered Nurses.

§ 90-158: Repealed by Session Laws 1953, c. 1199.

§ 90-158.1. Board of Nurse Registration and Nursing Education. —There is hereby created and established for the purposes and with the powers hereinafter set forth the North Carolina Board of Nurse Registration and Nursing Education, hereinafter designated and referred to as the Board, which shall consist of nine members to be chosen and commissioned as hereinafter provided.

Five members of said Board shall be registered nurses who are licensed to practice in North Carolina, and who have had nursing experience, all five of whom shall be appointed and commissioned by the Governor of North Carolina.

Two members of said Board shall be physicians with experience in teaching nurses, both of whom shall be appointed and commissioned by the Governor of North Carolina.

Two members of said Board shall be representatives of hospitals operating nursing schools who shall not be physicians, both of whom shall be appointed and commissioned by the Governor of North Carolina.

In appointing the members of said Board, the Governor shall designate the term for which each member is appointed. Three of said members shall be appointed for a term of one year; two for a term of two years; two for a term of three years; and two for a term of four years; and thereafter all appointments shall be for a term of four years.

An interim vacancy on the Board shall be filled for the remainder of the unexpired term by appointment of the Governor from a list of two nominees filed by the organization or association which previously nominated the member creating the vacancy, or by appointment by the Governor if such member was not a nominee of any of said organizations. (1953, c. 1199, s. 1.)

Editor's Note.—The provisions of former Article 9 entitled "Trained Nurses" and containing §§ 90-158 to 90-171, were repealed as of January 1, 1954, by Session Laws 1953, c. 1199, which substituted therefor §§ 90-158.1 to 90-158.40. Another

1953 act (chapter 1203) added § 90-158.41, relating to a nurse training program at State-supported educational institutions.

For brief comment on §§ 90-158.1 to 90-158.40, see 31 N. C. Law Rev. 384.

§ 90-158.2. **Officers.**—The officers of the Board shall be a chairman, a vice-chairman, and such other officers as the Board may deem necessary, which officers shall be elected annually by the Board for terms of one year each and until their successors shall have been elected and qualified. The Board shall employ an executive secretary, who shall not be a member of the Board, but who shall be a registered nurse, duly registered in the State of North Carolina, and who shall perform such duties and functions as may be prescribed by the Board and who shall be responsible to the Board for the accomplishment of such duties and functions. The Board shall fix the compensation of the executive secretary. The executive secretary shall serve as treasurer and shall furnish surety bond in such sum as may be prescribed by the Board, conditioned upon the true and faithful accounting for all funds of the Board which may come into the hands, custody, or control of the executive secretary, which said bond shall be made payable to the Board and approved by said Board. The Board shall require a surety bond to be furnished by the executive secretary for each year of employment, and any surety bond executed and furnished for the faithful accounting of the executive secretary, if continued or renewed from year to year by endorsement or otherwise, shall be deemed to be a bond covering the faithful accounting of the executive secretary to the extent of the principal amount of said bond for each and every year during which said bond shall be renewed or continued in force, and the provisions of this section of this statute shall be a part of the contract, terms and conditions of any such bond.

The Board shall have power and authority to employ legal counsel, certified public accountants, and such employees, assistants and agents as may be necessary in the opinion of the Board to carry into effect the provisions of this statute, and to fix the compensation of such persons employed, and to incur such other expenses as may be deemed necessary to carry into effect the provisions of this statute. (1953, c. 1199, s. 1.)

§ 90-158.3. **Compensation of members.**—The members of the Board shall receive such compensation in addition to reimbursement for actual traveling and hotel expenses as shall be fixed by the Board on a per diem basis. (1953, c. 1199, s. 1.)

§ 90-158.4. **Expenses payable from fees collected by Board.**—All salaries, compensation and expenses of every kind incurred or allowed for the purposes of carrying out the provisions of this statute shall be paid by the Board exclusively out of the fees received by the Board as authorized by the provisions of this statute, or funds received from other sources, and in no case shall any salaries, expenses or other obligations of the Board be charged upon the treasury of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board exclusively for the purpose of carrying out the provisions of this statute. (1953, c. 1199, s. 1.)

§ 90-158.5. **Official seal; rules and regulations.** — The Board shall adopt an official seal, which shall be affixed to all licenses or certificates of registration issued by it, and the Board shall make such rules and regulations, not inconsistent with law, as may be necessary to regulate its proceedings and otherwise carry out the purposes and enforce the provisions of this statute. (1953, c. 1199, s. 1.)

§ 90-158.6. **Meetings; quorum; power to compel attendance of witnesses and to take testimony.**—The Board shall hold at least one meeting each year, and may hold additional meetings as necessary, for the purpose of licensing qualified applicants as registered nurses, for the purpose of considering and acting upon the accreditation of schools of nursing within the jurisdiction of the Board, and for the transaction of other business and affairs within the jurisdiction of the Board. The Board is authorized and directed to establish rules with respect to the calling, holding and conduct of regular and special meetings. A majority of the members of the Board shall constitute a quorum. The Board shall have the power to compel the attendance of witnesses and to take testimony and proof concerning any matter within its jurisdiction, and for such purposes each member of the Board shall have the power to administer oaths, which shall be administered according to law. (1953, c. 1199, s. 1.)

§ 90-158.7. **Practice as registered professional nurse regulated.**—In order to safeguard the life and health of the citizens of North Carolina individually and collectively, any person practicing or offering to practice nursing in this State as a “trained nurse”, “graduate nurse”, “professional nurse”, “registered nurse” shall be required to submit evidence that he or she is qualified so to practice and shall be licensed and registered as hereinafter provided. (1953, c. 1199, s. 1.)

§ 90-158.8. **Practice of nursing.**—A person is engaged in the practice of professional nursing when such person for compensation or personal profit performs any professional service requiring the application of principles of the biological, physical or social sciences and nursing skills in the care of the sick, in the prevention of disease or in the conservation of health, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, and carrying out of treatments and medications as prescribed by a licensed physician, and the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; provided, however, that nothing in this statute shall be construed in any way to prohibit or limit:

- (1) Gratuitous nursing of the sick by friends or members of the family.
- (2) Incidental care of the sick by domestic servants or by persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this statute.
- (3) Domestic administration of family remedies by any person.
- (4) Nursing services in case of an emergency. “Emergency”, as used in this subdivision includes an epidemic or public disaster.
- (5) The performance by any person of such duties as are required in the

physical care of the patient or carrying out medical orders prescribed by a licensed physician; provided, such person shall not in any way assume to practice as a "professional nurse", "registered nurse", "graduate nurse" or "trained nurse". (1953, c. 1199, s. 1.)

§ 90-158.9. Use of title by nonlicensed persons prohibited.—Except as herein specifically provided to the contrary, no person shall use the title "trained nurse", "graduate nurse", "registered nurse", or "professional nurse", nor shall any person use any title abbreviation, sign, or device to indicate that he or she is a graduate, trained, registered, or professional nurse, nor shall any person engage in the practice as a "trained nurse", "graduate nurse", "registered nurse", or "professional nurse" in the State of North Carolina until and unless such person shall have been licensed by the Board in accordance with the provisions of this statute. (1953, c. 1199, s. 1.)

§ 90-158.10. Licensure by examination.—At least once each year, and at such other times as the Board may determine, the Board shall cause an examination to be given to applicants for a license to practice as a registered nurse at such time and place as may be fixed by the Board. The Board shall give due publicity in advance as to each examination in order that qualified persons may become applicants, including notice to all accredited nursing schools in the State. The Board shall also notify each applicant of the time and place of each examination. The Board is hereby empowered to prescribe such regulations as it may deem proper governing the furnishing of proof of qualifications of applicants for license, the conduct of applicants during examination and the conduct of the examination proper not inconsistent with the provisions of this article.

Every applicant for a license to practice as a registered nurse, except an applicant who has been duly licensed as a registered nurse under the laws of another state, territory or foreign country, shall be required to pass a written examination approved and given by the Board, as herein provided, which examination may be supplemented by an oral or practical examination as may be determined by the Board. When an applicant shall have successfully passed such examination, as determined by the Board, whose decision shall be final, the Board shall issue to the applicant a license to practice nursing as a registered nurse. The form of the license shall be determined by the Board. (1953, c. 1199, s. 1.)

§ 90-158.11. Scope of examination; uniformity in standards of admission.—Applicants shall be examined on their knowledge of anatomy and physiology, pharmacology, nutrition, bacteriology, obstetrical, medical and surgical nursing, nursing of children, ethics of nursing, and theory of psychiatric nursing. All examinations given by the Board shall be adopted and approved by the Board and the grade or grades given to all persons taking such examinations shall be determined and approved by the Board. In preparing and giving examinations to applicants for licensure to practice as registered nurses in North Carolina the Board may use its own methods of examination or the various "State Board Test Pool Examination" forms such as those prepared and published by the National League for Nursing, provided, however, that any examinations used by the Board shall be examined and approved by the Board and the grade or grades given to all persons taking such examination shall be determined and approved by the Board. No examination shall be given on subjects not required by this article. (1953, c. 1199, s. 1.)

§ 90-158.12. Qualification of applicants for licensure by examination.—In order to be eligible for the examination for licensure as a registered nurse every applicant shall make written application to the Board on forms furnished by the Board and shall submit to the Board written evidence, verified by oath, sufficient to satisfy the Board that the applicant meets the following qualifications and conditions:

- (1) The applicant shall be at least twenty (20) years of age.
- (2) The applicant shall be of good moral character.
- (3) The applicant shall be in good physical and mental health.
- (4) The applicant shall be a graduate of a high school accredited by the State agency charged by law with approving and accrediting high schools, or shall have a high school education equivalent thereto as determined by the Board.
- (5) The applicant shall have completed the basic professional curriculum in, and shall have graduated from, a school of nursing accredited by the Board in accordance with the provisions of this statute hereinafter set forth, or a school of nursing accredited by the appropriate accrediting agency of another state or territory, or the District of Columbia, or a foreign country, and approved by the Board. (1953, c. 1199, s. 1.)

§ 90-158.13. **Licensure by reciprocity.**—The Board may issue a license to practice nursing as a registered nurse, without examination, to an applicant who has been duly licensed as a registered nurse under the laws of another state, territory or foreign country, if in the opinion of the Board the applicant is competent to practice as a registered nurse in this State. The Board in its discretion may require such applicant for licensure to demonstrate her competency and qualifications to practice as a registered nurse in North Carolina and for that purpose the Board may require such applicant to successfully pass an examination, written or oral, or both, and submit evidence satisfactory to the Board of such applicant's competency to practice as a registered nurse, and the decision of the Board thereon shall be final. (1953, c. 1199, s. 1.)

§ 90-158.14. **Fees.**—Every applicant for license to practice nursing as a registered nurse in North Carolina, whether by examination or by reciprocity, shall pay to the Board at the time of making of application a fee of twenty dollars (\$20.00). Any applicant who fails to pass the examination by the Board may take another examination with payment of fee in the same amount; provided, however, the second examination is taken within two years of the date of the first examination. Upon the failure of an applicant to pass the second examination, the Board may require the applicant to complete additional courses of study designated by the Board, and before taking any such subsequent examination the applicant shall present to the Board satisfactory evidence of having completed such additional course of study and shall pay an additional fee in the same amount as that required by this statute for the filing of an original application. (1953, c. 1199, s. 1; 1961, c. 431, s. 1.)

Editor's Note. — The 1961 amendment increased the license application fee from fifteen to twenty dollars.

§ 90-158.15. **Custody and use of funds.**—All fees payable to the Board shall be deposited by the executive secretary of the Board in a bank or banks designated by the Board as an official depository for funds of the Board, which funds shall be deposited in the name of the Board and shall be used for the payment of salaries and other costs and expenses of the Board in carrying out the provisions of this statute and for promoting and extending nursing education in North Carolina pursuant to Board authorization. An annual audit of the accounts of the executive secretary shall be made by the State of North Carolina. (1953, c. 1199, s. 1.)

§ 90-158.16. **Temporary nursing in State.**—The Board may make reasonable rules and regulations for the purpose of permitting registered nurses from other states, territories and foreign countries to do temporary nursing in the State of North Carolina for periods not exceeding six months. For such temporary

license, except in emergencies referred to in § 90-158.8, an applicant shall pay to the Board a temporary registration fee of \$5.00. (1953, c. 1199, s. 1.)

§ 90-158.17. **Nurses registered under previous law.** — Every person holding a license or certificate of registration to practice nursing as a registered nurse issued by competent authority pursuant to the provisions of any statute heretofore in force and effect providing for the licensing and registration of professional nurses in North Carolina shall be deemed to be licensed as a registered nurse under the provisions of this statute, but such person previously licensed shall comply with the provisions of this statute with respect to renewal of licenses. (1953, c. 1199, s. 1.)

§ 90-158.18. **Renewal of license.**—The license of every person licensed or deemed to be licensed under the provisions of this statute shall be annually renewed except as hereinafter provided. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to practice nursing as a registered nurse or who has a right to renewal of license because of having received a license under the provisions of any law heretofore existing which provided for the registration and licensing of professional nurses. The application for renewal of license shall be mailed to the last known address of such registered nurse as it appears on the records of the Board. It shall be the duty of every registered nurse in North Carolina to keep the Board informed of the current mailing address of such registered nurse, and the failure of the Board to send or the failure of any registered nurse to receive any such application for renewal of license shall not excuse any practitioner as a registered nurse from the requirements for renewal of license herein contained. On or before January 1 of each year every registered nurse who desires to continue the practice of nursing as a registered nurse shall file application for renewal on forms furnished by the Board and shall forward with such application, completed in accordance with the rules and regulations of the Board, a renewal fee of \$2.00. Upon receipt of the application and fee for renewal of license, the executive secretary of the Board shall verify the accuracy of the application and issue to each such applicant entitled to renewal a certificate of renewal for the year beginning January 1 and ending December 31. Such certificate of renewal shall render the holder thereof a legal practitioner for the period stated on the certificate of renewal. Failure to renew the license annually as required by this section shall automatically result in the forfeiture of the right to practice nursing in North Carolina as a registered nurse until application shall have been made and the fee therefor paid for the current year as herein provided. Any licensee who allows his or her license to lapse by failing to renew the license as herein provided may be reinstated by the Board upon satisfactory explanation of such failure to renew the license and upon payment of a fee of \$5.00. A lapse shall not be deemed to have accrued during a period of service in the Armed Services of the United States and for a period of six months immediately thereafter. A person licensed under the provisions of this statute or any previously existing statute regulating the licensing of registered nurses who desires to retire from practice temporarily shall send a written notice thereof to the Board. Upon receipt of such notice the Board shall place the name of such person upon the nonpracticing list. While remaining on such list the person shall not be subject to the payment of any renewal fees and shall not practice as a registered nurse in this State. When any such person desires to resume practice as a registered nurse application for renewal of license and payment of the renewal fee required for the current year shall be made to the Board and the Board shall issue a certificate of renewal. (1953, c. 1199, s. 1.)

§ 90-158.19. **Revocation or suspension of license and procedure therefor.**—The Board shall have power to deny, revoke or suspend any license to practice nursing as a registered nurse which has been issued by the Board or

by any predecessor board or which has been applied for in accordance with the provisions of this statute, after notice and hearing in accordance with the provisions of chapter 150, General Statutes of North Carolina. If the Board shall determine, upon findings of fact supported by substantial competent evidence adduced at such hearing, that such person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing as a registered nurse in North Carolina; or
- (2) Has been convicted of a felony or any other crime involving moral turpitude; or
- (3) Is guilty of gross immorality or dishonesty; or
- (4) Is unfit or incompetent to practice as a registered nurse by reason of negligence, or habits; or
- (5) Is an habitual drunkard or is addicted to the use of habit forming drugs such as, but not limited to, narcotics and their derivatives, barbiturates and the like; or
- (6) Is mentally incompetent. (1953, c. 1199, s. 1.)

§ 90-158.20. Proceedings.—Upon filing of a sworn complaint with the Board charging a person with having been guilty of any of the actions specified as a ground for disciplinary action as provided in the preceding section, the executive secretary of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the accused. The notice, the hearing, and all other proceedings in connection therewith shall be conducted in accordance with the provisions of chapter 150, General Statutes of North Carolina. If the accused is found guilty of the charges, the Board may refuse to issue a license to the applicant or may revoke or suspend the license or otherwise discipline a licensee. Upon revocation of a license the name of the holder thereof shall be stricken from the roll of registered nurses in the custody of the executive secretary of the Board and thereafter such person shall not have the right to practice nursing as a registered nurse in the State of North Carolina. In the event the Board shall suspend the license of any such person for a specific period of time, such person shall not during the specified period of time engage in the practice of nursing as a registered nurse in North Carolina; and the Board shall have the power to provide that in the event any such person shall violate the terms of an order suspending a license or otherwise disciplining the licensee, the license of such person shall be revoked. A revoked or suspended license may be reissued after one year, in the discretion of the Board, upon good cause shown. (1953, c. 1199, s. 1.)

§ 90-158.21. Basic requirements for accreditation of school of nursing.—A school of nursing in order to be accredited by the Board shall meet the following standards and requirements:

- (1) The school shall be conducted in connection with one or more general hospitals having fifty or more beds.
- (2) The school shall give instruction in anatomy and physiology, pharmacology, nutrition, bacteriology, obstetrical, medical and surgical nursing, pediatric nursing, ethics of nursing, and theory of psychiatric nursing; and such instruction shall consist of not less than 1,000 hours of theoretical instruction in subjects and hours as follows:

THEORETICAL AND CLASSROOM WORK

Anatomy and Physiology	120
Microbiology	45
Chemistry	60
Pharmacology	50
History of Nursing	10
Nursing Arts	155

Psychology	30
Nutrition and Diet Therapy	60
Sociology	20
Elementary Pathology	30
Nursing in General Medicine	60
Nursing in General Surgical	60
Operating Room Technique	30
Nursing in Medical Specialties (Communicable and skin diseases)	35
Nursing in Surgical Specialties, eye, ear, nose and throat, including other surgical specialties	60
Obstetric Nursing	40
Pediatric Nursing	40
Psychiatric Nursing (theory only)	45
Unassigned	50
Total	1000

The Board is further authorized, upon application of a school or schools of nursing, to permit reasonable variations in the foregoing specification of the number of hours of instruction to be given in particular subjects; provided, that such variations do not lower the overall standard of instruction herein provided.

The school shall also give instruction and practice of not less than 2285 hours in the actual care of medical, surgical, and obstetrical patients, and sick children. The Board shall not require instruction and practice covering more than a three year period as a prerequisite for accreditation.

- (3) The hospital or hospitals affiliated with or in connection with which the school of nursing is conducted shall provide clinical facilities so that each student nurse may obtain clinical instruction and experience in
 - a. Medical nursing,
 - b. Surgical nursing,
 - c. Obstetrical nursing, and
 - d. Pediatric nursing.
- (4) The school shall provide minimum instructional facilities as follows:
 - a. The school shall have a library consisting of 100 books on technical subjects sufficiently diversified and in late editions so as to be suitable for reference and study in connection with the basic curriculum required for a school of nursing, which library shall be physically located so as to be easily accessible to the students.
 - b. The school shall have adequate classrooms and laboratory facilities and other reasonably suitable instructional facilities sufficient to accommodate the student body and to instruct the students in the subjects required by this statute and to prepare them for professional practice.
 - c. The members of the faculty of the school of nursing shall have educational qualifications and experience and shall be sufficient in number to effectively administer, teach and supervise the students at the school.
- (5) The school of nursing shall keep and maintain an accurate system of records containing up-to-date and complete information regarding each student's classroom hours in each course of instruction and the hours spent by each student in clinical instruction and experience, and showing the progress of each student graded under a suitable system of grades. The form, content and other requirements with respect to records shall be subject to the approval of the Board. The records

shall be readily accessible and shall be subject to inspection by the Board or its authorized representatives during normal business hours. Any person who shall intentionally falsify any record required to be kept and maintained by this statute and regulations of the Board made pursuant to this statute shall be guilty of a misdemeanor and punishable as such.

- (6) A school of nursing shall, from time to time and in accordance with regulations adopted by the Board, file with the Board such records, data, and reports as may be prescribed furnishing information concerning the conduct of the school and concerning any student or graduate of the school, as required by the Board. Any person who shall intentionally falsify any such record, data, or report shall be guilty of a misdemeanor and punishable as such.
- (7) Each school of nursing shall pay to the Board an annual fee to be determined by the Board, not to exceed \$5.00 per student according to the average number of students enrolled throughout the preceding year, provided the Board shall find that the payment of such fees by the schools of nursing is necessary to enable the Board to meet the necessary expenses of performing its duties under this article. (1953, c. 1199, s. 1.)

§ 90-158.22. Accredited list of nursing schools. — The Board shall prepare and maintain a list of accredited schools of nursing in this State, whose graduates, if they have the other necessary qualifications as provided by this statute, shall be eligible to apply for a license to practice nursing as a registered nurse in this State by examination. The list shall be known as "The List of Accredited Schools of Professional Nursing of North Carolina" hereinafter referred to as the Fully Accredited List. (1953, c. 1199, s. 1.)

§ 90-158.23. Board approval of nursing schools.—A fully accredited school of nursing is one which has met the standards and requirements for accreditation as provided by § 90-158.21 as determined by the Board, and which has been approved by the Board. New schools of nursing and those not previously accredited may be provisionally accredited by the Board in accordance with the procedure prescribed by § 90-158.25. (1953, c. 1199, s. 1.)

§ 90-158.24. Certain nursing schools placed on the Fully Accredited List.—Every nursing school fully accredited by the present Board as of January 1, 1953, shall be listed as fully accredited by this article. Such schools of nursing and every school of nursing subsequently placed upon the Fully Accredited List shall remain on the list and shall be deemed to be meeting the requirements and standards for the conduct of schools of nursing as prescribed by this statute until any such school shall have been removed from the list in accordance with the procedure hereinafter prescribed. (1953, c. 1199, s. 1.)

§ 90-158.25. Procedure for accreditation of new schools.—A new school of nursing or a school not previously accredited by the Board may become accredited as follows:

- (1) The institution applying for accreditation shall submit to the Board a written plan of organization containing a statement of the purposes and aims of the institution in establishing the school; the composition, powers, duties and responsibilities of the governing body of the school; a financial plan of the school; the titles and duties of the members of the faculty and the qualifications required of each; the proposed curriculum and the plan for its administration; the clinical facilities available at the hospital for hospitals affiliated with or in connection with which the school will be conducted; the scholastic standards to be met by the students; and such other written evidence as

shall be necessary to show to the satisfaction of the Board that the school is able and willing to provide nursing education and clinical instruction and experience in accordance with the requirements for accreditation as prescribed by § 90-158.21 and written evidence sufficient to show to the satisfaction of the Board that the school can and will comply with the minimum standards and requirements for accreditation upon the enrollment of students and the commencement of the operation of the school.

- (2) The executive secretary or some other designated representative of the Board shall conduct a general survey of the proposed educational program and clinical facilities and shall submit a written report of the survey to the Board with respect to the new school of nursing which has applied for accreditation.
- (3) The Board at a meeting at which representatives of the petitioning institution may appear after reasonable written notice shall consider the plan of organization, the report of survey, and such other evidence as may be presented, and shall act upon the application at the same or at a subsequent meeting.
- (4) If the application for accreditation is approved and the school enrolls its first class of students within one year after approval, the school shall be provisionally accredited for a period of one year beginning with the date of the enrollment of the first class of students.
- (5) The school shall be deemed to be fully accredited upon completion of a period of one year of satisfactory operation under provisional accreditation, if after survey and written report to the Board made by the executive secretary or other representative of the Board it shall appear that the school of nursing is meeting the standards and requirements prescribed by § 90-158.21.

If a school has been provisionally accredited under this section for one year and the survey and report of the executive secretary or other representative of the Board indicates that the school is not meeting the standards and requirements for complete accreditation as prescribed in § 90-158.21, the Board through its executive secretary shall cause a notice to be served upon the school notifying the school in writing that the survey indicates that the school is not complying with the standards and requirements for accreditation as prescribed by § 90-158.21, setting forth the respects in which the school fails to so comply therewith, and notifying the school that a hearing will be held before the Board on a specified date, to be not less than twenty days from the date on which the notice was given, and setting forth the time and place of such hearing at which the school of nursing may appear before the Board and show cause, if any, why the school should be placed upon the list of fully accredited schools of professional nursing. The school shall have the right and opportunity to present witnesses and other evidence on the question of its compliance with the standards and requirements for accreditation of schools of nursing, and to cross-examine other witnesses, and to be fully represented at the hearing by legal counsel. From the evidence presented at the hearing the Board shall make findings and conclusions on the question of whether or not the school of nursing has complied and is complying with the standards and requirements for accreditation as prescribed by § 90-158.21 and if the Board determines that the school has complied and is complying with such standards and requirements, the Board shall enter an order placing the school of nursing on the Fully Accredited List; if the Board determines to the contrary, the Board shall enter an order removing the school of nursing from the list of provisionally accredited schools. (1953, c. 1199, s. 1.)

§ 90-158.26. Periodic surveys of nursing schools. — The executive secretary of the Board, or such other representative of the Board, as may be authorized from time to time by the Board, shall annually visit and make surveys

of the various schools of nursing and the hospital or hospitals affiliated with the school of nursing or in connection with which the school of nursing is conducted. The purpose of such visit and survey shall be to make a preliminary determination concerning whether or not the particular school of nursing and the hospital or hospitals affiliated or connected therewith shall be then continuing to comply with the requirements and standards for the conduct of schools of nursing as prescribed by this statute. Following such visit and survey a written report of the survey and the findings shall be made to the Board. The Board shall consider such written reports covering surveys of schools of nursing at a regular or special meeting and if the Board determines from any such report that it appears that any school of nursing on the Fully Accredited List is not then complying with the requirements and standards for the conduct of schools of nursing prescribed by this statute, the Board shall order the executive secretary or other employee of the Board to give notice to such school of nursing, specifying in writing the particulars in which the school of nursing appears to be failing to comply with the requirements and standards. The notice shall be sent to the school of nursing by registered mail and shall state that if the school of nursing fails to correct the conditions and the deficiencies so as to fully comply with the requirements and standards for the conduct of schools of nursing within a period of 180 days following the date upon which the written notice was placed in the United States mails, the said school of nursing will be removed from the Fully Accredited List and placed upon "The List of Provisionally Accredited Schools of Professional Nursing of North Carolina," hereinafter referred to as the Provisionally Accredited List, pending a formal hearing before the Board to determine whether or not the particular school of nursing is complying with the requirements and standards so as to entitle the school to be replaced upon the Fully Accredited List, in accordance with the procedure hereinafter set forth. At the end of the 180-day period referred to in the notice of apparent noncompliance given to a school of nursing, a committee of at least three members of the Board, designated by the Board, shall make a visit and survey of the school of nursing and the hospital or hospitals affiliated or connected therewith to make a preliminary determination as to whether or not the school of nursing has corrected the deficiencies specified in the notice; and if the committee shall determine that the school of nursing has not corrected all of those deficiencies specified and is not then complying with the requirements and standards for the conduct of schools of nursing as required by this statute, the committee shall authorize and direct the executive secretary to remove the school of nursing from the Fully Accredited List and place the name of the school of nursing on the Provisionally Accredited List until further action by the Board. If a hearing has not been held and action taken by the Board within a period of 180 days after any school of nursing has been so placed on the Provisionally Accredited List, such school at the end of 180 days shall be replaced on the Fully Accredited List subject to further removal in accordance with the provisions of this statute. (1953, c. 1199, s. 1.)

§ 90-158.27. Effect of Provisionally Accredited List.—When a school of nursing shall have been placed upon the Provisionally Accredited List in accordance with the procedure herein prescribed, the effect of such action shall be to inform students and prospective students and other persons, institutions and organizations interested in schools of professional nursing in North Carolina that a question has arisen as to whether or not the school of nursing is meeting the minimum requirements and standards for the conduct of schools of nursing as prescribed by statute and that proceedings are being held for the purpose of making a formal determination of that question. In so far as applicants for examination for licensure as registered nurses in North Carolina are concerned, the appearance of the name of a school of nursing on the Provisionally Accredited List shall have the same effect as if said school had continued on the Fully Accredited List. (1953, c. 1199, s. 1.)

§ 90-158.28. Procedure for removal from Provisionally Accredited List.—When a school of nursing has been placed on the Provisionally Accredited List, it shall remain there until removed therefrom by action of the Board after a hearing as hereinafter provided for. The Board shall conduct a hearing at the time and place specified in the notice, at which hearing at least a majority of the members of the Board shall be present. A written transcript of the proceedings at the hearing shall be made by a qualified reporter. Any party to a proceeding before the Board shall be entitled to a copy of the record upon the payment of the reasonable cost thereof as determined by the Board. After hearing the witnesses and receiving other evidence presented at the hearing, the Board shall give consideration to all of the evidence and upon such evidence appearing in the record shall make findings of fact and conclusions, which shall be set forth in writing, determining whether or not the school of nursing in question is complying with the requirements and standards for the conduct of schools of nursing as prescribed by statute. If a majority of all of the members of the Board shall determine from the findings of fact and conclusions based upon the evidence at such hearing that the school of nursing involved is complying with the requirements and standards, the Board shall enter a written order directing the executive secretary to replace the name of the school of nursing on the Fully Accredited List. If a majority of all of the members of the Board shall determine that the school of nursing involved is not complying with the requirements and standards for the conduct of schools of nursing prescribed by statute, the Board shall enter a written order confirming the removal of the school of nursing from the Fully Accredited List and directing the executive secretary to remove the name of the school of nursing from the Provisionally Accredited List, effective twenty days after the date of the mailing of the order unless appeal is taken as herein-after provided. A copy of the findings, conclusions and orders of the Board, certified by the executive secretary shall be mailed to the school of nursing and to each student enrolled in said school of nursing. The executive secretary shall also cause to be published immediately in one or more daily newspapers of general circulation in North Carolina and also in a newspaper published in the county in which the school of nursing is located a notice of the decision of the Board after such decision has become final. In the event the decision of the Board is reversed on appeal, a notice of the final decision of the court shall be published by the executive secretary. (1953, c. 1199, s. 1.)

§ 90-158.29. Venue of hearings; authority of Board to issue subpoenas, administer oaths, etc.—All hearings before the Board shall be held in Wake County unless otherwise specifically ordered by the Board, in its discretion, for the convenience of witnesses. Hearings before the Board shall be open to the public. Every member of the Board shall have full power to administer oaths to witnesses appearing in any hearing before the Board, which oaths shall be administered according to law in the same form and manner as oaths are administered to witnesses testifying in the superior court. The Board shall have power to issue subpoenas to witnesses and to compel the attendance of witnesses at any hearing before the Board and shall have power to require the examination of persons and parties and compel the production of books, records and other documents pertinent to any matter pending before the Board. (1953, c. 1199, s. 1.)

§ 90-158.30. Refusal of witnesses to testify.—If any person duly subpoenaed to appear and testify before the Board shall fail or refuse to testify without lawful excuse, or shall refuse to answer any proper question propounded to him during the conduct of any hearing before the Board, or shall conduct himself in a rude, disrespectful or disorderly manner before the Board during the conduct of any hearing, such person shall be guilty of a misdemeanor and upon conviction thereof shall be punished in accordance with the law. (1953, c. 1199, s. 1.)

§ 90-158.31. **Issuance and service of subpoenas.** — All subpoenas for witnesses to appear before the Board shall be issued by the Board or its executive secretary and shall be directed to any sheriff, constable or other officer authorized by law to serve process issued out of the superior courts, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. The sheriffs and other officers serving such subpoenas shall be entitled to the same fees as are prescribed by law for serving subpoenas issued from the superior court. (1953, c. 1199, s. 1.)

§ 90-158.32. **Appeal to superior court.** — Within twenty days after the rendition of any adverse decision and the mailing to the school of nursing of a certified copy of the order of the Board containing such adverse decision, the school of nursing may appeal to the superior court of Wake County or the county in which the school is located by filing a written notice of such appeal with the Board, together with written exceptions to such order filed with the Board, specifically setting forth the ground or grounds on which the school of nursing, hereinafter called the appellant, considers said decision or order to be unlawful or unwarranted. Within twenty days after the filing of the notice of appeal, unless the time be extended by order of the court or by consent of the school of nursing involved, the Board shall transmit a copy of the entire record of the proceedings before the Board, certified under the seal of the Board, to the clerk of the court appealed to. The judge holding the courts of such county shall hear and determine all matters arising on such appeal as in this statute provided. After final determination of the case on appeal, the clerk of the superior court of such county shall transmit to the Board a certified copy of the judgment or order of the court. (1953, c. 1199, s. 1.)

§ 90-158.33. **Docketing of appeal.**—The cause shall be entitled “The North Carolina Board of Nurse Registration and Nursing Education v. (name of school of nursing)”. The cause shall be placed on the civil issue docket of the court and shall have precedence over other civil actions. (1953, c. 1199, s. 1.)

§ 90-158.34. **Extent of review on appeal.** — No evidence shall be received at the hearing on appeal. On appeal, the court shall review the proceedings, without a jury, in chambers or at term time, and such review shall be confined to the record as certified by the Board to the court, except that in cases of alleged irregularities in procedure before the Board, not shown in the record, testimony thereon may be taken in the court. So far as necessary to the decision, when presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Board action. The court may affirm or reverse the decision of the Board, declare the same null and void, or may remand the case for further procedure, if the substantial rights of the appellant school of nursing have been prejudiced because the Board’s findings, conclusions or decisions are:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Board, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by competent, material and substantial evidence in the record as submitted, or
- (6) Arbitrary or capricious.

The court shall also have power to compel action of the Board 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 the parties, and due account shall be taken of the rule of prejudicial error. The appellant school of nursing shall not be permitted to rely upon any grounds for

relief on appeal which have not been set forth specifically in the written exceptions taken to the order of the Board. (1953, c. 1199, s. 1.)

§ 90-158.35. **Relief pending review on appeal.** — Pending judicial review, upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the judge of the superior court is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Board or take such action as may be necessary to preserve the status and rights of any of the parties pending conclusion of the proceedings on appeal. (1953, c. 1199, s. 1.)

§ 90-158.36. **Appeal to Supreme Court.**—Either the appellant school of nursing or the Board may appeal to the Supreme Court of North Carolina from an adverse judgment of the superior court under the same rules and regulations as are prescribed by law for appeals. (1953, c. 1199, s. 1.)

§ 90-158.37. **Violation of statute misdemeanor.**—Any person procuring a license under this statute by false representation, or who shall refuse to surrender a license which has been revoked in the manner herein prescribed, or any person who shall use the title “trained nurse”, “graduate nurse”, “professional nurse”, or “registered nurse”, or any abbreviation, sign, or symbol thereof, without having first obtained a license as herein provided, and any person who shall otherwise violate any of the provisions of this statute, shall be guilty of a misdemeanor and upon conviction shall be punished according to law. Each act shall constitute a separate offense. (1953, c. 1199, s. 1.)

§ 90-158.38. **Board authorized to accept contributions, etc.** — The Board is authorized and empowered to accept grants, contributions, devises, bequests, or gifts to be kept in a separate fund and to be used by it in promotion and encouraging nurse recruitment and nurse education and training in this State, including the making of loans or gifts for the education and training of worthy student nurses. (1953, c. 1199, s. 1.)

§ 90-158.39. **Transfer of property, records, etc., of former Board of Nurse Examiners.**—From and after January 1, 1954, the title to all property, money, funds, books, records, furniture, fixtures and equipment shall automatically be transferred from the former board, known as the North Carolina Board of Nurse Examiners, to the new board created under the provisions of this article and designated as the North Carolina Board of Nurse Registration and Nursing Education. All records on file with the former Board of Nurse Examiners relating to the operation of the present duly licensed and accredited schools of nursing and all other records accumulated during the existence and enforcement of the provisions of the General Statutes pertaining to the Nurse Practice Act shall be retained by the North Carolina Board of Nurse Registration and Nursing Education. (1953, c. 1199, s. 11.)

§ 90-158.40. **Training school for nurses at Sanatorium.** — The State sanatorium for the treatment of tuberculosis located at Sanatorium, North Carolina, is hereby authorized and power is hereby expressly given it to organize and conduct a training school for nurses in connection with the said sanatorium. The superintendent of the North Carolina sanatorium for the treatment of tuberculosis shall be ex officio dean of the training school for nurses, and he shall have power and authority to appoint such faculty, prescribe such course or courses of lectures, study and clinical work, and award such diplomas, certificates, or other evidence of the completion of such course or courses as he may think wise and proper, and perform such other functions and do such other acts as he may think necessary in the conduct of the said training school. (1915, c. 163, ss. 1, 2; C. S., s. 6739; 1953, c. 1199, s. 1.)

§ 90-158.41. Nurse training program at State-supported educational institutions. — The Governor is authorized to appoint a committee of three persons whose duty it shall be to investigate, study and make recommendations to him concerning the advisability and feasibility of establishing a program of nurse training at one or more of the several State-supported educational institutions. The committee so appointed shall give special consideration to establishing such program at one or more of the State-supported Negro educational institutions. The committee shall begin its investigation immediately upon its appointment and shall report its findings and recommendations to the Governor not later than July 1, 1953.

Upon receipt of the findings and recommendations, the Governor, as Director of the Budget, is authorized to adopt all or a part of such recommendations, and shall allocate to such institutions as he may determine, such amounts from the appropriations provided for in this section as will, in his judgment, best serve the purpose herein set forth.

There is hereby appropriated from the General Fund of the State, for the biennium 1953-1955, the sum of two hundred thousand dollars (\$200,000.00) for the purposes of this section. (1953, c. 1208.)

§§ 90-159 to 90-171: Repealed by Session Laws 1953, c. 1199.

Editor's Note.—Section 90-169, prior to its repeal, was amended by Sessions Laws 1953, c. 1041, s. 14, and § 90-171 was continued as § 90-158.40. See note to § 90-158.1.

ARTICLE 9A.

Practical Nurses.

§ 90-171.1. Board of Nurse Registration and Nursing Education Enlarged.—Solely and exclusively for the purpose of examining, licensing, and regulating practical nurses in accordance with and under the provisions of this article and for the purpose of administering the provisions of this article as it relates to practical nurses, the North Carolina Board of Nurse Registration and Nursing Education is hereby enlarged by adding to the Board three members who shall be licensed practical nurses and who may be members of the North Carolina Licensed Practical Nurses Association. The three practical nurses herein provided and added to the Board for the purposes herein stated shall be appointed and commissioned by the Governor of North Carolina for terms, commencing January 1, 1954, of four years each. Thereafter, the appointments shall be for a term of four years each. All vacancies in the membership of the licensed practical nurse members herein provided because of death, resignation or otherwise shall be filled by appointment of the Governor for the unexpired term of the member causing the vacancy; all expirations of regular terms of the members of the practical nurses shall be filled by appointment of the Governor for terms of four years each.

For all other purposes, except as herein specifically provided, the membership of the North Carolina Board of Nurse Registration and Nursing Education shall be and remain constituted as provided by General Statutes, chapter 90, article 9, and except as herein specifically provided, the powers, duties, and functions of the Board as constituted by chapter 90, article 9, of the General Statutes, shall not be affected by the provisions of this article.

The practical nurse members of the Board, as enlarged by this article, shall participate only in such action and functions of the Board as shall concern and affect matters relating to the examination, licensing and the regulations of undergraduate and practical nurses and relating to the administration of the provisions of this article. No business shall be transacted or other action taken concerning undergraduate and practical nurses at any meeting of the Board, as enlarged by this article, unless at least two of the practical nurse members shall be present.

The officers of the Board as enlarged by this article, shall be the officers of the North Carolina Board of Nurse Registration and Nursing Education.

The executive secretary of the Board shall keep and maintain separate records and accounts of the funds arising from fees received under the provisions of General Statutes, chapter 90, article 9, as amended, from registered professional nurses and applicants for licensure as registered professional nurses, and of the funds arising from fees received under the provisions of this article from licensed practical nurses and applicants for licensure as licensed practical nurses.

The practical nurse members of the Board, as enlarged by this article, shall receive a per diem for attendance at meetings of the Board not exceeding ten dollars (\$10.00) per day, and in addition thereto they shall be entitled to their actual traveling and hotel expenses, to be approved by the enlarged Board, which shall be paid from the practical nurse funds arising from fees authorized by this article.

The Board, as enlarged by this article, is hereby empowered to authorize and direct the use of the funds arising from fees received under the provisions of this article from licensed practical nurses and applicants for licensure as licensed practical nurses for the purpose of contributing towards the payment of joint office expenses and joint operating expenses, including salaries of the secretary-treasurer and other employees who serve both the North Carolina Board of Nurse Registration and Nursing Education and the Board, as enlarged by this article. Provided, however, that the amount of funds arising from fees received under the authority and provisions of this article which may be so authorized and used for such joint purposes shall not exceed one-half of the total annual amount of such joint salaries and expenses during any fiscal year.

The Board, as enlarged by this article, is authorized and empowered to appoint and employ such assistants and clerical employees as it shall deem reasonably necessary to carry out its duties and functions relating to practical nurses.

All moneys received from fees authorized by this article from licensed practical nurses and from applicants for licensure as licensed practical nurses, in excess of the expenditures authorized and directed by the Board to be used for salaries and expenses as hereinbefore provided for, shall be held by the executive secretary for future expenses and for extending practical nursing education in North Carolina. No moneys used in carrying out this article shall be paid out of the State treasury.

The Board, as enlarged by this article, shall provide for the examination, licensing, and regulation of licensed practical nurses, and shall provide for the licensing of those now practicing as undergraduate and practical nurses, or attendants, in the manner hereinafter provided. (1947, c. 1091, s. 1; 1953, c. 1199, s. 2; 1955, c. 1266, s. 1.)

Editor's Note.—The 1953 amendment rewrote the first paragraph, deleted from the fourth paragraph the requirement that officers of the Board shall continue to be registered professional nurses, substituted "executive secretary" for "secretary-

treasurer" in the fifth and ninth paragraphs, deleted from the seventh paragraph the former provision relating to salary of educational director, and rewrote the eighth paragraph.

§ 90-171.2. Participation of practical nurse members in meetings or activities of Board; establishment of standards, etc., for schools of practical nursing; construction of article. — The practical nurse members heretofore added to the Board shall participate only in those meetings or activities of the Board as concern or pertain to practical nursing. The Board, as enlarged by this article, shall have the power and authority to establish standards and provide minimum requirements for the conducting of schools of practical nursing, of which applicants for examination for the practical nurses' license under this article must be graduates before taking such examination. The standards and minimum requirements established by the Board shall relate to curricula, number of hours of theoretical instruction of a minimum period, educational facilities, library facilities, approved reference books, laboratory and clinical experience required, if any.

practical experience required, if any, minimum hours to be required with reference to any or all of these standards, including classrooms, suitable instructional facilities, faculty, and records. Nothing in this article shall be construed to limit or otherwise affect article 9 of chapter 90 of volume 2C of the General Statutes relating to registered nurses except as herein set forth in this article. (1947, c. 1091, s. 1; 1953, c. 1199, s. 3.)

Editor's Note.—The 1953 amendment rewrote this section.

§ 90-171.3. Applicants; qualifications; procedure. — Any applicant who desires to obtain a license to practice as a licensed practical nurse shall submit to the Board, on forms furnished by the Board, satisfactory written evidence under oath that the applicant is at least eighteen years of age, is a citizen of the United States, or has legally declared intention of becoming a citizen, is of good moral character, is in good physical and mental health, has completed an education through the first year of high school, or its equivalent, and has successfully completed a course of training for practical nursing approved and accredited by the Board Enlarged. Any person who has not completed a course of training for practical nursing approved and accredited by the Board Enlarged may nevertheless be an applicant for a license to practice as a licensed practical nurse and to obtain such license by examination as provided by G. S. 90-171.4 by submitting to the Board, on forms furnished by the Board, satisfactory written evidence under oath that such person

- (1) Is at least twenty-one years of age;
- (2) Is a citizen of the United States or has legally declared intention of becoming a citizen;
- (3) Is of good moral character;
- (4) Is in good physical and mental health;
- (5) Has completed an education through the first year of high school, or its equivalent; and
- (6) Has either satisfactorily completed eighteen months of practical and theoretical instruction in a school of nursing meeting the minimum requirements and standards established by article 9 of chapter 90 of the General Statutes for the education of persons desiring to become registered nurses, or has had twenty-four months of actual experience in practical nursing, such period of service and competency as a practical nurse to be certified by two physicians, or by one physician and one registered nurse, licensed to practice in the State of North Carolina.

The application shall be accompanied by a fee of fifteen dollars (\$15.00) for examination and certification. Provided, that any person, who has not completed a course of training for practical nursing approved and accredited by the Board Enlarged, and who desires to be an applicant to practice as a licensed practical nurse under the conditions set forth in the second sentence in this section, shall file such application and complete and submit such forms as may be necessary to the Board on or before July 1, 1956, and no applications filed under this proviso after said date shall be considered or granted. (1947, c. 1091, s. 1; 1953, c. 750; c. 1199, s. 4; 1955, c. 1266, s. 2; 1961, c. 431, s. 2.)

Editor's Note. — This section was amended twice by the 1953 Session Laws. Chapter 750 inserted the second sentence. Chapter 1199 substituted the words "Board Enlarged" for "standardization committee" in the first paragraph, and substituted the phrase "by article 9 of chapter 90 of the General Statutes" for "pursuant to the pro-

visions of G. S. 90-159" in clause (6) of the second sentence.

The 1955 amendment added the proviso at the end of the section.

The 1961 amendment increased the license application fee in the first line of the last paragraph from ten to fifteen dollars.

§ 90-171.4. **Examination; procedure.** — An examination for licenses to practice practical nursing shall be given by the Board at least once in each year, after notice of the time and place of holding the examination has been published at least once a week for four weeks immediately preceding such examination in such newspapers, having State-wide circulation as may be selected by the Board. The examination shall be of such character as to determine the fitness of the applicant to practice practical nursing of the sick. In the discretion of the Board written examinations may be supplemented by oral or practical examinations. If the result of the examination of any applicant shall be satisfactory to a majority of the Board, the secretary shall, upon an order of the Board, issue the applicant a certificate to that effect; whereupon the person named in the certificate shall be declared duly licensed to practice practical nursing in North Carolina. (1947, c. 1091, s. 1.)

§ 90-171.5. **License without examination.**—Persons twenty years of age or over now practicing as undergraduate nurses, practical nurses, or performing similar services under any other title may make application to the Board for licensure as a licensed practical nurse under this provision on or before July 1st, 1949. The above application shall be made on forms furnished by the Board, in the manner prescribed by the Board and verified by oath. The Board, without requiring an examination, shall issue a license to practice as a licensed practical nurse to any person found to be a citizen of the United States and a resident of North Carolina, twenty years of age or more, of good moral character, in good physical and mental health, and to have lived in and cared for the sick as a vocation in this State for two years immediately preceding the date of such application.

Before such license is issued such applicant must be favorably endorsed by two physicians licensed to practice in North Carolina who have personal knowledge of the applicant's qualifications as a practical nurse, must be endorsed by two persons who have employed the applicant in the capacity of a practical nurse.

The fee for each such license shall be seven dollars and fifty cents (\$7.50) and shall accompany each application filed under this section.

The Board upon written application and such references and proof of identity as it may by rule prescribe may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a practical nurse, licensed or trained attendant, or as a person entitled to perform similar services under any other title under the laws of any other state, if in the opinion of the Board the applicant meets the preliminary requirements for licensed practical nurses under the provisions of this article upon application in the prescribed manner accompanied by a fee of fifteen dollars (\$15.00). (1947, c. 1091, s. 1; 1961, c. 431, s. 2.)

Editor's Note. — The 1961 amendment end of the last paragraph from ten to fifteen dollars.

§ 90-171.6. **Licensed practical nurses formally recognized.**—A person holding a license to practice as a licensed practical nurse in this State shall have the right to hold and use the title "licensed practical nurse" and the abbreviation "L. P. N." No other person shall assume such title or abbreviation, or any other word, symbols or letters to indicate that the person is a licensed or registered practical nurse unless licensed as such under the provisions of this article. (1947, c. 1091, s. 1.)

§ 90-171.7. **Renewal of licenses annually; procedure and fees.**—The license of every person practicing under the provisions of this article shall be renewed annually upon application to the Board. On or before November one of each year, the secretary of the Board shall mail to the last known address an application for renewal of license to every licensed practical nurse in the State, but the failure to receive such application shall not excuse any practitioner from

the requirements for renewal herein contained. The person receiving such application shall furnish the information indicated thereon and return the form to the Board with a renewal fee of two dollars (\$2.00) prior to January one of the following year. Upon receipt of the application duly filed in and signed and the required fee, the secretary of the Board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the period beginning January one and ending December thirty-one of the following year. Such certificate of renewal shall constitute the holder thereof a duly licensed practical nurse for the period indicated on such certificate. Failure to renew the license thus annually shall automatically result in forfeiture of the right to practice nursing in North Carolina as a licensed practical nurse until application shall have been made and the fee therefor paid for the current year, and in addition to the regular renewal fee of two dollars (\$2.00) there shall also be assessed and paid a penalty of three dollars (\$3.00) for such failure to renew the annual license as herein required. (1947, c. 1091, s. 1; 1955, c. 1266, s. 3.)

Editor's Note.—The 1955 amendment changed the renewal fee from one dollar to two dollars. It also added at the end of the section the provision as to penalty for failure to renew license.

§ 90-171.8. Denial, revocation and suspension of licenses; procedure for reinstatement. — The Board, as enlarged by this article, shall have power to deny, revoke or suspend any license to practice as a licensed practical nurse applied for or issued by the Board in accordance with the provisions of this article for gross incompetency, negligence while on duty, the commission of a felony or a crime involving moral turpitude, habitual drunkenness, addiction to the use of drugs, or for any habit rendering her unfit to care for the sick, or for violation of any provision of this article. The procedure for denial, revocation or suspension of a license shall be in accordance with the provisions of chapter 150, General Statutes of North Carolina. Upon revocation or suspension of a license the name of the holder thereof shall be stricken from the roll of licensed practical nurses in the hands of the secretary of the Board.

When the license of any person has been revoked as herein provided, the Board may, after the expiration of three months, and upon payment of a fee of five dollars (\$5.00), entertain an application for and grant a new license without further examination. No such new license shall be granted except upon the affirmative vote of at least five members of the Board. (1947, c. 1091, s. 1; 1953, c. 1041, s. 15; c. 1199, s. 5.)

Editor's Note. — This section was amended twice by the 1953 Session Laws. Chapter 1041 deleted from the end of the second sentence the following: 1943, entitled, "Uniform Revocation of Licenses." Chapter 1199 inserted "denial" near the beginning of the second sentence.

§ 90-171.9. Accredited list of practical nursing schools; approval of certain schools already accredited; procedure for accreditation of new schools; surveys and provisional accreditation.—(a) The Board Enlarged shall prepare and maintain a list of accredited schools of practical nursing in this State, whose graduates, if they have the other necessary qualifications as provided by this article, shall be eligible to apply for a license to practice nursing as a licensed practical nurse in this State by examination. The list shall be known as "The List of Accredited Schools of Practical Nursing of North Carolina", hereinafter referred to as the Fully Accredited List.

A fully accredited school of practical nursing is one which has met the standards and requirements for accreditation as provided by the Board Enlarged under the authority of this article. New schools of practical nursing and those not previously accredited may be provisionally accredited by the Board Enlarged in accordance with the procedure prescribed by this article.

(b) Every school of practical nursing or institution conducting a course for the training of licensed practical nurses fully accredited by the present Board En-

larged, as of January 1, 1953, shall be listed as fully accredited by this article. Such schools of nursing or institutions conducting courses for the training of licensed practical nurses subsequently placed upon the Fully Accredited List shall remain on the list and shall be deemed to be meeting the requirements and standards for the conduct of schools of nursing as prescribed by this article until any such school shall have been removed from the list in accordance with the procedure hereinafter prescribed.

(c) A new school of practical nursing or a school not previously accredited by the Board Enlarged may become accredited as follows:

- (1) The institution applying for accreditation shall submit to the Board Enlarged a written plan of organization containing a statement of the purposes and aims of the institution in establishing the school; the composition, powers, duties and responsibilities of the governing body of the school; a financial plan of the school; the titles and duties of the members of the faculty and the qualifications required of each; the proposed curriculum and the plan for its administration; the clinical facilities available at the hospital or hospitals affiliated with or in connection with which the school will be conducted; the scholastic standards to be met by the students; and such other written evidence as shall be necessary to show to the satisfaction of the Board Enlarged that the school is able and willing to provide practical nursing education and clinical instruction and experience in accordance with the requirements for accreditation as prescribed by the Board Enlarged under the authority of this article and written evidence sufficient to show to the satisfaction of the Board Enlarged that the school can and will comply with the minimum standards and requirements for accreditation upon the enrollment of students and the commencement of the operation of the school.
- (2) The executive secretary or some other designated representative of the Board Enlarged shall conduct a general survey of the proposed educational program and clinical facilities and shall submit a written report of the survey to the Board Enlarged with respect to the new school of practical nursing which has applied for accreditation.
- (3) The Board Enlarged at a meeting at which representatives of the petitioning institution may appear after reasonable written notice shall consider the plan of organization, the report of survey, and such other evidence as may be presented, and shall act upon the application at the same or at a subsequent meeting.
- (4) If the application for accreditation is approved and the school enrolls its first class of students within one year after approval, the school shall be provisionally accredited for a period of one year beginning with the date of the enrollment of the first class of students.
- (5) The school shall be deemed to be fully accredited upon completion of a period of one year of satisfactory operation under provisional accreditation, if after survey and written report to the Board Enlarged made by the executive secretary or other representative of the Board Enlarged it shall appear that the school of practical nursing is meeting the standards and requirements prescribed by the Board Enlarged under the authority of this article.

If a school has been provisionally accredited under this section for one year and the survey and report of the executive secretary or other representative of the Board Enlarged indicates that the school is not meeting the standards and requirements for complete accreditation as prescribed by the Board Enlarged under the authority of this article, the Board Enlarged through the executive secretary shall cause a notice to be served upon the school notifying the school in writing that the survey indicates that the school is not complying with the standards and requirements for accreditation as prescribed by the Board Enlarged under the au-

thority of this article, setting forth the respects in which the school fails to so comply therewith, and notifying the school that a hearing will be held before the Board Enlarged on a specified date, to be not less than twenty days from the date on which the notice was given, and setting forth the time and place of such hearing at which the school of nursing may appear before the Board Enlarged and show cause, if any, why the school should be placed upon the list of fully accredited schools of practical nursing. The school shall have the right and opportunity to present witnesses and other evidence on the question of its compliance with the standards and requirements for accreditation of schools of practical nursing, and to cross-examine other witnesses, and to be fully represented at the hearing by legal counsel. From the evidence presented at the hearing the Board Enlarged shall make findings and conclusions on the question of whether or not the school of nursing has complied and is complying with the standards and requirements for accreditation as prescribed by the Board Enlarged under the authority of this article, and if the Board Enlarged determines that the school has complied and is complying with such standards and requirements, the Board Enlarged shall enter an order placing the school of nursing on the Fully Accredited List; if the Board Enlarged determines to the contrary, the Board Enlarged shall enter an order removing the school of practical nursing from the list of provisionally accredited schools. (1947, c. 1091, s. 1; 1953, c. 1199, s. 6.)

Editor's Note.—The 1953 amendment re-wrote this section.

§ 90-171.10. Periodic surveys of practical nursing schools. — The executive secretary, or such other representative of the Board Enlarged as may be authorized from time to time by the Board Enlarged, shall visit and make surveys of the various schools of practical nursing and the hospital or hospitals affiliated with the school of practical nursing or in connection with which the school of practical nursing is conducted, at such time as the executive secretary may consider necessary and proper or at such time as the Board Enlarged may direct. The purpose of such visit and survey shall be to make a preliminary determination concerning whether or not the particular school of nursing and the hospital or hospitals affiliated or connected therewith shall be then continuing to comply with the requirements and standards for the conduct of schools of practical nursing as prescribed by this article. Following such visit and survey a written report of the survey and the findings shall be made to the Board Enlarged. The Board Enlarged shall consider such written reports covering surveys of schools of practical nursing at a regular or special meeting and if the Board Enlarged determines from any such report that it appears that any school of practical nursing on the Fully Accredited List is not then complying with the requirements and standards for the conduct of schools of practical nursing prescribed by this article, the Board Enlarged shall order the executive secretary or other employee of the Board Enlarged to give notice to such school of practical nursing, specifying in writing the particulars in which the school appears to be failing to comply with the requirements and standards. The notice shall be sent to the school by registered mail and shall state that if the school fails to correct the conditions and the deficiencies so as to fully comply with the requirements and standards for the conduct of schools of practical nursing within a period of 180 days following the date upon which the written notice was placed in the United States mails, the said school of practical nursing will be removed from the Fully Accredited List and placed upon "The List of Provisionally Accredited Schools of Practical Nursing of North Carolina", hereinafter referred to as the Provisionally Accredited List, pending a formal hearing before the Board Enlarged to determine whether or not the particular school of practical nursing is complying with the requirements and standards so as to entitle the school to be replaced upon the Fully Accredited List, in accordance with the procedure hereinafter set forth. At the end of the 180 day period referred to in the notice of

apparent noncompliance given to a school of practical nursing, a committee of at least three members of the Board Enlarged, designated by the Board Enlarged, shall make a visit and survey of the school of practical nursing and the hospital or hospitals affiliated or connected therewith to make a preliminary determination as to whether or not the school has corrected the deficiencies specified in the notice; and if the committee shall determine that the school has not corrected all of those deficiencies specified and is not then complying with the requirements and standards for the conduct of schools of practical nursing as required by this article, the committee shall authorize and direct the executive secretary to remove the school from the Fully Accredited List and place the name of the school on the Provisionally Accredited List until further action by the Board Enlarged. If a hearing has not been held and action taken by the Board Enlarged within a period of 180 days after any school of practical nursing has been so placed on the Provisionally Accredited List, such school at the end of 180 days shall be replaced on the Fully Accredited List subject to further removal in accordance with the provisions of this article.

The executive secretary shall also at least annually cause the lists to be published in such daily newspapers circulated in North Carolina as in the opinion of the executive secretary may be reasonably calculated to give the lists general publicity throughout the State. A copy of the list shall also be sent at least annually to every school of practical nursing on each list. (1953, c. 1199, s. 7.)

Editor's Note.—The 1953 amendment covering subject matter of former section, rewrote this section. For present section see § 90-171.13.

§ 90-171.11. Effect of Provisionally Accredited List. — (a) When a school of practical nursing shall have been placed upon the Provisionally Accredited List in accordance with the procedure herein prescribed, the effect of such action shall be to inform students and prospective students and other persons, institutions and organizations interested in schools of practical nursing in North Carolina that a question has arisen as to whether or not the school is meeting the minimum requirements and standards for the conduct of schools of practical nursing as prescribed by this article and that proceedings are being held for the purpose of making a formal determination of that question. Insofar as applicants for examination for licensure as licensed practical nurse in North Carolina are concerned, the appearance of the name of a school of practical nursing on the Provisionally Accredited List shall have the same effect as if said school had continued on the Fully Accredited List.

(b) When a school of practical nursing has been placed on the Provisionally Accredited List it shall remain there until removed therefrom by action of the Board Enlarged after a hearing as hereinafter provided for. The Board Enlarged shall conduct a hearing at the time and place specified in the notice, at which hearing at least a majority of the members of the Board Enlarged shall be present. A written transcript of the proceedings at the hearing shall be made by a qualified reporter. Any party to a proceeding before the Board Enlarged shall be entitled to a copy of the record upon the payment of the reasonable cost thereof as determined by the Board Enlarged. After hearing the witnesses and receiving other evidence presented at the hearing, the Board Enlarged shall give consideration to all of the evidence and upon such evidence appearing in the record shall make findings of fact and conclusions, which shall be set forth in writing, determining whether or not the school in question is complying with the requirements and standards for the conduct of schools of practical nursing as prescribed by this article. If a majority of all of the members of the Board Enlarged shall determine from the findings of fact and conclusions based upon the evidence at such hearing that the school of nursing involved is complying with the requirements and standards, the Board Enlarged shall enter a written order directing the executive secretary to replace the name of the school of practical nursing on the Fully Accredited List. If a majority of all of the members

of the Board Enlarged shall determine that the school involved is not complying with the requirements and standards for the conduct of schools of practical nursing prescribed by this article, the Board Enlarged shall enter a written order confirming the removal of the school of practical nursing from the Fully Accredited List and directing the executive secretary to remove the name of the school of practical nursing from the Provisionally Accredited List, effective twenty days after the date of the mailing of the order unless appeal is taken as hereinafter provided. A copy of the findings, conclusions and order of the Board Enlarged, certified by the executive secretary, shall be mailed to the school of practical nursing and to each student enrolled in said school. The executive secretary shall also cause to be published immediately in one or more daily newspapers of general circulation in North Carolina and also in a newspaper published in the county in which the school of practical nursing is located a notice of the decision of the Board Enlarged after such decision has become final. In the event the decision of the Board Enlarged is reversed on appeal, a notice of the final decision of the court shall be published by the executive secretary. (1953, c. 1199, s. 8.)

Editor's Note.—The 1953 amendment re-wrote this section. For present section covering subject matter of former section, see § 90-171.14.

§ 90-171.12. Venue; authority of Board Enlarged; subpoenas; oaths; conduct of hearing and appeals. — The venue of all hearings conducted by the Board Enlarged for the purposes of this article, the authority of the Board Enlarged to issue subpoenas, administer oaths, the punishment of witnesses for refusal to testify, service of subpoenas, the method of appeal to the superior court from adverse decisions of the Board Enlarged, the docketing of the appeal, the extent of judicial review on appeal and relief that may be granted pending review on appeal, as set forth in §§ 90-158.29, 90-158.30, 90-158.31, 90-158.32, 90-158.33, 90-158.34, 90-158.35 and 90-158.36 of article 9 of chapter 90 of volume 2C of the General Statutes, shall be applicable in all things and in all particulars to hearings, orders, decisions and other determinations and acts of the Board Enlarged to the same extent as if said sections were herein set forth, and said sections are in all respects made applicable to the Board Enlarged. (1953, c. 1199, s. 9.)

Editor's Note.—The 1953 amendment covering subject matter of former section, rewrote this section. For present section see § 90-171.15.

§ 90-171.13. Article does not prohibit other persons from performing nursing service.—No provision of this article shall be construed to prohibit the performance of general nursing service by any person for compensation or gratuitously, or to prohibit the gratuitous nursing of the sick, the furnishing of services by domestic servants, friends or relatives, or any midwife or other persons who does not assume to be or hold herself out to be a licensed practical nurse. (1947, c. 1091, s. 1; 1953, c. 1199, s. 10.)

Editor's Note.—The 1953 amendment renumbered § 90-171.10 to appear as this section.

§ 90-171.14. Violation of article; penalties. — After the effective date of this article it shall be unlawful for any person to:

- (1) Represent herself to be a licensed practical nurse or use the designation "licensed practical nurse" or the abbreviation "L. P. N.," unless she is licensed under the provisions of this article.
- (2) Make a material false statement or representation to the Board in applying for a license under this article.
- (3) Refuse to surrender a license which has been revoked in the manner prescribed herein.
- (4) Represent that any school or course is approved or accredited as a

course or school for the training of licensed practical nurses unless such course or school has been approved and accredited by the standardization committee hereinabove referred to.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty (30) days. (1947, c. 1091, s. 1; 1953, c. 1199, s. 10.)

Editor's Note.—The 1953 amendment renumbered § 90-171.11 to appear as this section.

§ 90-171.15. Undergraduate nurse. — The words “practical nurse” or “licensed practical nurse,” shall mean and include “undergraduate nurse.” (1947, c. 1091, s. 2; 1953, c. 1199, s. 10.)

Editor's Note.—The 1953 amendment renumbered § 90-171.12 to appear as this section.

ARTICLE 10.

Midwives.

§ 90-172. Midwives to register.—All persons, other than regularly registered physicians, desiring to practice midwifery in this State, must first secure a permit from the State Board of Health or a local department of health in accordance with the provisions of article 18 of chapter 130 of the General Statutes of North Carolina. (1917, c. 257, ss. 8, 9; C. S., s. 6750; 1957, c. 1357, s. 6.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, rewrote this section.

§§ 90-173 to 90-178: Repealed by Session Laws 1957, c. 1357, s. 7.

Editor's Note.—The act repealing these sections became effective January 1, 1958.

ARTICLE 11.

Veterinaries.

§ 90-179. North Carolina Veterinary Medical Association, Incorporated.—The association of veterinary surgeons and physicians calling themselves the North Carolina Veterinary Medical Association is declared to be a body politic and corporate under the name and style of the North Carolina Veterinary Medical Association. (1903, c. 503; Rev., s. 5431; C. S., s. 6754; 1961, c. 353, s. 1.)

Editor's Note.—The 1961 amendment “North Carolina” in the name of the Association omitted “State” formerly appearing after the word “association.”

§ 90-179.1. Definitions. — When used in this chapter, unless the context otherwise requires:

- (1) “Animal” means any mammal other than man;
- (2) “Applicant” means an applicant for a license to practice veterinary medicine;
- (3) “Board” means the veterinary medical board of the State of North Carolina;
- (4) “License” means a certificate of license to practice veterinary medicine in North Carolina, issued pursuant to the provisions of G. S. 90-183 of the General Statutes of North Carolina;
- (5) The “practice of veterinary medicine” means the practice of any person who:

- a. Diagnoses, prognoses, treats, administers to, prescribes for, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound, or physical condition of any animal or for the prevention of or to test for the presence of any disease of any animal, or who holds himself out as being able or legally authorized to act in such manner;
 - b. Practices dentistry or surgery on any animal;
 - c. Represents himself as engaged in the practice of veterinary medicine as defined in paragraphs a and b of this subsection;
 - d. Uses any words, letters or titles in such connection and under such circumstances as to induce the belief that the person using them is engaged in or is legally qualified for the practice of veterinary medicine;
- (6) "Temporary permit" means a temporary permit to practice veterinary medicine, issued pursuant to G. S. 90-183 of the General Statutes of North Carolina;
- (7) "Veterinary" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association. (1961, c. 353, s. 2.)

§ 90-180. North Carolina Veterinary Medical Board; appointment, terms and qualifications of members; oaths.—In order to properly regulate the practice of veterinary medicine and surgery, there shall be a board to be known as the North Carolina Veterinary Medical Board which shall consist of five members appointed by the Governor. When and as the terms of the present members expire, the Governor shall annually appoint one member of such Board, who shall hold his office for five years, and until his successor is appointed and qualified. Every person so appointed shall, within 30 days after notice of appointment appear before the clerk of the superior court of the county in which he resides and take oath to faithfully discharge the duties of his office.

Each member shall have been a legal resident of this State and licensed to practice veterinary medicine in this State for not less than five years prior to his appointment. No person who has been appointed a member of the Board shall continue on said Board if during the term of his appointment he shall

- (1) Transfer his legal residence to another state; or
- (2) Be or become the owner of, or be employed by, any wholesale or jobbing house dealing in supplies, equipment, or instruments used or useful in the practice of veterinary medicine; or
- (3) Have his license to practice veterinary medicine rescinded for cause in accordance with the provisions of chapter 150 of the General Statutes. (1903, c. 503, s. 2; Rev., s. 5432; C. S., s. 6755; 1961, c. 353, s. 3.)

Editor's Note.—The 1961 amendment rewrote this section.

§ 90-181. Meeting of Board; powers. — The Board of Examiners shall meet at least once a year at such times and places as the Association may decide upon, and remain in session sufficiently long to examine all who may make application at the appointed time for a license. Three members of said Board shall constitute a quorum. The Board of Examiners shall elect a president and a secretary, who shall also perform the duties of a treasurer. They shall keep a regular record of their proceedings in a book to be kept for that purpose, which shall always be open for inspection, and shall keep a record of all applicants for a certificate and of all who are granted a certificate, and shall publish the names of the successful applicants at least once each year in two newspapers published in the State. The Board shall have authority to adopt such bylaws and regula-

tions as may be necessary. (1903, c. 503, ss. 3, 4, 6, 7; Rev., s. 5433; C. S., s. 6756.)

§ 90-182. Compensation of members of Board.—Each member of the Board may for personal expenses receive up to twenty-five dollars (\$25.00) for each day, or portion thereof, he is actually engaged in the discharge of his duties. None of the expenses of the Board or of the members shall be paid by the State. (1903, c. 503, s. 9; Rev., s. 5434; C. S., s. 6757; 1961, c. 353, s. 4.)

Editor's Note.—The 1961 amendment rewrote the first sentence of this section.

§ 90-183. Examination and licensing of veterinaries.—The Board of Examiners shall, at its annual meeting, examine all applicants who desire license to practice veterinary medicine or surgery in the State of North Carolina. To entitle a person to such examination, each applicant shall have attained the age of 21 years and shall be a person of good moral character and shall furnish said Board of Examiners with satisfactory evidence that said applicant is a graduate of a reputable and accredited veterinary school, college or university accepted and approved by the American Veterinary Medical Association. If upon such examination the applicant be found to possess sufficient skill to practice veterinary medicine or surgery, a license or certificate shall be issued to him. No certificate shall be granted except with a concurrence of a majority of the members present. To prevent delay and inconvenience two members of the Board of Examiners may grant a temporary certificate to practice veterinary medicine or surgery which shall be in force only until the next regular meeting of the Board of Examiners, but in no case shall such temporary certificate be granted to any person who theretofore has been an unsuccessful applicant for a certificate before the Board. The Board shall have power to require such applicant to pay a fee of not more than twenty-five dollars (\$25.00) before issuing a certificate, and ten dollars (\$10.00) before issuing a temporary certificate. (1903, c. 503, ss. 3, 5, 8; Rev., s. 5435; C. S., s. 6758; 1951, c. 749; 1961, c. 353, s. 5.)

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

The 1961 amendment deleted "United States Bureau of Animal Industry and the

United States Army" formerly appearing at the end of the second sentence and substituted therefor "American Veterinary Medical Association."

§ 90-183.1. Certificates to registered applicants of other states. — Applicants registered or certified by examiners of other states whose requirements are equal to those of this State may, in the discretion of the Board, and upon payment of a fee of twenty-five dollars (\$25.00), be granted a certificate without examination: Provided, that the provisions of this section shall be extended only to those states which extend to this State the same privilege. (1959, c. 744.)

§ 90-183.2. Annual registration with Board; fee. — Every person heretofore or hereafter licensed to practice veterinary medicine by said Board shall during the month of January, 1962, and during the month of January in every year thereafter, register with the secretary-treasurer of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of five dollars (\$5.00). In the event a veterinarian fails to register as herein provided within 30 days after notification by certified mail to his last known home address, he shall pay an additional amount of ten dollars (\$10.00) to the Board. Should a veterinarian fail to register and pay the fees imposed, the license of such veterinarian may be suspended by the Board. Upon payment of all fees which may be due, the license of any such veterinarian shall be reinstated. (1961, c. 353, s. 6.)

§ 90-184. Refusal, suspension or revocation of license or permit.—The Board may refuse to issue a license or a temporary permit to any applicant, may issue a reprimand, or suspend or revoke the license or the temporary permit of any person licensed to practice veterinary medicine who:

- (1) In the conduct of his practice does not conform to the rules prescribed by the Board for proper sanitary and hygienic methods to be used in the care and treatment of animals;
- (2) Is found guilty of fraud in completing the examination conducted by the Board;
- (3) Is found to be addicted to the alcohol or drug habit to such a degree as to render him unfit to practice veterinary medicine;
- (4) Employs directly or indirectly a solicitor for the purpose of obtaining patients;
- (5) Advertises in a manner which is false or misleading or has for its purpose an intent to deceive or defraud;
- (6) Has professional association with or lends his name to any unlicensed person for the purpose of, or in such manner as to encourage or permit practice of veterinary medicine directly or indirectly by persons other than those licensed under this article;
- (7) Divides fees or charges or has any arrangement to share fees or charges with any other person, except on the basis of services performed;
- (8) Is convicted of any felony or crime involving moral turpitude;
- (9) Is convicted of sale of narcotics or other dangerous drugs in violation of law;
- (10) Swears falsely in any affidavit required to be made by him in the course of his practice of veterinary medicine;
- (11) Fails to report promptly to the proper official any dangerous, infectious, or contagious disease;
- (12) Fails to report promptly the results of tests when required to do so by law or regulation;
- (13) Fraudulently issues or uses any health certificate, inspection certificate, vaccination certificate, test chart, or other blank form used in the practice of veterinary medicine, relating to the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption;
- (14) Willfully makes any misrepresentation in the inspection of food stuffs;
- (15) Fraudulently applies or reports any intradermal, cutaneous, subcutaneous, serological, or chemical test.

Before the Board may revoke or suspend a license, or otherwise discipline the holder of a license, written charges shall be filed with the Board by the secretary and a hearing shall be had thereon as provided by chapter 150 of the General Statutes of North Carolina. (1903, c. 503, s. 10; Rev., s. 5436; C. S., s. 6759; 1953, c. 1041, s. 16; 1961, c. 353, s. 7.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

Editor's Note.—The 1953 amendment substituted "chapter 150 of the General

Statutes" for "§§ 150-1 to 150-8" formerly appearing in the first sentence.

The 1961 amendment rewrote this section.

§ 90-184.1. Reinstatement of license or permit. — Any person whose license or temporary permit is suspended or revoked may, at the discretion of the Board, be relicensed to practice at any time without an examination, on application made to the Board. Such application for reinstatement shall be in writing, in a form prescribed by the Board, signed by the applicant, and shall be delivered to the secretary of the Board.

Any person whose license or temporary permit to practice veterinary medicine is suspended or revoked shall be deemed an unlicensed person. (1961, c. 353, s. 8.)

§ 90-184.2. **Enforcement.**—The Board shall enforce the provisions of this article and for that purpose shall make investigations relative thereto. If the Board has knowledge or notice of a violation of this article, it shall investigate and, upon probable cause appearing, shall direct the secretary to file a complaint and institute the prosecution of the offender. (1961, c. 353, s. 8.)

§ 90-184.3. **Practice in name of prior licensee.**—Wherever the practice of veterinary medicine is continued in the name of a prior licensee, said name may not be used for more than two years after the death or cessation of active participation by such licensee. (1961, c. 353, s. 8.)

§ 90-184.4. **Partnerships.**—Whenever the practice of veterinary medicine is carried on by a partnership, all partners must be either licensed or the holders of temporary permits. (1961, c. 353, s. 8.)

§ 90-185. **Practitioners before one thousand nine hundred and thirty-five.**—All persons who had, on the first day of January, one thousand nine hundred and thirty-five, been practicing veterinary medicine or surgery and who have for a period of twenty years paid all fees as are required by law shall be allowed to practice veterinary medicine or surgery in this State: Provided, they make affidavit to the effect that they have practiced veterinary medicine or surgery as a profession for a period of twenty years prior to the first day of January, one thousand nine hundred and thirty-five, and that they have for a period of twenty years prior to the first day of January, one thousand nine hundred and thirty-five, paid all fees as may have been required by law. (1903, c. 503, s. 11; 1905, c. 320; Rev., s. 5437; 1913, c. 129; 1919, c. 94; C. S., s. 6760; 1921, c. 171; Ex. Sess. 1921, s. 68; 1924, c. 38; 1935, c. 387.)

Editor's Note.—The 1935 amendment rewrote this section.

§ 90-186. **Necessity for license; certain practices exempted.** — No person shall engage in the practice of veterinary medicine in this State or attempt to do so without having first applied for and obtained a license for such purpose from the North Carolina Veterinary Medical Board, or without having first obtained from said Board a certificate of renewal of license for the calendar year in which such person proposes to practice and until he shall have been first licensed and registered for such practice in the manner provided in this article and the rules and regulations of the said Board.

Nothing in this article shall be construed to prohibit:

- (1) Any person from administering to animals, the title to which is vested in himself, except when said title is so vested for the purpose of circumventing the provisions of this article;
- (2) Any person who is a regular student or instructor in a legally chartered college from the performance of those duties and actions assigned as his responsibility in teaching or research;
- (3) Any veterinarian who is a member of the armed forces of the United States or who is an employee of the United States Department of Agriculture, the United States Public Health Service or other federal agency, or the State of North Carolina, or political subdivision thereof, from performing official duties while so commissioned or employed;
- (4) Any person from such practices as permitted under the provisions of G. S. 90-185, chapter 17, Private Laws 1937, or chapter 5, Private Laws 1941;
- (5) Any person from dehorning animals or castrating male food animals;
- (6) Any person from providing for or assisting in the practice of artificial insemination;
- (7) Any physician licensed to practice medicine in this State, or his assistant, while engaged in medical research;

- (8) Any rabies inspector duly appointed and acting within the provisions of G. S. 106-365 and 106-366. (1903, c. 503, s. 12; Rev., s. 5438; C. S., s. 6761; 1961, c. 353, s. 9.)

Editor's Note.—The 1961 amendment rewrote this section.

§ 90-187. **Unauthorized practice; penalty.**—If any person shall practice or attempt to practice veterinary medicine in this State without first having passed the examination and obtained a license or temporary permit from the North Carolina Veterinary Medical Board; or if he shall practice veterinary medicine without the renewal of his license, as provided in G. S. 90-183.2; or shall practice or attempt to practice veterinary medicine while his license is revoked, or suspended, or when a certificate of license has been refused; or shall violate any of the provisions of this article, said person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or imprisonment at the discretion of the court, or both fined and imprisoned; and each act of such unlawful practice shall constitute a distinct and separate offense. (1913, c. 129, s. 2; C. S., s. 6762; 1961, c. 353, s. 10; c. 756.)

Editor's Note.—The first 1961 amendment rewrote this section.

The second 1961 amendment substituted "G. S. 90-183.2" for "G. S. 90-183.1."

ARTICLE 12.

Chiropodists.

§ 90-188. **Podiatry defined.** — Podiatry as defined by this article is the surgical or medical or mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes, or the use of an anesthetic other than local. (1919, c. 78, s. 2; C. S., s. 6763; 1945, c. 126; 1963, c. 1195, s. 2.)

Editor's Note.—The 1945 amendment inserted "or" before "medical" and after "medical" substituted "or" for "and."

Pursuant to Session Laws 1963, c. 1195, s. 2, "Podiatry" has been substituted for "Chiropody."

§ 90-189. **Unlawful to practice unless registered.** — On and after the first of July, one thousand nine hundred and nineteen, it shall be unlawful for any person to practice or attempt to practice podiatry in this State or to hold himself out as chiropodist (podiatrist) or to designate himself or describe his occupation by the use of any words or letters calculated to lead others to believe that he is a chiropodist (podiatrist) unless he is duly registered as provided in this article. (1919, c. 78, s. 1; C. S., s. 6764; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-190. **Board of Podiatry Examiners; how appointed; terms of office.**—There shall be established a Board of Podiatry Examiners for the State of North Carolina. This Board shall consist of three members who shall be appointed by the North Carolina Pedic Association. All of such members shall be chiropodists who have practiced podiatry in North Carolina for a period of not less than one year. The members of the Board shall be appointed by said Association for a term of three years: Provided, the members of the first Board shall be appointed to hold office for one, two and three years respectively, and one member shall be appointed annually thereafter by said Association. The Board shall have authority to elect its own presiding and other officers. (1919, c. 78, s. 3; C. S., s. 6765; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-191. Applicants to be examined; examination fee; requirements.—Any person not heretofore authorized to practice podiatry in this State shall file with the Board of Podiatry Examiners an application for examination accompanied by a fee of twenty-five dollars, together with proof that the applicant is more than twenty-one years of age, is of good moral character, and has obtained a preliminary education equivalent to four years' instruction in a high school and two (2) years of instruction in a college or university approved by the American Association of Colleges and Universities. Such applicant before presenting himself for examination, must be a graduate of a legally incorporated school of podiatry acceptable to the Board. (1919, c. 78, s. 9; C. S., s. 6766; 1963, c. 1195, ss. 1, 2.)

Editor's Note. — The 1963 amendment added "and two (2) years of instruction in a college or university approved by the American Association of Colleges and Universities" at the end of the first sentence.

Section 3 of the 1963 amendatory act

provides that the amendment to this section shall not apply to present students of podiatry nor to persons previously licensed in this State or other states.

Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiroprody."

§ 90-192. Examinations; subjects; certificates.—The Board of Podiatry Examiners shall hold at least one examination annually for the purpose of examining applicants under this article. The examination shall be held at such time and place as the Board may see fit, and notice of the same shall be published in one or more newspapers in the State. The Board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide such books, blanks and forms as may be necessary to conduct such examinations, and shall preserve and keep a complete record of all its transactions. Examinations for registration under this article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral, or clinical, as the Board may determine, and shall be in the following subjects wholly or in part: Anatomy, physiology, pathology, bacteriology, chemistry, diagnosis and treatment, therapeutics, clinical podiatry and asepsis; limited in their scope to the treatment of the foot. No applicant shall be granted a certificate unless he obtains a general average of seventy-five or over, and not less than fifty per cent in any one subject. After such examination the Board shall, without unnecessary delay, act on same and issue certificates to the successful candidates, signed by each member of the Board; and the Board of Podiatry Examiners shall report annually to the North Carolina Podic Association. (1919, c. 78, s. 4; C. S., s. 6767; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiroprody."

§ 90-193. Re-examination of unsuccessful applicants.—An applicant failing to pass his examination shall within one year be entitled to re-examination upon the payment of two dollars, but not more than two re-examinations shall be allowed any one applicant. Should he fail to pass his third examination he shall file a new application before he can again be examined. (1919, c. 78, s. 6; C. S., s. 6768.)

§ 90-194. Practitioners before enactment of this article; certificates.—Every person who is engaged in the practice of podiatry in this State one year next prior to the enactment of this article shall file with the Board of Podiatry Examiners on or before the first day of July, one thousand nine hundred and nineteen, a written application for a certificate to practice podiatry, together with proof satisfactory to the Board that the applicant is more than twenty-one years of age and has been practicing podiatry in this State for a period of more than one year next prior to the passage of this article, and upon

the payment of a fee of ten dollars the said Board of Podiatry Examiners shall issue to such applicant a certificate to practice podiatry in this State. (1919, c. 78, s. 5; C. S., s. 6769; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiroprody."

§ 90-195. Certificates to registered chiroprodists of other states.— Applicants registered or certified by examiners of other states whose requirements are equal to those of this State may, upon the payment of a fee of twenty-five dollars, be granted a certificate without examination: Provided, that the provisions of this section shall be extended only to those states which extend to this State the same privilege. (1919, c. 78, s. 8; C. S., s. 6770.)

§ 90-196. Certificates filed with clerk of court; clerk to keep record. — Every person receiving a certificate from the Board shall file the same with the clerk of the court of the city or county in which he resides. It shall be the duty of the clerk to register the name and address and date of the certificate in a book kept for such purpose as a part of the records of his office, and the number of the book and the page therein containing said recorded copy shall appear on the face of the certificate over the name of the clerk recording the same. The person thus registering shall pay to the clerk a fee of fifty cents. (1919, c. 78, s. 7; C. S., s. 6771.)

§ 90-197. Revocation of certificate; grounds for; suspension of certificate. — The Board of Podiatry Examiners may revoke by a majority vote of its members, and in accordance with the provisions of chapter 150 of the General Statutes, any certificate it has issued, and cause the name of the holder to be stricken from the book of the registration by the clerk of the court in the city or county in which the name of the person whose certificate is revoked is registered for any of the following causes:

- (1) The willful betrayal of a professional secret.
- (2) Any person who in any affidavit required of the applicant for certificate, registration, or examination under this article shall make a false statement.
- (3) Any person convicted of a crime involving moral turpitude.
- (4) Any person habitually indulging in the use of narcotics, ardent spirits, stimulants or any other substance which impairs intellect and judgment to such an extent as in the opinion of the Board to incapacitate such person for the performance of his professional duties.

The Board may, in accordance with the provisions of chapter 150 of the General Statutes, suspend any certificate granted under this article for a period not exceeding six months on account of any misconduct on the part of the person registered which would not, in the judgment of the Board, justify the revocation of his certificate. (1919, c. 78, ss. 12, 13; C. S., s. 6772; 1953, c. 1041, ss. 17, 18; 1963, c. 1195, s. 2.)

Cross Reference.—As to uniform procedure for suspension or revocation of licenses, see §§ 150-1 to 150-8.

Editor's Note.—The 1953 amendment substituted "chapter 150 of the General Statutes" for "§§ 150-1 to 150-8" formerly appearing near the beginning of the first paragraph, struck out the former second

paragraph, and inserted "in accordance with the provisions of chapter 150 of the General Statutes" near the beginning of the last paragraph.

Pursuant to Session Laws 1963, c. 1195, s. 2, "Podiatry" has been substituted for "Chiroprody."

§ 90-198. Fees for certificates and examinations; compensation of Board.—To provide a fund in order to carry out the provisions of this article the Board shall charge ten dollars for each certificate issued and fifteen dollars for each examination. From such funds all expenses and salaries, not exceeding

four dollars per diem for each day actually spent in the performance of the duties of the office and actual railroad expenses in addition, shall be paid by the Board: Provided, that at no time shall the expenses exceed the cash balance on hand. (1919, c. 78, s. 14; C. S., s. 6773.)

§ 90-199. Annual fee of \$10 required; cancellation or renewal of license.—On or before the first day of July of each year every chiropodist engaged in the practice of podiatry in this State shall transmit to the secretary-treasurer of the said North Carolina State Board of Podiatry Examiners his signature and post-office address, the date and year of his or her certificate, together with a fee to be set by the Board of Podiatry Examiners not to exceed ten (\$10.00) dollars and receive therefor a renewal certificate. Any license or certificate granted by said Board under or by virtue of this or the following section, shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of thirty days after the thirty-first day of July of each year, and such delinquent chiropodist shall pay a penalty of five dollars for reinstatement: Provided that any legally registered chiropodist in this State who has retired from practice or who has been absent from the State may, upon furnishing affidavit to that effect, reinstate himself by paying all fees due for the years in which he was absent or retired, the said amount in no case to exceed fees for five years. (1931, c. 191; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-200. Issuance of license upon payment of fees.—Upon payment of the fees prescribed in the above section, by or before July first, nineteen hundred and thirty-one, by any person who has heretofore practiced podiatry in the State of North Carolina, for a period of five successive years regularly, it shall be the duty of the State Board of Podiatry Examiners to issue to said person a license which shall grant to such person all the rights and privileges of chiropodists now engaged in practicing podiatry. (1931, c. 191; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-201. Unlawful practice of podiatry a misdemeanor.—Any person who shall practice or attempt to practice podiatry in this State without having complied with the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or shall be imprisoned for not less than thirty nor more than ninety days. Nothing in this article shall be construed to interfere with physicians in the discharge of their professional duties. (1919, c. 78, s. 10; C. S., s. 6774; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-202. Sheriffs and police to report violators of this article. — It shall be the duty of the police department of the cities and the sheriff of each county in the State to see that all practitioners of podiatry in the State are legally registered according to the provisions of this article, and to report to the State's attorney of the city or county all cases of violation of this article; whereupon the State's attorney shall promptly prosecute those violating the provisions of this article. (1919, c. 78, s. 11; C. S., s. 6775; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

ARTICLE 13.

Embalmers and Funeral Directors.

§ 90-203. **State Board; members; election; qualifications; term; vacancies.**—The State Board of Embalmers and Funeral Directors shall consist of seven members, elected by the North Carolina Funeral Directors and Burial Association, Incorporated, at least five of whom shall be licensed and practicing embalmers, having experience in the care and disposition of dead human bodies. Of the five members of the Board required to be licensed and practicing embalmers, one such member of the Board shall be elected in June, one thousand nine hundred and five, and one annually thereafter in the month of June. The term of office shall begin on the first day of July, next after the election and continue for five years. The two members of the Board not required to be licensed and practical embalmers shall be elected during the month of June, one thousand nine hundred and forty-nine, one for a term of two years, beginning on the first day of July, one thousand nine hundred and forty-nine, and one for a term of three years, beginning July 1, one thousand nine hundred and forty-nine; the successor of these members of the Board shall be elected thereafter during the month of June in the year in which the term of the Board member expires. The North Carolina Funeral Directors and Burial Association, Incorporated, shall fill all vacancies in such Board. In addition to the seven members above provided for, the president of the State Board of Health shall serve ex officio as a member of said Board. (1901, c. 338, ss. 1, 2, 3; Rev., s. 4384; C. S., s. 6777; 1931, c. 174; 1945, c. 98, s. 1; 1949, c. 951, s. 1; 1957, c. 1240, s. 1.)

Editor's Note.—The 1945 amendment substituted "North Carolina Funeral Directors and Burial Association, Incorporated" for "State Board of Health." The 1949 amendment rewrote this section and increased the number of Board members from five to seven.

The 1957 amendment added the last sentence of this section.

For a brief comment on the 1949 amendments to this article, see 27 N. C. Law Rev. 407.

§ 90-204. **Definitions.**—As used in this article, unless the context otherwise requires, the term

- (1) "Apprentice" means a person who is engaged in learning the art of embalming under the instruction and personal supervision of a duly licensed embalmer under the provisions of this article, and who is duly registered as such with the Board.
- (2) "Board" means the North Carolina State Board of Embalmers and Funeral Directors.
- (3) "Embalmer" means a person who disinfects and preserves or attempts to disinfect and preserve the dead human body, entirely or in part, by the use or application of chemicals, fluids, or gases, externally or internally, or both, either by the introduction of same into the body by vascular or hypodermic injections or by direct application into the organs or cavities or by any other method, or who by restorative art restores or attempts to restore the appearance of the dead human body.
- (4) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of the dead human body entirely or in part, by the application of chemicals, fluids, or gases, externally or internally, or both, either by the introduction of same into the body, by vascular or hypodermic injections or by direct application into the organs or cavities or by other approved or recognized methods, and shall include the restoration, or attempted restoration, of the appearance of the dead human body.
- (5) "Funeral establishment", for the purposes of G. S. 90-204 through G. S. 90-210.8, means a place of business used in the care and preparation

for burial or transportation or other disposal of dead human bodies, or any place or premises at or from which any person or persons shall represent himself or themselves or hold out himself or themselves as being engaged in the profession of embalming.

- (6) "Secretary" means the secretary for the North Carolina State Board of Embalmers. (1957, c. 1240, s. 2.)

Editor's Note.—Session Laws 1957, c. 1240, s. 2, rewrote all of this article except § 90-203.

§ 90-205. Removal of members; oath.—The North Carolina Funeral Directors and Burial Association, Incorporated, shall have power to remove from office any member of said Board for neglect of duty, incompetency, or improper conduct. The North Carolina Funeral Directors and Burial Association, Incorporated, shall furnish each person appointed to serve on the Board a certificate of appointment, except the president of the State Board of Health. The appointees shall qualify by taking and subscribing to the usual oath of office, to faithfully perform their duties, before some person authorized to administer oaths, within ten days after said appointment has been made, which oath shall be filed with the Board. (1901, c. 338, ss. 3, 4; Rev., s. 4385; C. S., s. 6778; 1945, c. 98, s. 2; 1949, c. 951, s. 2; 1957, c. 1240, s. 2.)

§ 90-206. Common seal; powers. — The Board shall adopt a common seal and shall have the powers and privileges conferred on it by the law of the State. (1901, c. 338, s. 6; Rev., s. 4386; C. S., s. 6779; 1957, c. 1240, s. 2.)

§ 90-207. Meetings; quorum; bylaws; officers; president to administer oaths.—The Board shall meet at least once every year, during the month of July, at such place as it may determine. Four members shall constitute a quorum. At each annual meeting the Board from its members shall select a president and a secretary, who shall hold their offices for one year, and until their successors are elected. The Board shall, from time to time, adopt rules, regulations, and bylaws not inconsistent with the laws of this State or the United States, whereby the performance of the duties of such Board and the practice of embalming of dead human bodies shall be regulated. The Board shall also enforce such rules and regulations relative to sanitation, health and the protection of the public from contagious and infectious diseases as are promulgated by the State Board of Health with respect to the handling of dead human bodies. The president of the Board (and in his absence a president pro tempore elected by the members present) is authorized to administer oaths to witnesses testifying before the Board. (1901, c. 338, ss. 5, 6, 7, 8; Rev., s. 4387; C. S., s. 6780; 1949, c. 951, s. 3; 1957, c. 1240, s. 2.)

§ 90-208. Expenses and salaries of Board. — All expenses, salary, and per diem to members of this Board shall be paid from fees received under the provisions of this article, and shall in no manner be an expense to the State. All moneys received in excess of said per diem allowance and other expenses provided for shall be held by the secretary of said Board as a special fund for meeting expenses of said Board. (1901, c. 338, s. 11; Rev., s. 4389; C. S., s. 6783; 1957, c. 1240, s. 2.)

§ 90-209. Unlawful practice; exceptions. — It shall be unlawful for any person to engage in embalming or to represent himself to the public as an embalmer, undertaker or mortician, without first complying with the provisions of this article. When any funeral establishment is owned by a partnership or corporation, the person or persons in active charge of the operation of such establishment must be licensed as a funeral director and/or a licensed embalmer under the terms of this article and are subject to the provisions thereof.

The provisions of this article shall not apply to the preparation and burial of

dead bodies of paupers or of inmates of State institutions when such paupers or inmates are buried at the expense of the State. (1957, c. 1240, s. 2.)

§ 90-210. **Grant of license to embalmers.**—No person shall engage in the practice of embalming without first obtaining the license herein provided. Every person not licensed as an embalmer, now engaged or desiring to engage in the practice of embalming dead human bodies, shall make written application to the Board for a license, accompanying the same with a fee of fifteen dollars (\$15.00) whereupon the applicant shall present himself before the Board at a time and place fixed by the Board, and if the Board shall find upon due examination that the applicant is a resident of North Carolina, a citizen of the United States, 21 years of age, of good moral character, as evidenced by at least two affidavits to that effect; possessed of high school education of not less than sixteen Carnegie units or the equivalent thereof, such equivalence to be determined by the Board in its discretion, has completed a minimum of twenty-four months of service as an apprentice under the supervision of a licensed and practicing embalmer, who shall make affidavit upon the application that said applicant has had such experience under him, possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has a responsible knowledge of sanitation and the disinfection of bodies of deceased persons and the apartment, clothing, and bedding, in case of death from infectious or contagious disease, and has had a special course of at least nine months in embalming in an approved school in mortuary science, the Board shall issue to such applicant a license to practice the art of embalming and the care and disposition of the dead and shall register such applicant as a duly licensed embalmer, such license shall be signed by a majority of the Board and attested by its seal. (1901, c. 338, ss. 9, 10; Rev., s. 4388; 1917, c. 36; 1919, c. 88; C. S., s. 6781; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, s. 2.)

§ 90-210.1. **Renewal; registration; display of license.** — All persons receiving a license as an embalmer under the provisions of this article shall register the fact at the office of the board of health of the city, and where there is no board of health, with the clerk of the superior court in the county or counties in which it is proposed to carry on said practice and shall display said license in a conspicuous place in the office of such licentiate. Every registered embalmer who desires to continue the practice of his profession shall annually, during the time he shall continue in such practice, on such day as the Board may determine, pay to the secretary of the Board, a fee not in excess of fifteen dollars (\$15.00) for the renewal registration, as determined by the Board. (1901, c. 338, ss. 9, 10; Rev., s. 4388; 1917, c. 36; 1919, c. 88; C. S., s. 6781; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, s. 2.)

§ 90-210.2. **Embalmers licensed prior to July 1, 1957.**—Any person who having previously been licensed by the Board as an embalmer prior to July 1, 1957, shall not be required to take or pass an examination, or to serve the apprenticeship herein provided, but shall be entitled to have such license renewed upon making proper application therefor, and upon the payment of the renewal fee provided by the provisions of this article. (1957, c. 1240, s. 2½.)

§ 90-210.3. **Apprentices.** — (a) Each apprentice in embalming, upon commencing his apprenticeship as an embalmer, shall register as an apprentice with the secretary and pay such fee as may be fixed by the Board. He shall notify the Board immediately upon completion of his apprenticeship and as evidence thereof submit to the Board a sworn affidavit to that effect, signed by the licensed embalmer under whom such apprenticeship was served, or in case of his death or incapacity, then by some reputable person having knowledge of the facts.

(b) Whenever any person applying for a license under this article as an embalmer has served the whole or any part of the apprenticeship of practical experi-

ence required by this article, and his apprenticeship has been interrupted by service in any branch of the armed services of the United States, then in all such cases, the applicant shall be given credit for the time served in such apprenticeship as fully in all respects as if such service in the armed forces had not caused an interruption in the period of practical experience required under this section. (1957, c. 1240, s. 2.)

§ 90-210.4. **Powers of Board.** — (a) In furtherance of its purpose of regulating the practice of embalming in this State, the Board shall have the power and it shall be its duty to prescribe rules and regulations governing the qualifications, fitness and practices of those engaged in and who may engage in embalming in this State and the care and disposition of dead human bodies; governing the standards of sanitation to be observed in the embalming and care of dead human bodies; and governing the proper administration of the provisions of this article including defining any provisions not specifically defined in this article. The Board shall specifically have the power to fix and prescribe rules and regulations as to the procedure to be followed in making of applications for licenses, in the issuance and renewals of licenses, and the conduct of examinations. It shall fix fees to be paid for the registration of apprentices.

(b) The Board may refuse to issue or may refuse to renew, or suspend or revoke any license to engage in embalming, or may place the holder thereof on a term of probation or suspension after proper hearing upon finding the holder of such license to be guilty of any of the following acts or commissions:

- (1) Conviction of a crime involving moral turpitude,
- (2) Conviction of a felony,
- (3) Unprofessional conduct which is hereby defined to include:
 - a. Misrepresentation or fraud in the conduct of the business or the profession of an embalmer;
 - b. False or misleading advertising as an embalmer;
 - c. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees, provided that this subsection shall not be deemed to prohibit general advertising;
 - d. Employment by the licensee of persons known as "cappers", or "steerers" or "solicitors", or other such persons to obtain embalming;
 - e. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, or other persons, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular embalmer;
 - f. The direct or indirect giving of certificates of credit, the payment or offer of payment of a commission by the licensee, his agents, assistants, or employees for the purpose of securing business;
 - g. Gross immorality;
 - h. Aiding or abetting an unlicensed person to practice embalming;
 - i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased person whose body has not yet been interred or otherwise disposed of;
 - j. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any cemetery, mausoleum, or crematory;
 - k. Violation of any of the provisions of this article;
 - l. Violation of any State law or municipal ordinance or regulations affecting the handling, custody, care or transportation of dead human bodies;

- m. Fraud or misrepresentation in obtaining a license;
- n. Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody thereof;
- o. Failure to secure permit for removal or burial of a dead human body prior to interment or disposal;
- p. Knowingly making any false statement on a certificate of death;
- q. Indecent exposure or exhibition of a dead human body while in the custody or control of an embalmer.

(4) Failure to pay the license renewal fee on the date designated by the Board and continuing to practice without paying said fee.

(c) In addition to the above specific grounds for refusal or suspension of a license or the placing of a licensee on probation, whenever the Board shall have reason to believe that any person to whom a license has been issued has become unfit to practice embalming, or has violated any of the provisions of this article or any rule or regulation prescribed pursuant thereto, it shall be the duty of the Board to conduct an investigation, and from such investigation if it shall appear to the Board that there is reasonable ground for belief that the accused may have been guilty of the violation charged, a time and place shall be set by the Board for a hearing to show cause whether or not the license of the accused shall be revoked, or suspended. (1957, c. 1240, s. 2.)

§ 90-210.5. Funeral home; embalmer; preparation room. — (a) Every established funeral home or firm must employ and maintain a licensed embalmer or embalmers as may be necessary to operate the business under the terms of this article.

(b) Every such establishment or funeral home shall maintain a preparation room containing at least 64 square feet in area for the preparation of dead human bodies. This room shall be strictly private. No one shall be allowed in the preparation room while a dead human body is being prepared, except the licensed embalmer, their duly registered apprentices, public officials in the discharge of their duties, accredited nurse employed in the case or members of the medical profession, next of kin of the deceased or officials of the funeral home or other legally authorized persons. The room shall contain the following equipment:

- (1) One modern standard type sanitary operating table;
- (2) Slop sink with adequate drainage;
- (3) Sanitary waste receptacle;
- (4) An approved type instrument sterilizer.

(c) The floor shall have tile or concrete or other waterproof materials covering the floor from wall to wall and the room shall be kept in sanitary condition at all times subject to inspection by the Board or their designated agents at any and all times. (1957, c. 1240, s. 2.)

§ 90-210.6. Acting as embalmer without license.—If any person shall practice or hold himself out as practicing the art of embalming without having complied with the licensing provisions of this article, and with the provisions of G. S. 90-210.5, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than two hundred fifty dollars (\$250.00) or imprisonment for not less than six months, or both, in the discretion of the court. (1901, c. 338, s. 14; Rev., s. 3644; C. S., s. 6782; 1957, c. 1240, s. 2.)

§ 90-210.7. Suspicious circumstances surrounding death. — It shall be unlawful and punishable, as provided in G. S. 90-210.6, for any person for any reason to remove or embalm a dead human body when any fact within his knowledge or brought to his attention, is sufficient to arouse suspicion of a crime in connection with the cause of death of the deceased, until the permission of the coroner or other official of competent jurisdiction, shall have first been obtained. (1957, c. 1240, s. 2.)

§ 90-210.8. **Embalming schools have same privileges of medical schools as to cadavers.**—Schools for teaching embalming shall have extended to them the same privileges as to the use of bodies for dissection while teaching, as those granted to medical colleges. (1901, c. 338, s. 15; Rev., s. 4390; C. S., s. 6784; 1957, c. 1240, s. 2.)

§ 90-210.9. **Funeral directors and funeral directing; definitions.** — As used in the following sections of this article, unless the context otherwise requires, the term

- (1) "Funeral director", means a person engaged for hire or profit in the profession of directing or supervising funerals or the preparing of dead bodies for burial, including the preparation of all external aspects of the human body, other than by the act of embalming, or the disposition of dead human bodies.
- (2) "Funeral directing", means engaging for hire or profit in the profession of directing or supervising funerals or the preparation of dead human bodies for burial other than by the act of embalming, or the disposition of dead human bodies, or the provision or maintenance of a place for the preparation for disposition of future care of dead human bodies; or the use in connection with a business of the words or terms "funeral director", "undertaker", "mortician", or similar words or terms.
- (3) "Board" means the North Carolina State Board of Embalmers and Funeral Directors.
- (4) "Secretary" means the secretary for the North Carolina State Board of Embalmers and Funeral Directors.
- (5) "Funeral establishment", for the purposes of G. S. 90-210.9 through G. S. 90-210.16, means a place of business used in the care and preparation for burial or transportation or other disposal of dead human bodies, or any place or premises at or from which any person or persons shall represent himself or themselves or hold out himself or themselves as being engaged in the profession of funeral directing.
- (6) "Apprentice" means a person who is engaged in learning the art of funeral directing under the instruction and personal supervision of a duly licensed funeral director under the provisions of this article, and who is duly registered as such with the Board. (1957, c. 1240, s. 2.)

§ 90-210.10. **Grant of license to funeral directors.** — No person shall engage in the practice of funeral directing without first obtaining the license herein provided. No person shall be issued a license as a funeral director unless he is at least twenty-one years of age; a resident of North Carolina, a citizen of the United States, of good moral character, as evidenced by at least two affidavits to that effect, possessed of a high school education of not less than sixteen Carnegie units or the equivalent thereof, such equivalence to be determined by the Board in its discretion; and has passed to the satisfaction of the Board an examination as prescribed by the Board, of his qualifications and skill as a funeral director.

Every person having the above qualifications may make application to be licensed as a funeral director to the Board on blank applications furnished by the Board accompanied by a fee of fifteen dollars (\$15.00), whereupon the applicant shall present himself before the Board at a time and place to be fixed by the Board and if the Board shall find upon due examination that the applicant meets the requirements outlined above and makes an average of seventy-five per cent (75%) on his examination, such applicant shall be issued a license to practice funeral directing. (1957, c. 1240, s. 2.)

§ 90-210.11. **Unlawful practice; exception.** — It shall be unlawful for any person to engage in funeral directing, or to represent himself to the public as a funeral director without first complying with the provisions of this article. When any funeral establishment is owned by a partnership or corporation, the

person or persons in active charge of a funeral must be licensed as a funeral director or embalmer, as the case may be, before engaging in practice as either. (1957, c. 1240, s. 2.)

§ 90-210.12. **Renewal; registration; display of license.** — All persons receiving a license as a funeral director under the provisions of this article shall register the fact at the office of the board of health of the city, and where there is no board of health, with the clerk of the superior court in the county or counties in which it is proposed to carry on said practice and shall display said license in a conspicuous place in the office of such licentiate. Every registered funeral director who desires to continue the practice of his profession shall annually, during the time he shall continue in such practice, on such day as the Board may determine, pay to the secretary of the Board, a fee not in excess of fifteen dollars (\$15.00) for the renewal registration, as determined by the Board. (1901, c. 338, ss. 9, 10; Rev., s. 4388; 1917, c. 36; 1919, c. 88; C. S., s. 6781; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, s. 2.)

§ 90-210.13. **Funeral directors licensed prior to July 1, 1957.**—Any person who having previously been licensed by the Board as a funeral director prior to July 1, 1957, shall not be required to take or pass an examination, or to serve the apprenticeship herein provided, but shall be entitled to have such license renewed upon making proper application therefor, and upon the payment of the renewal fee provided by the provisions of this article. (1957, c. 1240, s. 2½.)

§ 90-210.14. **Powers of Board.** — (a) In furtherance of its purpose of regulating the practice of funeral directing in this State, the Board shall have the power and it shall be its duty to prescribe rules and regulations governing the qualifications, fitness and practice of those engaged in and who may engage in funeral directing in this State; and the care and disposition of dead human bodies; and governing the proper administration of the provisions of this article including defining any provision not specifically defined in this article. The Board shall specifically have the power to fix and prescribe rules and regulations as to the procedure to be followed in making of applications for licenses, in the issuance and renewals of licenses, and conduct of examinations. It shall fix fees to be paid for the registration of apprentices.

(b) The Board may refuse to issue or may refuse to renew, or suspend or revoke any license to act as a funeral director, or may place the holder thereof on a term of probation or suspension after proper hearing upon finding the holder of such license to be guilty of any of the following acts or omissions:

- (1) Conviction of a crime involving moral turpitude,
- (2) Conviction of a felony,
- (3) Unprofessional conduct which is hereby defined to include:
 - a. Misrepresentation or fraud in the conduct of the business or the profession of a funeral director;
 - b. False or misleading advertising as a funeral director;
 - c. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees, provided that this subsection shall not be deemed to prohibit general advertising;
 - d. Employment by the licensee or persons known as "cappers", or "steerers" or "solicitors", or other such persons to obtain funeral directing;
 - e. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, or other persons, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director;
 - f. The direct or indirect giving of certificates of credit, the pay-

ment or offer of payment of a commission by the licensee, his agents, assistants, or employees for the purpose of securing business;

- g. Gross immorality;
- h. Aiding or abetting an unlicensed person to practice funeral directing;
- i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased person whose body has not yet been interred or otherwise disposed of;
- j. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any cemetery, mausoleum, or crematory;
- k. Violation of any of the provisions of this article;
- l. Violation of any State law or municipal ordinance or regulations affecting the handling, custody, care or transportation of dead human bodies;
- m. Fraud or misrepresentation in obtaining a license;
- n. Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody thereof;
- o. Failure to secure permit for removal or burial of a dead human body prior to interment or disposal;
- p. Knowingly making any false statement on a certificate of death;
- q. Indecent exposure or exhibition of a dead human body while in the custody or control of the funeral director.

(4) Failure to pay the license renewal fee on the date designated by the Board and continuing to practice without paying said fee.

(c) In addition to the above specific grounds for refusal or suspension of a license to practice funeral directing or the placing of such licensee on probation, whenever the Board shall have reason to believe that any person to whom a license has been issued has become unfit to practice funeral directing, or has violated any of the provisions of this article or any rule or regulation prescribed pursuant thereto, it shall be the duty of the Board to conduct an investigation, and from such investigation if it shall appear to the Board that there is reasonable ground for belief that the accused may have been guilty of the violation charged, a time and place shall be set by the Board for a hearing to show cause whether or not the license of the accused shall be revoked, or suspended. (1957, c. 1240, s. 2.)

§ 90-210.15. Funeral home; directors; preparation room. — (a) Every established funeral home or firm must employ such licensed funeral director or directors as may be necessary from time to time to operate the business under the terms of this article.

(b) Every such establishment or funeral home shall maintain a preparation room containing at least 64 square feet in area for the preparation of dead human bodies. This room shall be strictly private. No one shall be allowed in the preparation room while a dead human body is being prepared, except the licensed embalmer, their duly registered apprentices, public officials in the discharge of their duties, accredited nurse employed in the case or members of the medical profession, or officials of the funeral home, or other legally authorized persons. The room shall contain the following equipment:

- (1) One modern standard type sanitary operating table;
- (2) Slop sink with adequate drainage;
- (3) Sanitary waste receptacle;
- (4) An approved type instrument sterilizer.

(c) The floor shall have tile or concrete or other waterproof materials covering the floor from wall to wall and the room shall be kept in sanitary condition at all times subject to inspection by the Board or their designated agents at any and all times. (1957, c. 1240, s. 2.)

§ 90-210.16. **Acting as funeral director without license.** — If any person shall practice or hold himself out as practicing the art of funeral directing, without having complied with the licensing provisions of this article, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine or imprisonment for not more than six months, or both, in the discretion of the court. (1957, c. 1240, s. 2.)

ARTICLE 14.

Cadavers for Medical Schools.

§ 90-211. **Board for distribution.** — The North Carolina Board of Anatomy shall consist of three members, one each from the University of North Carolina School of Medicine, the Duke University School of Medicine, and the Bowman Gray School of Medicine of Wake Forest College, appointed by the deans of the respective medical schools. This Board shall be charged with the distribution of dead human bodies for the purpose of promoting the study of anatomy in this State, and shall have power to make proper rules for its government and the discharge of its functions under this article. (1903, c. 666, s. 1; Rev., s. 4287; C. S., s. 6785; 1943, c. 100.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 90-212. **What bodies to be furnished.**—All officers, agents or servants of the State of North Carolina, or of any county or town in said State, and all undertakers doing business within the State, having charge or control of a dead body required to be buried at public expense, or at the expense of any institution supported by State, county or town funds, shall be and hereby are required immediately to notify, and, upon the request of said Board or its authorized agent or agents, without fee or reward, deliver, at the end of a period not to exceed thirty-six hours after death, such body into the custody of the Board, and permit the Board or its agent or agents to take and remove all such bodies or otherwise dispose of them: Provided, that such body be not claimed within thirty-six hours after death to be disposed of without expense to the State, county or town, by any relative within the second degree of consanguinity, or by the husband or wife of such deceased person: Provided, further, that the thirty-six hour limit may be prolonged in cases within the jurisdiction of the coroner where retention for a longer time may be necessary: Provided, further, that the bodies of all such white prisoners dying while in Central Prison or road camps of Wake County, whether death results from natural causes or otherwise, shall be equally distributed among the white funeral homes in Raleigh, and the bodies of all such negro prisoners dying under similar conditions shall be equally distributed among the negro funeral homes in Raleigh; but only such funeral homes can qualify hereunder as at all times maintain a regular licensed embalmer: Provided, further, that nothing herein shall require the delivery of bodies of such prisoners to funeral directors of Wake County where the same are claimed by relatives or friends.

Whenever the dead body is that of an inmate of any State hospital, the State School for the Deaf, the State School for the Deaf, Dumb and Blind, or of any traveler or stranger, it may be embalmed and delivered to the North Carolina Board of Anatomy, but it shall be surrendered to the husband or wife of the deceased person or any other person within the second degree of consanguinity upon demand at any time within ten days after death upon the payment to said Board of the actual cost to it of embalming and preserving the body. (1903, c. 666, s. 2;

Rev., s. 4288; 1911, c. 188; C. S., s. 6786; 1923, c. 110; 1937, c. 351; 1943, c. 100.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 90-213. **Autopsies unlawful without consent of Board.**—It is hereby declared unlawful to hold an autopsy on any dead human body subject to the provisions of this article without first having obtained the consent, in writing, of the chairman of the Board or of his accredited agent: Provided, that nothing in this article shall limit the coroner in the fulfillment of his duties: Provided, further, that nothing in §§ 90-211 through 90-216, inclusive, shall prevent a person from making testamentary disposition of his or her body after death. Provided, further, that nothing in this article shall restrict or limit the provisions of article 30 of the General Statutes entitled "Post-Mortem Medicolegal Examinations." (1903, c. 666, s. 3; Rev., s. 4289; 1911, c. 188; C. S., s. 6787; 1943, c. 100; 1955, c. 972, s. 5.)

Editor's Note.—The 1943 amendment rewrote this section. *vis*o, relating to article 30 of chapter 130 of the General Statutes.

The 1955 amendment added the last pro-

§ 90-214. **Bodies to be distributed to medical schools.**—The bodies obtained under this article shall be distributed, with due precautions to shield them from the public view, among the several medical schools in a proportion to be agreed upon by a majority of the members of the North Carolina Board of Anatomy, such bodies to be used within the State for the advancement of science. (1903, c. 666, s. 4; Rev., s. 4290; C. S., s. 6788; 1943, c. 100.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 90-215. **How expenses paid.** — All expenses for the delivery, distribution and embalming of the dead bodies obtained under this article upon the request of the North Carolina Board of Anatomy, under such rules and regulations as the Board may provide shall be borne by the medical school receiving same, and in no case shall the State or any county or town be liable therefor. (1903, c. 666, s. 5; Rev., s. 4291; C. S., s. 6789; 1943, c. 100.)

Editor's Note.—The 1943 amendment rewrote this section.

§ 90-216. **Violation of article misdemeanor.**—Any person failing or refusing to perform any duty imposed by this article, or violating any of its provisions shall be guilty of a misdemeanor, punishable by a fine and/or imprisonment in the discretion of the court. (1903, c. 666, s. 6; Rev., s. 3567; C. S., s. 6790; 1943, c. 100.)

Editor's Note.—The 1943 amendment rewrote this section.

ARTICLE 14A.

Bequest of Body or Part Thereof.

§ 90-216.1. **Bequest for purposes of medical science or rehabilitation of the maimed authorized.** — Any person who may otherwise validly make a will in this State may by will dispose of the whole or any part of his or her body to a teaching institution, university, college, State Department of Health, legally licensed hospital or any other legally licensed hospital, agency or commission operating an eye bank, bone or cartilage bank, a blood bank or any other bank of a similar nature and kind designated for the rehabilitation of the maimed. (1951, c. 773, s. 1.)

§ 90-216.2. **Donee and purpose of bequest.**—Persons so donating or bequeathing the whole or any part of their bodies under the provisions of § 90-

216.1 may designate the donee or may expressly designate the purpose for which his or her body, or any part thereof, is to be used, but such shall not be necessary. If no donee is named by the donor in his will, then any hospital in which the donor may depart this life or any available physician or surgeon shall be considered the donee and have full authority to take the body or the part thereof so donated and thereafter to use the body or the part thereof so donated for the purposes designated by the donor, or if no such purpose has been designated, then for purposes in accordance with the intention of this article. (1951, c. 773, s. 2.)

§ 90-216.3. **No particular form or words required; liberal construction.**—No particular form or words shall be necessary or required but any written statement or last will and testament or codicil shall be liberally construed to effectuate the intent and purpose of the persons wishing to donate their bodies or any part thereof for the purpose elaborated in this article. (1951, c. 773, s. 3.)

§ 90-216.4. **Provision effective immediately upon death.**—Any provision in any last will and testament or codicil which donates the body of the testator or any part thereof as provided by this article shall become effective immediately upon the death of the testator and the authority for any hospital, physician or surgeon to remove said body or any part thereof shall be such last will and testament or codicil. (1951, c. 773, s. 4.)

§ 90-216.5. **Co-operation of North Carolina State Commission for the Blind.**—The North Carolina State Commission for the Blind is hereby authorized to help and assist in the execution and furtherance of the purposes of this article insofar as it concerns any eye bank and may provide for the registration of the names of persons in need of having their eyesight restored. (1951, c. 773, s. 5.)

ARTICLE 15.

Autopsies.

§ 90-217. **Limitation upon right to perform autopsy.**—The right to perform an autopsy upon the dead body of a human being shall be limited to cases specially provided by statute or by direction or will of the deceased; cases where a coroner or the majority of a coroner's jury deem it necessary upon an inquest to have such an autopsy; and cases where the husband or wife or one of the next of kin or nearest known relative or other person charged by law with the duty of burial, in the order named and as known, shall authorize such examination or autopsy. (1931, c. 152; 1933, c. 209.)

Cross References.—As to authority of coroners, see § 152-7. As to authority of prosecuting officer, see § 15-7. As to cadavers for medical schools, see § 90-213.

Editor's Note.—The 1933 amendment deleted "for the purpose of ascertaining the cause of death," which formerly appeared at the end of this section.

The right of burial belongs to the sur-

viving relations in the order of inheritance. See *Floyd v. R. R.*, 167 N. C. 55, 83 S. E. 12 (1914); 9 N. C. Law Rev. 348.

For note on autopsies and authority to use parts removed in treatment of the living, see 33 N. C. Law Rev. 653.

Cited in *Gurganious v. Simpson*, 213 N. C. 613, 197 S. E. 163 (1938).

§ 90-218. **Post-mortem examination of inmates of certain public institutions.**—Upon the death of any inmate of any institution now maintained, or in the future established, by the State, or any city, county or other political subdivision of the State, for the care of the sick, the feeble-minded or insane, the superintendent, or other administrative head of such institution in which such death occurs, is empowered to authorize a post-mortem examination of the deceased person. Such examination shall be of such scope and nature as may be thought necessary or desirable to promote knowledge of the human organism and the disorders to which it is subject. (1943, c. 87, s. 1.)

§ 90-219. **Post-mortem examinations in certain medical schools.**—The post-mortem examinations and studies authorized may be made in the laboratories of incorporate medical schools of colleges and universities on such conditions as may be agreed upon by the superintendent, or other administrative head of such institution, authorizing the examination and the head of the medical school undertaking to make the examination. (1943, c. 87, s. 2.)

§ 90-220. **Written consent for post-mortem examinations required.**—No superintendent, or other administrative head of such institution, shall authorize any post-mortem examination, as described in §§ 90-218 and 90-219, without first securing the written consent of the deceased person's husband or wife, or one of the next of kin, or nearest known relative or other person charged by law with the duty of burial, in the order named and as known. A copy of the written consent shall be filed in the office of the superintendent, or other administrative head of the institution wherein said inmate dies. (1943, c. 87, s. 3.)

ARTICLE 16.

Dental Hygiene Act.

§ 90-221. **Definitions.**—(a) "Dental hygiene" as used in this article shall mean the treatment of human teeth by removing therefrom calcareous deposits and by removing accumulated accretion from directly beneath the free margin of the gums and polishing the exposed surface of the teeth, provided that nothing in this article shall be construed as affecting the practice of medicine or the practice of dentistry as provided by law, nor so construed as to prevent the performance of the acts herein referred to in colleges or universities under the supervision of instructors;

(b) "Dental hygienist" as used in this article shall mean any person who practices dental hygiene;

(c) "License" shall mean a certificate issued to any applicant upon completion of requirements for admission to practice dental hygiene;

(d) "Renewal certificate" shall mean the annual certificate of renewal of license to continue practice of dental hygiene in the State of North Carolina;

(e) "Board" shall mean "The North Carolina State Board of Dental Examiners" created by chapter one hundred thirty-nine, Public Laws of one thousand eight hundred and seventy-nine, and chapter one hundred and seventy-eight, Public Laws of one thousand nine hundred and fifteen as continued in existence by § 90-22. (1945, c. 639, s. 1.)

§ 90-222. **Administration of article.**—The Board is hereby vested with the authority and is charged with the duty of administering the provisions of this article. (1945, c. 639, s. 2.)

§ 90-223. **Powers and duties of Board.**—The Board shall have authority, in the administration of this article, to fix the time of examinations for the granting of licenses to dental hygienists; form of application to be filed; the type of examination to be given, whether written or oral or a combination of both, and to make such rules and regulations as may be necessary and reasonable to carry out the provisions of this article.

The Board shall keep on file in its office at all times a complete record of the names, addresses, license numbers and renewal certificate numbers of all persons entitled to practice dental hygiene in this State. (1945, c. 639, s. 3.)

§ 90-224. **Eligibility for examination.** — Any person of good moral character over nineteen (19) years of age who is a citizen of any state of the United States or of the United States of America, a graduate of an accredited high school who has successfully completed training in a school of dental hygiene ap-

proved by the Board, shall be eligible to take an examination for a license to practice dental hygiene in the State of North Carolina. (1945, c. 639, s. 4.)

§ 90-225. **Examination of applicants; issuance of license.**—Any person desiring to obtain a license to practice dental hygiene after having complied with the rules and regulations of the Board under its authority to determine eligibility, shall be entitled to an examination by the Board upon such subjects as the Board may deem necessary, which examination may be written or oral or a combination of both, as in the opinion of the Board will be practical or necessary to test the qualifications of the applicant.

As soon as possible after the examination has been given, the Board, under rules and regulations adopted by it, shall determine the qualifications of the applicant and shall issue to each person successfully meeting the qualifications a license which shall entitle the person to practice dental hygiene in the State of North Carolina, subject to the requirements hereinafter provided for annual renewal certificate. (1945, c. 639, s. 5.)

§ 90-226. **Renewal certificates.**—On or before the first of January next following the obtaining of a license to practice dental hygiene, the holder of such license shall obtain from the Board a renewal certificate, which renewal certificate shall authorize the holder of a license certificate to continue the practice of dental hygiene in the State of North Carolina for the current calendar year and on or before each January first thereafter, such holder of a license certificate shall obtain from the Board a renewal certificate, which renewal certificate shall authorize the practice by such person of dental hygiene for the year for which the renewal certificate is issued. (1945, c. 639, s. 6.)

§ 90-227. **Renewal of license.**—Any person who has obtained from the Board a license certificate to practice dental hygiene in the State of North Carolina and who shall fail to obtain a renewal certificate for any year, shall before resuming the practice of dental hygiene make application to the Board under such rules as it may prescribe for the renewal of the license to practice dental hygiene and upon such application being made the Board shall determine that such applicant possesses the qualifications prescribed for the granting of a license to practice dental hygiene and that the applicant continues to possess a good moral character and is not otherwise disqualified to practice dental hygiene in the State of North Carolina, and thereupon issue a renewal certificate for the practice of dental hygiene for the calendar year in which the renewal certificate is issued, and thereafter such person shall have the right to make application annually for the renewal certificate as if there had been no failure to obtain for one year a renewal certificate. (1945, c. 639, s. 7.)

§ 90-228. **Revocation or suspension of license or renewal certificate; unprofessional conduct.** — (a) Grounds for Revocation, etc. — The Board may revoke or suspend the license or renewal certificate of any person upon proof satisfactory to said Board:

- (1) That a license or registration was procured through fraud or misrepresentation.
- (2) That the holder thereof has been convicted of an offense involving moral turpitude.
- (3) That the holder thereof is guilty of chronic or periodic inebriety or addiction to habit forming drugs.
- (4) That the holder thereof is guilty of advertising professional superiority or the performance of professional service in a superior manner; advertising prices for professional services; advertising by means of large display, glaring light signs or containing as a part thereof representation of a tooth, teeth or any other portion of the human head; employing or making use of solicitors or free publicity agents directly

or indirectly; advertising any free dental work or free examination; advertising to guarantee any service.

- (5) That such holder is guilty of hiring, supervising, permitting or aiding unlicensed persons to practice dental hygiene.
- (6) That such holder is guilty of conduct which disqualifies him to practice dental hygiene with safety to the public.
- (7) That such person practices dental hygiene in any place or establishment not authorized by this article.
- (8) That such person is guilty of unprofessional conduct.

(b) Acts Constituting Unprofessional Conduct. — The following acts on the part of a licensed dental hygienist are hereby declared to constitute unprofessional conduct:

- (1) Practicing while his or her license is suspended,
- (2) Practicing without a renewal certificate,
- (3) Willfully deceiving or attempting to deceive the Board or its agents with reference to any matter under investigation by the Board,
- (4) Practicing dental hygiene under a false or assumed name or any name except the full name which was used in making application and in the license granted by the Board or under her married name, established to the satisfaction of the Board,
- (5) Violating this article or the provisions of article 2 of this chapter, or violating or aiding any person to knowingly violate the Dental Practice Act or Dental Hygiene Act of any state or territory, and
- (6) Practicing in the employment of or in association with any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced or as limiting or restricting the said Board from holding that other or similar acts also constitute unprofessional conduct. (1945, c. 639, s. 8.)

§ 90-229. **Procedure for renewal of certificate.**—The procedure for the renewal of a certificate by the Board shall be the same in form and manner as prescribed in § 90-31. (1945, c. 639, s. 9.)

§ 90-230. **Discipline of dental hygienist.**—The procedure for the revocation of a license or for other discipline of a holder of a certificate under this article shall be the same in form and manner as prescribed in § 90-41. (1945, c. 639, s. 10.)

§ 90-231. **Fees and disposition thereof.** — The fees which shall be charged by the Board for the performance of the duties imposed upon it by this article shall be as follows:

- (1) Examination fee, twenty dollars (\$20.00);
- (2) Issuance of annual renewal certificate, two dollars (\$2.00);
- (3) Restoration of license, twenty dollars (\$20.00).

All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this article, with any surplus to be disposed of as provided in article 2 of this chapter. (1945, c. 639, s. 11.)

§ 90-232. **Practice of dental hygiene.**—The holder of a license certificate for the year in which the same is issued, or of a renewal certificate for the current year, shall have the right to practice dental hygiene in this State in the office of any duly licensed dentist; in a clinic or in clinics in the public schools of the State of North Carolina, as an employee of the State Board of Health; in a clinic or in clinics in a State institution as an employee of the institution; in a clinic in any industrial establishment as an employee of such establishment where services are rendered only to bona fide employees of the industrial establishment;

or in a clinic established by a hospital, as an employee of the hospital, where service is rendered only to patients of such hospital. No dentist in private practice shall employ more than one dental hygienist at one and the same time. In a clinic the necessary number of dental hygienists may be employed, but no clinic shall be operated or maintained except under the supervision and direction of a licensed dentist. (1945, c. 639, s. 12.)

§ 90-233. **Violation a misdemeanor.**—Any person who shall violate, or aid or abet another in violating, any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1945, c. 639, s. 13.)

ARTICLE 17.

Dispensing Opticians.

§ 90-234. **Necessity for certificate of registration.**—On and after the first day of July, 1951, no person or combination of persons shall for pay, or reward, either directly or indirectly, practice as a dispensing optician as hereinafter defined in the State of North Carolina without a certificate of registration issued pursuant to the provisions of this article by the North Carolina State Board of Opticians hereinafter established. (1951, c. 1089, s. 1.)

§ 90-235. **Definition.**—Within the meaning of the provisions of this article, the term "dispensing optician" defines one who prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their professions, and in accordance with such prescriptions interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye. The services and appliances related to ophthalmic dispensing shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon prescription issued by a physician or an optometrist; but duplications, replacements, reproductions or repetitions may be done without prescription, in which event any such act shall be construed to be ophthalmic dispensing, the same as if performed on the basis of a written prescription. (1951, c. 1089, s. 2.)

Cross Reference.—See note to § 90-236.

§ 90-236. **What constitutes practicing as a dispensing optician.** — Any one or combination of the following practices when done for pay or reward shall constitute practicing as a dispensing optician: Interpreting prescriptions issued by licensed physicians and/or optometrists; fitting glasses on the face; servicing glasses or spectacles; measuring of patient's face, fitting frames, compounding and fabricating lenses and frames, and any therapeutic device used or employed in the correction of vision, and alignment of frames to the face of the wearer. (1951, c. 1089, s. 3.)

Neither an optician nor an optometrist is permitted to use any medicine to treat the eye in order to relieve irritation or for any other trouble which requires the use of drugs. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

Fitting Contact Lenses.—It is apparent from an examination of the statutes defining the practice of optometry and the business of a dispensing optician that the General Assembly has not expressly authorized either the optometrist or the optician to fit contact lenses to the human eye, but that the general terms of the

statutes governing both are broad enough to authorize the optometrist to do so, and to authorize the dispensing optician to do so upon prescription of a physician, oculist or optometrist. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

So long as the dispensing optician fabricates, fits and inserts contact lenses in the eyes in accordance with the prescriptions of examining physicians or oculists, and requires the patient to return to the examining physician or oculist in order that the writer of the prescription may de-

termine whether or not the prescription has been properly filled and the contact lenses properly measured, fabricated and fitted, such optician is not engaged in the practice of optometry within the meaning

of this section *High v. Ridgeway's Opticians*, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

Quoted in *In re Berman*, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 90-237. Qualifications for dispensing optician.—No person shall be issued a certificate of registration as a registered dispensing optician by the North Carolina State Board of Opticians hereinafter established:

- (1) Unless such person is qualified under the provisions of § 90-240;
- (2) Unless such person is at least twenty-one (21) years of age;
- (3) Unless such person has passed a satisfactory examination conducted by the Board to determine his fitness to engage in the practice of a dispensing optician. (1951, c. 1089, s. 4.)

§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.—There is hereby created a North Carolina State Board of Opticians whose duty it shall be to carry out the purposes and enforce the provisions of this article. The Board shall be appointed by the Governor from a list of names submitted by the North Carolina Opticians Association on or before July 1, 1951, and shall consist of five (5) members, each of whom shall have been engaged in the practice of a dispensing optician for at least five (5) years prior to the enactment of this article. The term of a member shall be as follows: One for one year, one for two years, one for three years, one for four years, and one for five years. The term of any member thereafter appointed shall be for five years. The members of the Board, before entering upon their duties, shall respectively take all oaths taken and prescribed for other State officers in the manner provided by law, which shall be filed in the office of the Secretary of State. The Governor, at his option, may remove any member of the Board for good cause shown and appoint members to fill unexpired terms. (1951, c. 1089, s. 5.)

§ 90-239. Organization, meetings and powers of Board. — Within thirty (30) days after appointment of the Board, the Board shall hold its first regular meeting, and at said meeting and annually thereafter shall choose one of its members as president and one as secretary and treasurer. The Board shall make such rules and regulations not inconsistent with the law as may be necessary to the proper performance of its duties, and each member may administer oaths and take testimony concerning any matter within the jurisdiction of the Board, and a majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the time and place of meeting to be designated by the president. The secretary of the Board shall keep a full and complete record of its proceedings, which shall at all reasonable times be open to public inspection. (1951, c. 1089, s. 6.)

§ 90-240. Examination for practice as a dispensing optician. — Every person, before beginning the practice of a dispensing optician, after July 1, 1951, shall pass the examination before the North Carolina State Board of Opticians. The examination shall be confined to such knowledge as is essential to practice as a dispensing optician and shall show proficiency in the following subjects:

- Ophthalmic lens surface grinding;
- Prescription interpretation;
- Practical anatomy of the eye;
- Theory of light;
- Edge grinding;
- Ophthalmic lenses;
- Measurements of face;
- Finishing, fitting and adjusting glasses and frames to face.

Every person, before taking an examination, must file with the Board an application showing his age, his training and experience, and must file with the Board a certificate of good moral character, signed by two reputable citizens of this State, but an applicant from another state may have such certificate signed by any state officer of the state from which he comes. (1951, c. 1089, s. 7.)

§ 90-241. Fees required.—The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered dispensing optician shall be twenty (\$20.00) dollars; and if he shall successfully pass the examination, he shall pay the further sum of five (\$5.00) dollars on the issuance to him of the certificate of registration. Provided, that any person holding a certificate or license to practice as a dispensing optician in another state where the qualifications prescribed are equal to the qualifications required in this State may be licensed without examination upon the payment of the same fees as required of other applicants. (1951, c. 1089, s. 8.)

§ 90-242. Persons practicing before passage of article.—Every person who has been engaged in the practice of a dispensing optician as defined in this article for a period of five (5) years or more, and who has been a resident of the State of North Carolina for two (2) years immediately prior to the date of the passage of this article, shall be eligible for and receive a license as a dispensing optician. Said person shall file an affidavit as proof of such practice with the Board. The secretary shall keep a record of such persons who shall be exempt from the provisions of § 90-240. Upon the payment of a fee of ten (\$10.00) dollars the secretary shall issue to each of such persons certificates of registration without the necessity of an examination. Failure on the part of persons so entitled within six (6) months of the passage of this article to make written application to the Board for a certificate of registration, accompanied by an affidavit duly signed and verified fully setting forth the grounds upon which he claims certificate and license, which shall be accompanied by a fee of ten (\$10.00) dollars, shall be deemed a waiver of his rights to a certificate and license under the provisions of this article. (1951, c. 1089, s. 9.)

Refusal of License Where Applicant Not Practicing for Five Years.—It is clear that the Board had the right to refuse an application for a license requested by virtue of this section if it appeared that the applicant had not been engaged in the practice of a dispensing optician as defined in this article for a period of five years or more. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

And Mere Filing of Affidavit as to Requisite Practice Is Not Conclusive.—The mere filing of an affidavit with the State Board of Opticians as proof that the affiant had been engaged in the practice of a dispensing optician as defined in this article for a period of five years or more prior to the enactment of article 17, is not conclusive as to his right to receive a license, even though this section states the applicant shall file an affidavit as proof of such practice, since the essential fact for

the granting of such license is that the applicant was in fact engaged in the practice of a dispensing optician during the time required by this section. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

Revocation of License Procured by Misrepresentation in Affidavit.—There was competent, material and substantial evidence to support the order of the State Board of Opticians revoking a license to practice as a dispensing optician on the ground that the licensee procured it by a material misrepresentation, in that he stated in his affidavit that he had been engaged in the practice of a dispensing optician as defined in this article for a period of five years or more, whereas in truth and in fact he had not been so engaged in such practice for such a period of time. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 90-243. Certificates to be recorded.—Every recipient of a certificate of registration shall present the same for recording to the clerk of the superior court of the county in which he resides and practices, and shall pay a fee of fifty (50¢) cents for recording the same. The clerk shall record the certificate in a book to be provided by him for that purpose. Any failure, neglect or refusal on

the part of persons holding certificates to file the same of record for thirty (30) days after the issuance thereafter shall forfeit the certificate and the same shall become null and void. Upon the request of any person to whom a certificate has been issued the Board shall issue a certified copy thereof, and upon the proof of the loss of the original being made to appear, the certified copy shall be recorded in lieu of the original. The Board shall be entitled to a fee of one (\$1.00) dollar for the issuance of certified copy. (1951, c. 1089, s. 10.)

Editor's Note.—The word “thereafter” probably read “thereof”, although “there-in the third sentence of this section should after” is the enacted word.

§ 90-244. Posting of certificates.—Every person to whom a certificate of registration has been granted under this article shall display the same in a conspicuous part of the office or establishment wherein he is engaged as a dispensing optician. (1951, c. 1098, s. 11.)

§ 90-245. Collection of fees.—The secretary to the Board is hereby authorized and empowered to collect in the name and on behalf of this Board the fees prescribed by this article and shall turn over to the State Treasurer all funds collected or received under this article, which funds shall be credited to the North Carolina State Board of Opticians, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this article. The secretary to the Board shall, before entering upon the duties of the office, execute a satisfactory bond with a duly licensed surety or other surety approved by the Director of the Budget, said bond to be in the penal sum of not less than two thousand (\$2,000.00) dollars and conditioned upon the faithful performance of the duties of the office and the true and correct accounting of all funds received by such secretary by virtue of such office. Nothing in this article shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from the fees collected under the provisions of this article and received by the State Treasurer in the manner aforesaid. (1951, c. 1089, s. 12.)

§ 90-246. Yearly license fees.—For the use of the Board in performing its duties under this article, every registered dispensing optician shall in each year after the year 1951 pay to the North Carolina State Board of Opticians a sum not exceeding twenty-five (\$25.00) dollars, the amount to be fixed by the Board, as a license fee for the year. Such payment shall be made prior to the first day of April in each year and in case of default in payment by a registered dispensing optician, his certificate of registration may be revoked by the Board at the next regular meeting of the Board, after notice as herein provided. But no license shall be revoked for nonpayment if the person so notified shall, before or at the time of consideration, pay his fee and such penalty as may be imposed by the Board. A penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed five (\$5.00) dollars. The Board may collect any dues or fees provided in this section by suit in the name of the Board. The notice hereinbefore mentioned shall be in writing addressed to the persons in default of the payments of dues herein mentioned at the last address shown by the records of the Board and shall be sent by the secretary of the Board by registered mail with proper postage attached at least twenty (20) days before the date upon which revocation of the license is to be considered, and the secretary shall keep a record of the fact and the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of license of persons to whom such notice is addressed. (1951, c. 1089, s. 13.)

§ 90-247. Meeting of the Board.—The Board shall meet at least once each year for the purpose of transacting all business of the Board and to conduct examinations of applicants for certificates of registration as herein provided

and at such other times as may be necessary, said meetings to be held at such time and place as the president of the Board may determine. Special meetings of the Board shall be called by the president upon the written request of three (3) members thereof. (1951, c. 1089, s. 14.)

§ 90-248. Compensation and expenses of Board members and secretary.—Each member of the Board shall receive for his services for the time actually in attendance upon board meetings the sum of ten (\$10.00) dollars per day and shall be reimbursed for actual necessary expenses incurred in the discharge of such duties not to exceed five (\$5.00) dollars per day for subsistence plus the actual traveling expenses or an allowance of five (5¢) cents per mile while such member uses his personally owned automobile. The compensation of the secretary shall be fixed by the Board in an amount not to exceed three hundred dollars (\$300.00) per annum. (1951, c. 1089, s. 15; 1953, c. 894.)

Editor's Note.—The 1953 amendment added the second sentence.

§ 90-249. Powers of the Board. — The Board shall have the power to make such rules and regulations not inconsistent with the laws of the State of North Carolina as may be necessary and proper for the regulation of the practice of dispensing optician and for the performance of its duties. The Board shall have the power to revoke any certificate of registration granted by it under this article for conviction of crime, habitual drunkenness, gross incompetency, for contagious or infectious disease.

The Board shall likewise have the power to revoke licenses and certificates of registration upon the finding by the Board that the holder of such certificate has been guilty of unethical methods of practice. It shall be considered unethical practice to advertise in any manner by words or phrases of similar import which convey or which are calculated to convey the impression to the public that the eyes are examined by persons licensed under this article or by the use of words and phrases of a character tending to deceive or mislead the public or in the nature of price or baiting advertising; use of advertising directly or indirectly by any method or nature which seeks or solicits on any installment plan; house to house canvassing or peddling directly or through any agent or employee for the purpose of selling, fitting or supplying frames, mountings, lenses or other ophthalmic materials.

Any person whose certificate has been revoked for any cause may, after the expiration of ninety (90) days, and within two (2) years from the date of revocation, apply to the Board to have the same reinstated, and upon a showing satisfactory to the Board and in the discretion of the Board, the certificate of registration or license may be restored to such person.

The procedure for revocation and suspension of a license shall be in accordance with the provisions of chapter 150 of the General Statutes. (1951, c. 1089, s. 16; 1953, c. 1041, s. 19.)

Cross Reference.—As to judicial review of decisions of Board, see note to § 150-27.

Editor's Note.—The 1953 amendment added the last paragraph and made other changes.

Board May Revoke License Procured by Fraud or Misrepresentations. — Certain grounds for revocation of a license issued by the Board are set forth in this section. Fraud or misrepresentation, which is material, in the procurement of the license is not one of them, but the Board has inherent power, independent of statutory authority, to revoke a license it improperly

issued by reason of material fraud or misrepresentation in its procurement. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

The crucial findings of fact of the State Board of Opticians being supported by the evidence, it was error for the superior court on appeal to reverse the judgment of the Board revoking the license theretofore granted to the applicant under § 90-249 on the ground that its issuance was procured by misrepresentations. In re Berman, 245 N. C. 612, 96 S. E. (2d) 836 (1957).

§ 90-250. **Sale of optical glasses.**—No optical glass or other kindred products or instruments of vision shall be dispensed, ground or assembled in connection with a given formula prescribed by a licensed physician or optometrist except under the supervision of a licensed dispensing optician and in a registered optical establishment or office. Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles without advice or aid as to the selection thereof as merchandise from permanently located or established places of business. (1951, c. 1089, s. 17.)

§ 90-251. **Licensee allowing unlicensed person to use his certificate or license.**—Each licensee licensed under the provisions of this article who shall rent, loan or allow the use of his registration certificate or license to an unlicensed person for any unlawful use shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred (\$100.00) dollars or imprisoned for not more than twelve (12) months, or both, in the discretion of the court, and shall forfeit his license. (1951, c. 1089, s. 18.)

§ 90-252. **Necessity for dispensing optician to supervise place of business; false and deceptive advertising.**—Any person, firm or corporation owning, managing or conducting a store, shop or place of business and not having in its employ a licensed dispensing optician for the supervision of such store, office, place of business or optical establishment, or including an advertisement, whether in newspaper, radio, book, magazine or other printed matter the words, "optician, licensed optician, optical establishment, optical office," or any combination of such terms within or without such store as to mislead the public, that the same is a legally established optical place of business duly licensed as such or managed or conducted by persons holding a dispensing optician's license, when in fact such license or permit is not held by such person, firm or corporation, or some person in the employ and in charge of such optical business, shall upon conviction be fined not less than one hundred (\$100.00) dollars or be imprisoned for not more than twelve (12) months, or both, in the discretion of the court. (1951, c. 1089, s. 19.)

§ 90-253. **Exemptions from article.**—Nothing in this article shall be construed to apply to a licensed physician or optometrist, nor to any individual, partnership or corporation who is now and shall in the future engage in supplying ophthalmic prescriptions and supplies to physicians, optometrists, dispensing opticians or optical scientists. (1951, c. 1089, s. 20.)

§ 90-254. **General penalty for violation.**—Any person, firm or corporation who shall violate any provision of this article for which no other penalty has been provided shall, upon conviction, be fined not more than two hundred (\$200.00) dollars or imprisoned for a period of not more than twelve (12) months, or both, in the discretion of the court. (1951, c. 1089, s. 21.)

§ 90-255. **Gifts, premiums or discounts unlawful; refund of fees; illegal advertising.**—It shall be unlawful for any person, firm or corporation to offer or give any gift or premium or discount, directly or indirectly, or in any form or manner participate in the division, assignment, rebate or refund of fees or parts thereof or to engage in advertising in any form or manner that would urge the public to seek the services of any specific professional person or group of persons engaged in the field of refraction and visual care. (1951, c. 1089, s. 23.)

ARTICLE 18.

Physical Therapy.

§ 90-256. **Definitions.**—In this article, unless the context otherwise requires:

- (1) "Physical therapist" means a person who practices physical therapy as

defined in this article under the prescription, supervision and direction of a person licensed in this State to practice medicine and surgery.

- (2) "Physical therapy" means the treatment of any bodily or mental conditions of any person by the use of the physical, chemical and other properties of heat, light, water, electricity, massage and therapeutic exercise, which includes posture and rehabilitation procedures. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in this article.
- (3) Words importing the masculine gender may be applied to females. (1951, c. 1131, s. 1.)

§ 90-257. Examining committee. — The State examining committee of physical therapists is hereby created. The examining committee shall consist of five members, including at least one doctor and four physical therapists, who shall be appointed by the Governor from a list submitted to him by the North Carolina Physical Therapy Association, Inc., for terms as provided in this article. Each physical therapy member of said examining committee shall be registered, a resident of this State, and shall have not less than three years' experience in the practice of physical therapy immediately preceding his appointment and shall be actively engaged in the practice of physical therapy during his incumbency. On or before January 1, 1952, five members shall be appointed by the Governor, whose terms of office shall commence on January 1, 1952, one member to serve for one year, two for two years, and two for three years respectively, to serve until their successors are appointed. On January 1, 1953, and triennially thereafter, one member shall be appointed for three years; on January 1, 1954, and triennially thereafter, two members shall be appointed for three years; on January 1, 1955, and triennially thereafter, two members shall be appointed for three years. In the event that a member of the examining committee for any reason cannot complete his term of office, another appointment shall be made by the Governor in accordance with the procedure stated above to fill the remainder of the term. No member may serve for more than two successive three-year terms. The committee shall designate one of its members as chairman, and one as secretary-treasurer.

The examining committee shall have the power to make such rules not inconsistent with the law which may be necessary for the performance of its duties. The North Carolina Physical Therapy Association, Inc., shall furnish such clerical and other assistance as the examining committee may require. Each member of the examining committee shall, in addition to necessary travel expenses, receive compensation in an amount for each day actually engaged in the discharge of his duties: Provided, however, that such compensation shall not exceed \$10.00 per diem.

It shall be the duty of the examining committee to pass upon the qualifications of applicants for registration, prepare the necessary lists of examination questions, conduct all examinations and determine the applicants who successfully pass examination. (1951, c. 1131, s. 2.)

§ 90-258. Qualifications of applicants for examination; application; subjects of examination; fee.—A person who desires to be registered as a physical therapist and who

- (1) Is of good moral character;
- (2) Has obtained a high school education or its equivalent as determined by the examining committee; and
- (3) Has been graduated by a school of physical therapy approved for training physical therapists by the appropriate sub-body of the American Medical Association, if any, at the time of his graduation, or if gradu-

ated prior to 1936, the school or course was approved by the American Physical Therapy Association at the time of his graduation; may make application, on a form furnished by the examining committee, for examination for registration as a physical therapist by the examining committee as defined in this article. Such examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics, physical therapy, as defined in this article, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this article. At the time of making such application, the applicant shall pay to the secretary-treasurer of the committee twenty-five dollars (\$25.00), no portion of which shall be returned. (1951, c. 1131, s. 3; 1959, c. 630.)

Editor's Note.—Prior to the 1959 amendment the applicant was required to be at least twenty-one years old.

§ 90-259. Certificates of registration for successful examinees. — The examining committee shall furnish a certificate of registration to each applicant who successfully passes the examination for registration as a physical therapist. (1951, c. 1131, s. 4.)

§ 90-260. Certificates of registration for persons qualified at time of passage of article.—The examining committee shall furnish a certificate of registration to any person who applies for such registration on or before July 1, 1952, and who on April 14, 1951, meets the qualifications for a physical therapist as set forth by the American Physical Therapy Association and for a senior member of the American Registry of Physical Therapists, and who, at the time of application is practicing physical therapy in the State of North Carolina. At the time of making such application, such applicant shall pay to the secretary-treasurer of the committee a fee of twenty-five dollars (\$25.00). (1951, c. 1131, s. 5.)

§ 90-261. Certificates of registration for persons registered in other states or territories.—The examining committee shall furnish a certificate of registration to any person who is a physical therapist registered under the laws of another state or territory, if the applicable requirements for registration of physical therapists were at the date of his registration substantially equal to the requirements under this article. At the time of making application, such applicant shall pay to the secretary-treasurer of the committee a fee of twenty-five dollars (\$25.00). (1951, c. 1131, s. 6; 1959, c. 630.)

Editor's Note.—The 1959 amendment deleted the former second sentence and the latter part of the first sentence.

§ 90-261.1. Graduate students exempt from registration; registration of foreign-trained physical therapists. — (a) Physical therapists, including foreign-trained physical therapists, who are graduate students in special physical therapy courses receiving a small stipend rather than the usual staff salary for practicing their profession as part of their training, shall not be required to register as physical therapists in North Carolina. Any such physical therapist shall furnish sufficient information to the State examining committee for it to determine such person's status. At the end of one year, should the student wish to continue his education in this State, he must apply to the North Carolina State examining committee for evaluation of his status as of that time.

(b) A temporary certificate of registration, limited to six months, may be issued to a foreign-trained physical therapist who

- (1) Makes the usual application for registration,
- (2) Holds a diploma from an approved school of physical therapy in his own country,

(3) Is a member of a professional association belonging to World Confederation of Physical Therapists whose credentials are acceptable to the American Physical Therapy Association and to the North Carolina State examining committee of physical therapists, and

(4) Pays the required North Carolina registration fee.

(c) A regular certificate of registration may be issued to a foreign-trained physical therapist who fulfills the above requirements in subsection (b) of this section and who passes the next North Carolina State examination for registration or who has passed the American Physical Therapy Association's examination for foreign-trained physical therapists. (1959, c. 630.)

§ 90-262. Renewal of registration; lapse; revival.—Every registered physical therapist shall, during the month of January, 1953, and during the month of January every year thereafter, apply to the examining committee for an extension of his registration and pay a fee of five dollars (\$5.00) to the secretary-treasurer. Registration that is not so extended in the first instance before February 1, 1953, and thereafter before February 1 of every successive year, shall automatically lapse. The examining committee shall revive and extend a lapsed registration on the payment of current fees provided the requirements for securing an original certificate have not been changed so as to have become more stringent than the requirements at the time the certificate lapsed, but the examining committee may refuse to grant any such extension on the same grounds as are set forth in § 90-263 for refusing to grant or for revoking the registration of a physical therapist. (1951, c. 1131, s. 7; 1959, c. 630.)

Editor's Note.—The 1959 amendment rewrote the last sentence of this section.

§ 90-263. Grounds for refusing registration; revocation. — The examining committee shall refuse to grant registration to any physical therapist or shall revoke the registration of any physical therapist if he

- (1) Is habitually drunk or is addicted to the use of narcotic drugs;
- (2) Has been convicted of violating any State or federal narcotic law;
- (3) Has obtained or attempted to obtain registration by fraud or material misrepresentation;
- (4) Is guilty of any act derogatory to the standing and morals of the profession of physical therapy, including the treatment or undertaking to treat ailments of human beings otherwise than by physical therapy and as authorized by this article, and undertaking to practice independent of the prescription, direction and supervision of a person licensed in this State to practice medicine and surgery.

The procedure for revocation shall be that set forth in chapter 150 of the General Statutes relating to uniform revocation of licenses. (1951, c. 1131, s. 8; 1959, c. 630.)

Editor's Note.—The 1959 amendment added the last paragraph.

§ 90-264. Unregistered person not to represent himself as registered physical therapist.—A person who is not registered with the examining committee as a physical therapist shall not represent himself as being so registered and shall not use in connection with his name the words or letters "R. P. T.", "Registered Physical Therapist," "Physical Therapist" or "Physiotherapist," or any other letters, words or insignia indicating or implying that he is a registered physical therapist. Any person violating the provisions of this section after January 1, 1952, shall be guilty of a misdemeanor; provided, that nothing in this article shall prohibit any person who does not in any way assume or represent himself or herself to be a "Registered Physical Therapist," abbreviated "R. P. T.", or "Physical Therapist," or "Physiotherapist," from doing all types of therapy. (1951, c. 1131, s. 9.)

§ 90-265. **Fraudulently obtaining, etc., registration a misdemeanor.**—A person who obtains or attempts to obtain registration as a physical therapist by a willful misrepresentation or any fraudulent representation shall be guilty of a misdemeanor. (1951, c. 1131, s. 10.)

§ 90-266. **Necessity for prescription, supervision and direction of licensed doctor.**—A person registered under this article as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the prescription, supervision and direction of a person licensed in this State to practice medicine and surgery. Any person violating the provisions of this section shall be guilty of a misdemeanor. (1951, c. 1131, s. 11.)

§ 90-267. **Rules and regulations; records to be kept; copies of register.**—The examining committee is authorized to adopt reasonable rules and regulations to carry this article into effect and may amend and revoke such rules at its discretion. The examining committee shall keep a record of proceedings under this article and a register of all persons registered under it. The register shall show the name of every living registrant, his last known place of business and last known place of residence and the date and number of his registration and certificate as a registered physical therapist. Any interested person in the State is entitled to obtain a copy of that list on application to the examining committee and payment of such amount as may be fixed by them, which amount shall not exceed the cost of the list so furnished. (1951, c. 1131, s. 12.)

§ 90-268. **Disposition of fees.**—All fees collected pursuant to this article shall be expended, under the direction of said committee, for the purposes of defraying the expense of holding examinations and issuing licenses. (1951, c. 1131, s. 14.)

§ 90-269. **Title.**—This article may be cited as the “Physical Therapists Practice Act.” (1951, c. 1131, s. 15.)

§ 90-270. **Osteopaths, chiropractors and Y. M. C. A. Health Clubs not restricted.**—Nothing in this article shall restrict the practice of physical therapy by licensed osteopaths or chiropractors, or the operation of Y. M. C. A. Health Clubs. (1951, c. 1131, s. 15.1.)

ARTICLE 19.

Sterilization Operations.

§ 90-271. **Operations lawful; consent required for operation on married person or person over twenty-one.**—It shall be lawful for any physician or surgeon licensed by this State and acting in collaboration or consultation with at least one or more physicians or surgeons so licensed, when so requested by any person twenty-one years of age or over, or less than twenty-one years of age if legally married, to perform, in a hospital licensed by the Medical Care Commission, upon such person a surgical interruption of vas deferens or Fallopian tubes, as the case may be, provided a request in writing is made by such person at least thirty (30) days prior to the performance of such surgical operation, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation; and provided, further, that a request in writing is also made at least thirty (30) days prior to the performance of the operation by the spouse of such person, if there be one, unless the spouse has been declared mentally incompetent, or unless a separation agreement has been entered into between the spouse and the person to be operated upon, or unless the spouse and the person to be operated upon have been divorced from bed and board or have been divorced absolutely. (1963, c. 600.)

§ 90-272. **Operation on unmarried minor.** — Any such physician or surgeon may perform a surgical interruption of vas deferens or Fallopian tubes upon any unmarried person under the age of twenty-one years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in G. S. 90-271, provided that the juvenile court of the county wherein such minor resides, upon petition of the parent or parents, if they be living, or the guardian or next friend of such minor, shall determine that the operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation. (1963, c. 600.)

§ 90-273. **Thirty-day waiting period.**—No operation shall be performed pursuant to the provisions of this article prior to thirty (30) days from the date of consent or request therefor, or in the case of an infant, from the date of the order of the court authorizing the same, and in neither event if the consent for such operation is withdrawn prior to its commencement. (1963, c. 600.)

§ 90-274. **No liability for nonnegligent performance of operation.**—Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed by this State shall be liable either civilly or criminally by reason of having performed a surgical interruption of vas deferens or Fallopian tubes authorized by the provisions of this article upon any person in this State. (1963, c. 600.)

§ 90-275. **Article does not affect eugenical or therapeutical sterilization laws.**—Nothing in this article shall be deemed to affect the provisions of article 7 of chapter 35 of the General Statutes of North Carolina. (1963, c. 600.)

Chapter 90A

Sanitarians.

Sec.	Sec.
90A-1. Definitions.	90A-7. Rating of educational institutions.
90A-2. State Board of Sanitarian Examiners created; composition; appointment and term of office.	90A-8. Certification and registration of persons performing sanitarian functions after January 1, 1960.
90A-3. Compensation and expenses of members; employees; administrative expenses.	90A-9. Certification and registration of sanitarian certified in other states.
90A-4. Chairman of Board; meetings; quorum; rules and regulations; seal; authority to administer oaths; membership by public employee.	90A-10. Renewal of certificates.
90A-5. Reports by Board.	90A-11. Suspension and revocation of certificates.
90A-6. Examination and certification of sanitarians; fee; qualifications.	90A-12. Representing oneself as registered sanitarian without certificate prohibited; appending letters "R. S." to name.
	90A-13. Violations; penalty: injunction.

§ 90A-1. **Definitions.** — (a) For the purpose of this chapter, "Board" means the State Board of Sanitarian Examiners.

(b) For the purpose of this chapter, "sanitarian" means a person who is qualified by education and experience in the biological and sanitary sciences to engage in the promotion and protection of the public health by the application of technical knowledge to solve problems of a sanitary nature and the development of methods for the control of man's environment for the protection of health, safety, and well-being. (1959, c. 1271, s. 1.)

Editor's Note.—The act inserting this chapter is effective as of Jan. 1, 1960.

§ 90A-2. **State Board of Sanitarian Examiners created; composition; appointment and term of office.**—In order to provide for the effective promotion of public health and the proper protection of life and property by those qualified in biological and sanitary sciences, there is hereby created a State Board of Sanitarian Examiners. The Board shall consist of the State Health Director, or his duly authorized representative; the Dean of the School of Public Health, University of North Carolina, or his duly authorized representative; the Director of the Division of Sanitary Engineering, State Board of Health; and four sanitarians, one local health director, and one public-spirited citizen to be appointed by the Governor. Prior to January 1, 1960, the Governor shall appoint one sanitarian for a term of one year; one sanitarian for a term of two years; one sanitarian and one local health director for a term of three years; and one sanitarian and one public-spirited citizen for a term of four years. Thereafter, as the term of an appointed member expires, or as a vacancy in the appointed membership occurs for any reason, the Governor shall appoint a successor for a term of four years, or for the remainder of the unexpired term, as the case may be.

The sanitarians appointed by the Governor must be registered sanitarians under the provisions of this chapter; provided, however, that this requirement shall not apply to members of the original Board during their initial terms of office. (1959, c. 1271, s. 2.)

§ 90A-3. **Compensation and expenses of members; employees; administrative expenses.** — Members of the Board shall receive ten dollars (\$10.00) per day for each day actually spent in the performance of duties required by this chapter, plus actual travel expense. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board. The total ex-

pense of the administration of this chapter shall not exceed the total income therefrom; and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina. (1959, c. 1271, s. 3.)

§ 90A-4. Chairman of Board; meetings; quorum; rules and regulations; seal; authority to administer oaths; membership by public employee.—The Board shall annually elect a chairman from among its membership. The Board shall meet annually in the city of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. Five members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board. The Board shall have an official seal and each member shall be empowered to administer oaths in the taking of testimony upon any matters pertaining to the functions of the Board. Membership on the Board of any public employee shall not constitute dual office holding but merely additional duties of such employee. (1959, c. 1271, s. 4.)

§ 90A-5. Reports by Board. — The Board shall file such reports as are required by chapter 93B of the General Statutes of North Carolina. (1959, c. 1271, s. 5.)

§ 90A-6. Examination and certification of sanitarians; fee; qualifications.—(a) The Board shall issue a certificate as a registered sanitarian to any applicant who pays a fee set by the Board but not to exceed twenty dollars (\$20.00), who passes an examination to the satisfaction of the Board, and who submits evidence verified by oath and satisfactory to the Board that he:

- (1) Is at least twenty-one years of age;
- (2) Is of good moral character;
- (3) Is a citizen of the United States, or has legally declared his intentions of becoming one;
- (4) Has received a degree from a four-year educational institution rated as acceptable by the Board as provided in § 90A-7, with a major in biological and/or physical sciences; and
- (5) Has had at least three years' experience, under the supervision of a registered sanitarian or under other equivalent supervision, in the field of environmental sanitation, or at least two years of such experience in the field of environmental sanitation plus one year of graduate study in sanitary science.

(b) The examination required by subsection (a) of this section shall be in a form prescribed by the Board, and may be oral, written, or both. The examination for unlicensed applicants shall be held annually, or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. Persons failing to pass the examination shall be refunded one half of the examination fee. Failure to pass an examination shall not prohibit such person from being examined at a subsequent time. (1959, c. 1271, s. 6.)

§ 90A-7. Rating of educational institutions. — For the purpose of determining the qualifications of applicants for certification and registration under this chapter, the Board may accept the ratings of educational institutions as issued by accrediting bodies acceptable to the Board. (1959, c. 1271, s. 7.)

§ 90A-8. Certification and registration of persons performing sanitarian functions after January 1, 1960. — Any person who, within six

months after January 1, 1960, submits to the Board under oath evidence satisfactory to the Board that he was performing functions as a sanitarian (as defined in § 90A-1) on January 1, 1960, shall be certified as a registered sanitarian upon the payment of a fee of not more than ten dollars (\$10.00) as determined by the Board. The provisions of this section shall not apply to persons performing functions as a sanitarian's aide (as defined by the North Carolina Merit System Council) on January 1, 1960. (1959, c. 1271, s. 8.)

§ 90A-9. **Certification and registration of sanitarian certified in other states.**—The Board may, without examination, grant a certificate as a registered sanitarian to any person who, at the time of application, is certified as a registered sanitarian by a similar board of another state, district or territory whose standards are acceptable to the Board but not lower than those required by this chapter. A fee of not more than twenty dollars (\$20.00), as determined by the Board, must be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section. (1959, c. 1271, s. 9.)

§ 90A-10. **Renewal of certificates.** — (a) A certificate as a registered sanitarian issued pursuant to the provisions of this chapter must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars (\$10.00). The Board is authorized to charge an extra two-dollar late renewal fee for renewals made after the first day of January of each year.

(b) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate. (1959, c. 1271, s. 10.)

§ 90A-11. **Suspension and revocation of certificates.**—(a) The Board shall have the power to refuse to grant, or may suspend or revoke, any certificate issued under the provisions of this chapter for any of the causes hereafter enumerated:

- (1) Conviction of a felony;
- (2) Fraud, deceit, or perjury in obtaining registration under the provisions of this chapter;
- (3) Habitual use of morphine, opium, cocaine, or any drug having a similar effect;
- (4) Habitual drunkenness;
- (5) Defrauding the public or attempting to do so; or
- (6) Failing, for a period of more than six months after the renewal date, to renew his certificate, and has continued during that period to represent himself as a registered sanitarian.

(b) The procedure to be followed by the Board when it contemplates refusing to allow an applicant to take an examination, or to revoke or suspend a certificate issued under the provisions of this chapter, shall be in accordance with the provision of chapter 150 of the General Statutes of North Carolina. (1959, c. 1271, s. 11.)

§ 90A-12. **Representing oneself as registered sanitarian without certificate prohibited; appending letters "R. S." to name.** — No person shall offer his service as a registered sanitarian or use, assume or advertise in any way any title or description tending to convey the impression that he is a registered sanitarian unless he is the holder of a current certificate of registration issued by the Board. A holder of a current certificate of registration may append to his name the letters, "R. S.". (1959, c. 1271, s. 12.)

§ 90A-13. **Violations; penalty; injunction.** — It shall be unlawful for any person to represent himself as a registered sanitarian without being duly reg-

istered and the holder of a currently valid certificate of registration issued by the Board. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable in the discretion of the court. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this chapter. (1959, c. 1271, s. 13.)

Chapter 91.

Pawnbrokers.

Sec.

- 91-1. Pawnbroker defined.
 91-2. License; business confined to municipalities.
 91-3. Municipal authorities to grant and control license; bond.

Sec.

- 91-4. Records to be kept.
 91-5. Pawn ticket.
 91-6. Sale of pledges.
 91-7. Usury law applicable.
 91-8. Violation of chapter misdemeanor.

§ 91-1. **Pawnbroker defined.** — Any person, firm, or corporation who shall engage in the business of lending or advancing money on the pledge and possession of personal property, or dealing in the purchasing of personal property or valuable things on condition of selling the same back again at stipulated prices, is hereby declared and defined to be a pawnbroker. (1915, c. 198, s. 1; C. S., s. 7000.)

§ 91-2. **License; business confined to municipalities.** — No person, firm, or corporation shall engage in the business of lending money, or other things, for profit or on account of specific articles of personal property deposited with the lender in pledge in this State, which business is commonly known as that of pawnbrokers, except in incorporated cities and towns, and without first having obtained a license to do so from such incorporated cities and towns, and by paying the county, State, and municipal tax required by law, and otherwise complying with the requirements made in this and succeeding sections. (1915, c. 198, s. 1; C. S., s. 7001.)

Local Modification.—Cumberland: 1957, c. 1155, s. 1.

Cross Reference.—As to the State license tax, see § 105-50.

§ 91-3. **Municipal authorities to grant and control license; bond.**—The board of aldermen, or other governing body, of any city or town in this State may grant to such person, firm, or corporation as it may deem proper, and who shall produce satisfactory evidence of good character, a license authorizing such person, firm, or corporation to carry on the business of a pawnbroker, which said license shall designate the house in which such person, firm, or corporation shall carry on said business, and no person, firm, or corporation shall carry on the business of a pawnbroker without being duly licensed, nor in any other house than the one designated in the said license. Every person, firm, or corporation so licensed to carry on the business of a pawnbroker shall, at the time of receiving such license, file with the mayor of the city or town granting the same, a bond payable to such city or town in the sum of one thousand dollars, to be executed by the person so licensed and by two responsible sureties, or a surety company licensed to do business in the State of North Carolina, to be approved of by such mayor, which said bond shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The board of aldermen, or other governing body, shall have full power and authority to revoke such license and sue for forfeiture of the bond upon a breach thereof. Any person who may obtain a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied, may maintain an action in his own name upon the said bond of said pawnbroker, in any court having jurisdiction of the amount demanded, to satisfy said judgment. (1915, c. 198, s. 2; C. S., s. 7002.)

Local Modification.—Cumberland: 1957, c. 1155, s. 2.

§ 91-4. **Records to be kept.** — Every pawnbroker shall keep a book in which shall be legibly written, at the time of the loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on said loan,

and the name and residence of the person pawning or pledging the said goods, articles, or things. (1915, c. 198, s. 3; C. S., s. 7003.)

§ 91-5. **Pawn ticket.**—And every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, articles, or things a ticket or memorandum or note signed by him containing the substance of the entry required to be made by him in his book as aforesaid, and a copy of the said ticket, memorandum, or note so given to the person pawning or pledging any goods, articles, or things of value, shall be filed within forty-eight hours in the office of the chief of police of the city or town issuing the license to such pawnbroker. The said tickets or memorandums so issued shall be numbered consecutively and dated the day issued. (1951, c. 198, s. 3; C. S., s. 7004.)

Local Modification.—Cumberland: 1957, c. 1155, s. 3.

§ 91-6. **Sale of pledges.**—No pawnbroker shall sell any pawn or pledge until the same shall have remained sixty days in his possession after the maturity of the debt for which the property was pledged. And no pawnbroker shall advertise or sell at his place of business as unredeemed pledges any articles of property other than those received by him as pawns or pledges in the usual course of his business at the place where he is licensed to do business. (1915, c. 198, s. 4; C. S., s. 7005.)

Cross Reference.—As to sale of pledged goods, see § 105-50.

§ 91-7. **Usury law applicable.**—The provisions of this chapter shall not be construed to relieve any person from the penalty incurred under the laws against usury in this State. (1915, c. 198, s. 5; C. S., s. 7006.)

§ 91-8. **Violation of chapter misdemeanor.**—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court. (1915, c. 198, s. 5; C. S., s. 7007.)

Chapter 92. Photographers.

§§ 92-1 to 92-29: Deleted.

Cross References.—As to prevention of certain fraudulent practices by photographers, see §§ 66-59 to 66-64. As to coupons redeemable in products of photography, see §§ 66-59 to 66-64. As to privilege tax on photographers, see §§ 105-41, 105-48.1.

Editor's Note.—This chapter which had its origin in Public Laws 1935, c. 155, enacted to regulate the practice of photography through the agency of an examining board, has been deleted because of its invalidity.

Chapter Held Unconstitutional.—Chapter 92 of the General Statutes, relating to the licensing and supervision of photographers, was held unconstitutional as violative of Art. I, §§ 1, 17 and 31 of the State Constitution. *State v. Ballance*, 229 N. C. 764, 51 S. E. (2d) 731 (1949), overruling *State v. Lawrence*, 213 N. C. 674, 197 S. E. 586, 116 A. L. R. 1366 (1938).

For decisions of other jurisdictions which have held practically identical statutes invalid, see *Buehman v. Bechtel*, 57 Ariz. 363, 114 P. (2d) 227, 134 A. L. R. 1374 (1941); *Sullivan v. DeCerb* 156 Fla. 496, 23 So. (2d) 571 (1945); *Bramley v. State*, 187 Ga. 826, 2 S. E. (2d) 647 (1939); *Territory v. Kraft* 33 H. w. 397; *State v. Cromwell*, 72 N. D. 565, 9 N. W. (2d) 914;

Wright v. Wiles, 173 Tenn. 334, 117 S. W. (2d) 736, 119 A. L. R. 456 (1938); *Moore v. Sutton*, 185 Va. 481, 39 S. E. (2d) 348 (1946).

Not Valid Exercise of Police Power and Violative of Constitutional Guaranties.—

“When chapter 92 of the General Statutes is laid alongside the relevant legal authorities and principles, it is plain that it is not a valid exercise of the police power of the State, and that it violates the constitutional guaranties securing to all men the right to ‘liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness’ and providing that no person is to be deprived of ‘liberty or property, but by the law of the land.’ It unreasonably obstructs the common right of all men to choose and follow one of the ordinary lawful and harmless occupations of life as a means of livelihood, and bears no rational, real, or substantial relation to the public health, morals, order, or safety, or the general welfare. Instead, it is addressed to the interests of a particular class rather than the good of society as a whole, and tends to promote a monopoly in what is essentially a private business.” *State v. Ballance*, 229 N. C. 764, 772, 51 S. E. (2d) 731 (1949).

Chapter 93.

Public Accountants.

Sec.		Sec.	
93-1.	Definitions; practice of law.	93-8.	Public practice of accounting by corporations prohibited.
93-2.	Qualifications.	93-9.	Assistants need not be certified.
93-3.	Unlawful use of title "certified public accountant" by individual.	93-10.	Persons certified in other states.
93-4.	Use of title by firm.	93-11.	Not applicable to officers of State, county or municipality.
93-5.	Use of title by corporation.	93-12.	Board of Certified Public Accountant Examiners.
93-6.	Practice as accountants permitted; use of misleading titles prohibited.	93-13.	Violation of chapter; penalty.
93-7.	Registration of accountants already practicing.		

§ 93-1. Definitions; practice of law. — (a) Definitions. — As used in this chapter certain terms are defined as follows:

- (1) An "accountant" is a person engaged in the public practice of accountancy who is neither a certified public accountant nor a public accountant as defined in this chapter.
- (2) "Board" means the Board of Certified Public Accountant Examiners as provided in this chapter.
- (3) A "certified public accountant" is a person engaged in the public practice of accountancy who holds a certificate as a certified public accountant issued to him under the provisions of this chapter.
- (4) A "public accountant" is a person engaged in the public practice of accountancy who is registered as a public accountant under the provisions of this chapter.
- (5) A person is engaged in the "public practice of accountancy" who holds himself out to the public as an accountant and in consideration of compensation received or to be received offers to perform or does perform, for other persons, services which involve the auditing or verification of financial transactions, books, accounts, or records, or the preparation, verification or certification of financial, accounting and related statements intended for publication or renders professional services or assistance in or about any and all matters of principle or detail relating to accounting procedure and systems, or the recording, presentation or certification and the interpretation of such service through statements and reports.

(b) Practice of Law.—Nothing in this chapter shall be construed as authorizing certified public accountants, public accountants or accountants to engage in the practice of law, and such person shall not engage in the practice of law unless duly licensed so to do. (1925, c. 261, s. 1; 1929, c. 219, s. 1; 1951, c. 844, s. 1.)

Editor's Note.—Prior to the 1951 amendment this section related only to the "practice of public accounting."

Chapter 261 of the Public Laws of 1925 was probably intended to cure defects and omissions of the former statutes. *Respass v. Rex Spinning Co.*, 191 N. C. 809, 133 S. E. 391 (1926). The 1925 act expressly repealed Public Laws 1913, c. 157, codified as

C. S., §§ 7008 to 7024. However, many of the provisions of the old act were re-enacted by the repealing act and will be found in this chapter. For other cases decided under the 1913 act, see note to § 19-12.

Applied in *Scott v. Gillis*, 197 N. C. 223, 148 S. E. 315 (1929).

§ 93-2. Qualifications.—Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, over twenty-one years of age and of good moral character, and who shall have received from the State

Board of Accountancy a certificate of qualification admitting him to practice as a certified public accountant as hereinafter provided, or who is the holder of a valid and unrevoked certificate issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, shall be licensed to practice and be styled and known as a certified public accountant. (1925, c. 261, s. 2.)

§ 93-3. Unlawful use of title "certified public accountant" by individual.—It shall be unlawful for any person who has not received a certificate of qualification admitting him to practice as a certified public accountant to assume or use such a title, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant. (1925, c. 261, s. 3.)

Editor's Note.—This section was reviewed in 3 N. C. Law Rev. 149.

§ 93-4. Use of title by firm.—It shall be unlawful for any firm, copartnership, or association to assume or use the title of certified public accountant, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the members of such firm, copartnership or association have been admitted to practice as certified public accountants, unless each of the members of such firm, copartnership or association first shall have received a certificate of qualification from the State Board of Accountancy admitting him to practice as a certified public accountant. (1925, c. 261, s. 4.)

§ 93-5. Use of title by corporation.—It shall be unlawful for any corporation to assume or use the title of certified public accountant, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that such corporation has received a certificate of qualification from the State Board of Accountancy admitting it to practice as a certified public accountant. (1925, c. 261, s. 5.)

§ 93-6. Practice as accountants permitted; use of misleading titles prohibited.—It shall be unlawful for any person to engage in the public practice of accountancy in this State who is not a holder of a certificate as a certified public accountant issued by the Board, or is not registered as a public accountant under the provisions of this chapter, unless such person uses the term "accountant" and only the term "accountant" in connection with his name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with his services as an accountant, and refrains from the use in any manner of any other title or designation in such practice. (1925, c. 261, ss. 6, 8; 1951, c. 844, s. 2.)

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

§ 93-7. Registration of accountants already practicing. — Any person, firm, copartnership, association or corporation who shall on March 10, 1925, be engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina, may, within six months thereafter, apply to the State Board of Accountancy for registration as a public accountant, and the State Board of Accountancy, upon the production of satisfactory evidence that such applicant was engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina on March 10, 1925, shall register such person, firm, copartnership, association or corporation. Such registration shall be conclusive evidence of the right of such person, firm, copartnership, association or corporation to engage in the practice of public accounting in the State of North Carolina, but such registration shall not be construed in any way as indicating that the State of North Carolina or the State

Board of Accountancy has approved the educational and professional experience and qualifications of the registrant. (1925, c. 261, s. 7.)

§ 93-8. Public practice of accounting by corporations prohibited.—On and after July 1, 1951, it shall be unlawful for any corporation to engage in the public practice of accountancy in this State. (1925, c. 261, s. 6; 1951, c. 844, s. 3.)

Editor's Note.—The 1951 amendment re-wrote this section.

§ 93-9. Assistants need not be certified. — Nothing contained in this chapter shall be construed to prohibit the employment by a certified public accountant or by any person, firm, copartnership, association, or corporation permitted to engage in the practice of public accounting in the State of North Carolina, of persons who have not received certificates of qualification admitting them to practice as certified public accountants, as assistant accountants or clerks: Provided, that such employees work under the control and supervision of certified public accountants or public accountants, and do not certify to anyone the accuracy or verification of audits or statements; and provided further, that such employees do not hold themselves out as engaged in the practice of public accounting. (1925, c. 261, s. 9.)

§ 93-10. Persons certified in other states.—A public accountant who holds a valid and unrevoked certificate as a certified public accountant, or its equivalent, issued under authority of any state, or the District of Columbia, and who resides without the State of North Carolina, may perform work within the State: Provided, that he register with the State Board of Accountancy and comply with its rules regarding such registration. (1925, c. 261, s. 10.)

§ 93-11. Not applicable to officers of State, county or municipality.—Nothing herein contained shall be construed to restrict or limit the power or authority of any State, county or municipal officer or appointee engaged in or upon the examination of the accounts of any public officer, his employees or appointees. (1925, c. 261, s. 12.)

Cross References.—As to municipal accounting, see § 160-290. As to county accounting systems, see § 153-30.

§ 93-12. Board of Certified Public Accountant Examiners. — The name of the State Board of Accountancy is hereby changed to State Board of Certified Public Accountant Examiners and said name State Board of Certified Public Accountant Examiners is hereby substituted for the name State Board of Accountancy wherever the latter name appears or is used in chapter 93 of the General Statutes. Said Board is created as an agency of the State of North Carolina and shall consist of four persons to be appointed by the Governor, all of whom shall be holders of valid and unrevoked certificates as certified public accountants issued under the provisions of this chapter. Members of the Board shall hold office for the term of three years and until their successors are appointed. Appointments to the Board shall be made under the provisions of this chapter as and when the terms of the members of the present State Board of Accountancy expire; provided, that all future appointments to said Board shall be made for a term of three years expiring on the 30th day of June. The powers and duties of the Board shall be as follows:

- (1) To elect from its members a president, vice-president and secretary-treasurer. The members of the Board shall be paid, for the time actually expended in pursuance of the duties imposed upon them by this chapter, an amount not exceeding ten dollars (\$10) per day, and they shall be entitled to necessary traveling expenses.
- (2) To employ legal counsel, clerical and technical assistance and to fix the

compensation therefor, and to incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this chapter. Upon request the Attorney General of North Carolina will advise the Board with respect to the performance of its duties and will assign a member of his staff, or approve the employment of counsel, to represent the Board in any hearing or litigation arising under this chapter. The Board may, in the exercise of its discretion, co-operate with similar boards of other states, territories and the District of Columbia in activities designed to bring about uniformity in standards of admission to the public practice of accountancy by certified public accountants, and may employ a uniform system of preparation of examinations to be given to candidates for certificates as certified public accountants, including the services and facilities of the American Institute of Certified Public Accountants, or of any other persons or organizations of recognized skill in the field of accountancy, in the preparation of examinations and assistance in establishing and maintaining a uniform system of grading of examination papers, provided however, that all examinations given by said Board shall be adopted and approved by the Board and that the grade or grades given to all persons taking said examinations shall be determined and approved by the Board.

- (3) To formulate rules for the government of the Board and for the examination of applicants for certificates of qualification admitting such applicants to practice as certified public accountants.
- (4) To hold written or oral examinations of applicants for certificates of qualification at least once a year, or oftener, as may be deemed necessary by the Board.
- (5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed examinations to the satisfaction of the Board, in "theory of account", "practical accounting", "auditing", "commercial law", and other related subjects.

From and after July 1, 1961, any person shall be eligible to take the examination given by the Board who is a citizen of the United States, or has declared his intention of becoming such citizen, and has resided for at least one year within the State of North Carolina, is twenty-one years of age or over and of good moral character, submits evidence satisfactory to the Board that he has completed two years in a college or university, or its equivalent, and shall have completed a course of study in accountancy in a school, college or university approved by the Board. Such applicant, in addition to passing satisfactorily the examinations given by the Board, shall have had at least two years' experience on the field staff of a certified public accountant or a North Carolina public accountant in public practice, or shall have served two or more years as an internal revenue agent or special agent under a District Director of Internal Revenue, or at least two years on the field staff of the North Carolina State Auditor under the direct supervision of a certified public accountant and shall have the endorsement of three certified public accountants as to his eligibility. A master's or more advanced degree in economics or business administration from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such persons shall have had the required experience.

- (6) In its discretion to grant certificates of qualification admitting to practice as certified public accountants such applicants who shall be the

holders of valid and unrevoked certificates as certified public accountants, or the equivalent, issued by or under the authority of any state, or territory of the United States or the District of Columbia; or who shall hold valid and unrevoked certificates or degrees as certified public accountants, or the equivalent, issued under authority granted by a foreign nation; when in the judgment of the Board the requirements for the issuing or granting of such certificates or degrees are substantially equivalent to the requirements established by this chapter: Provided, however, that such applicant has been a bona fide resident of this State for not less than one year or, if a nonresident, he has maintained or has been a member of a firm that has maintained for not less than one year a bona fide office within this State for the public practice of accounting and, provided further, that the state or political subdivision of the United States upon whose certificate the reciprocal action is based grants the same privileges to holders of certificates as certified public accountants issued pursuant to the provisions of this chapter. The Board, by general rule, may grant temporary permits to applicants under this subsection pending their qualification for reciprocal certificates.

- (7) To charge for each examination and certificate provided for in this chapter a fee not exceeding thirty-five dollars (\$35.00). This fee shall be payable to the secretary-treasurer of the Board by the applicant at the time of filing application. If at any examination an applicant shall have received a passing grade in one subject, he shall have the privilege of one re-examination at any subsequent examination held within eighteen months from the date of his application upon payment of a re-examination fee not to exceed twenty-five dollars (\$25.00). In no case shall the examination fee be refunded, unless in the discretion of the Board the applicant shall be deemed ineligible for examination.
- (8) To require the renewal of all certificates of qualification annually on the first day of July, and to charge and collect a fee not to exceed fifteen dollars (\$15.00) for such renewal.
- (9) Adoption of Rules of Professional Conduct; Disciplinary Action.—The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants and public accountants engaged in the public practice of accountancy in this State. The rules so adopted shall be publicized and a certified copy filed in the office of the Secretary of State of North Carolina within sixty (60) days after adoption. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this chapter to a certified public accountant or public accountant or to censure the holder of any such certificate for any one or combination of the following causes:
 - a. Conviction of a felony under the laws of the United States or of any state of the United States.
 - b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
 - c. Fraud or deceit in obtaining a certificate as a certified public accountant.
 - d. Dishonesty, fraud or gross negligence in the public practice of accountancy.
 - e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of chapter 150 of the General Statutes.

- (10) Within sixty days after March 10, 1925, the Board shall formulate rules for the registration of those persons, firms, copartnerships, associations or corporations who, not being holders of valid and unrevoked certificates as certified public accountants issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, and who, having on March 10, 1925, been engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina, shall, under the provisions of § 93-7 apply to the Board for registration as public accountants. The Board shall maintain a register of all persons, firms, copartnerships, associations or corporations who have made application for such registration and have complied with the rules of registration adopted by the Board.
- (11) Within sixty days after March 10, 1925, the Board shall formulate rules for registration of these public accountants who are qualified to practice under this chapter and who under the provisions of § 93-10 are permitted to engage in work within the State of North Carolina. The Board shall have the power to deny or withdraw the privilege herein referred to for good and sufficient reasons.
- (12) To submit annually on or before the first day of May to the Commissioner of Revenue the names of all persons who have qualified under this chapter as certified public accountants or public accountants. Privilege license issued under G. S. 105-41 shall designate whether such license is issued to a certified public accountant, a public accountant, or an accountant.
- (13) The Board shall keep a complete record of all its proceedings and shall annually submit a full report to the Governor.
- (14) All fees collected on behalf of the State Board of Accountancy, and all receipts of every kind and nature, as well as the compensation paid the members of the Board and the necessary expenses incurred by them in the performance of the duties imposed upon them by this chapter, shall be reported annually to the State Treasurer. Any surplus remaining in the hands of the Board over the amount of fifteen hundred dollars shall be paid to the State Treasurer at the time of submitting the report, and shall go to the credit of the general fund: Provided, that no expense incurred under this chapter shall be charged against the State.
- (15) Any certificate of qualification issued under the provisions of this chapter, or issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, shall be forfeited for the failure of the holder to renew same and to pay the renewal fee therefor to the State Board of Accountancy within thirty days after demand for such renewal fee shall have been made by the State Board of Accountancy. (1925, c. 261, s. 11; 1939, c. 218, s. 1; 1951, c. 844, ss. 4-9; 1953, c. 1041, s. 20; 1959, c. 1188; 1961, c. 1010.)

Cross References.—As to uniform revocation of licenses, see chapter 150. As to privilege tax, see § 105-41.

Editor's Note. — The 1951 amendment rewrote the first paragraph of this section and also subdivisions (2), (5), (6), (9) and (12). The 1953 amendment rewrote the last paragraph of subdivision (9).

The 1959 amendment amended the former third paragraph of subdivision (5), deleted in 1961.

The 1961 amendment, effective July 1, 1961, substituted in subdivision (2) "American Institute of Certified Public Accountants" for "American Institute of Accountants." It struck out the second and third paragraphs of subdivision (5) and inserted in lieu thereof the present second paragraph. The amendment increased the amounts in subdivisions (7), (8) and (14).

The cases cited below were decided under the former law. See note to § 93-1.

Members of Board are State Officials.—Under the former act creating and incorporating the State Board of Accountancy, its members are to be regarded as State officials to the extent of their duties specified in the statute. *State v. Scott*, 182 N. C. 865, 109 S. E. 789 (1921).

Exercise of Police Power.—The former statute creating the State Board of Accountancy, with authority to pass upon applications and issue licenses to those qualified as public accountants, was within the exercise of the police powers of the State. *State v. Scott*, 182 N. C. 865, 109 S. E. 789 (1921).

When License Not Required.—Former § 7023 of the Consolidated Statutes did not embrace within its terms an isolated instance of the employment of a firm of certified public accountants licensed in another state, who sent their representative to this State to acquire information from the books of a corporation for a statement of its condition to be made out in the state in which the auditing concern was authorized to do business. *Respass v. Rex Spinning Co.*, 191 N. C. 809, 133 S. E. 391 (1926).

The exercise of the powers of the Board

is coextensive with the State boundaries, and may not be exercised beyond them. *State v. Scott*, 182 N. C. 865, 109 S. E. 789 (1921).

Holding Examination Outside of State.—Under the 1913 act giving the State Board of Accountancy the power to examine and license applicants, and stating that the Board may do so "at such place as it may designate," the discretion of the Board in the exercise of this power will be confined to places within the boundaries of this State. *State v. Scott*, 182 N. C. 865, 109 S. E. 789 (1921).

Where a statute gives the Board the power to determine upon examination whether applicants for licenses therein are qualified to receive them, it is for the courts of the State, upon proper action, to pass upon the question of whether the Board acts ultra vires in holding an examination beyond the boundaries of the State upon the request of a nonresident desiring to obtain a certificate, and a declaration in the fixing of such place that it would be the last time the Board would hold an examination outside the State is not binding or controlling on the question. *State v. Scott*, 182 N. C. 865, 109 S. E. 789 (1921).

§ 93-13. Violation of chapter; penalty. — Any violation of the provisions of this chapter shall be deemed a misdemeanor, and upon conviction thereof the guilty party shall be fined not less than fifty dollars and not exceeding two hundred dollars for each offense. (1925, c. 261, s. 11.)

Chapter 93A.

Real Estate Brokers and Salesmen.

Sec.	Sec.
93A-1. License required of real estate brokers and real estate salesmen.	93A-5. Register of applicants; roster of brokers and salesmen; financial report to Secretary of State.
93A-2. Definitions and exceptions.	93A-6. Revocation of licenses; hearings; grounds; powers of Board.
93A-3. Licensing Board created; compensation; organization.	93A-7. Power of courts to revoke.
93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal of license; power to enforce provisions.	93A-8. Penalty for violation of chapter.
	93A-9. Licensing nonresidents.
	93A-10. Nonresident licensees; filing of consent as to service of process and pleadings.

§ 93A-1. License required of real estate brokers and real estate salesmen.—From and after July 1, 1957, it shall be unlawful for any person, partnership, association or corporation in this State to act as a real estate broker or real estate salesman, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate salesman without first obtaining a license issued by the North Carolina Real Estate Licensing Board (hereinafter referred to as the Board), under the provisions of this chapter. (1957, c. 744, s. 1.)

Editor's Note. — For comment on this chapter, see 36 N. C. Law Rev. 44.

Constitutionality.—The real estate business affects a substantial public interest and may be regulated for the purpose of

protecting and promoting the general welfare of the people. *State v. Warren* 252 N. C. 690, 114 S. E. (2d) 660 (1960).

Cited in *In re Dillingham*, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

§ 93A-2. Definitions and exceptions.—(a) A real estate broker within the meaning of this chapter is any person, partnership, association, or corporation, who for a compensation or valuable consideration or promise thereof sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others, as a whole or partial vocation.

(b) The term real estate salesman within the meaning of this chapter shall mean and include any person who, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.

(c) The provisions of this chapter shall not apply to and shall not include any person, partnership, association or corporation, who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where such acts are performed in the regular course of or as an incident to the management of such property and the investment therein; nor shall the provisions of this chapter apply to persons acting as attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate, nor shall this chapter be construed to include in any way the acts or services rendered by an attorney at law; nor shall it be held to include, while acting as such, a receiver, trustee in bankruptcy, guardian, administrator or executor or any such person acting under order of any court, nor to include a trustee acting under a trust agreement, deed of trust or will, or the regular salaried employees

thereof, and nothing in this chapter shall be so construed as to require a license for the owner, personally, to sell or lease his own property. (1957, c. 744, s. 2.)

Cross Reference.—See note to § 93A-6.

§ 93A-3. Licensing Board created; compensation; organization.—

(a) There is hereby created the North Carolina Real Estate Licensing Board for issuing licenses to real estate brokers and real estate salesmen, hereinafter called the Board. The Board shall be composed of five (5) members to be appointed by the Governor: Provided, that only two (2) members of said Board shall be a licensed real estate broker or salesman. One member shall be appointed for one year, two for two years and two for three years. Members appointed on the expiration of such term of office shall serve for three years. The members of the Board shall elect one of their members to serve as chairman of the Board. The Governor may remove any member of the Board for misconduct, incompetency, or wilful neglect of duty. The Governor shall have the power to fill all vacancies occurring on said Board.

(b) Members of the Board shall each receive as full compensation for each day accordingly spent on work for the Board, the sum of fifteen dollars (\$15.00) per day plus ten dollars (\$10.00) per day for subsistence plus travel expense, such per diem allowance for the whole Board not to exceed an aggregate amount of twenty-five hundred dollars (\$2500.00) for any fiscal year. The total expense of the administration of this chapter shall not exceed the total income therefrom; and none of the expenses of said Board or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any office or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Board may set aside an expense reserve each year not to exceed ten per cent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina.

(c) The Board shall have power to make such bylaws, rules and regulations as it shall deem best, that are not inconsistent with the provisions of this chapter and the laws of North Carolina; provided, however, the Board shall not make rules or regulations regulating commissions, salaries, or fees to be charged by licensees under this chapter. The Board shall adopt a seal for its use, which shall bear thereon the words "North Carolina Real Estate Licensing Board." Copies of all records and papers in the office of the Board duly certified and authenticated by the seal of the Board shall be received in evidence in all courts and with like effect as the originals.

(d) The Board may employ a secretary-treasurer and such clerical assistance as may be necessary to carry out the provisions of this chapter and to put into effect such rules and regulations as the Board may promulgate. The Board shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties.

(e) The Board shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Board or may on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this chapter, as to specific matters, but the fee paid for such service shall be approved by the Attorney General. The Board may prefer a complaint for violation of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this chapter and collect the penalties provided therein. (1957, c. 744, s. 3.)

§ 93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal of license; power to enforce provisions. — (a) Any person, partnership, association, or corporation here-

after desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Board on such forms as are prescribed by the Board. Each application for a license as real estate broker shall be accompanied by twenty-five dollars (\$25.00). Each application for license as a real estate salesman shall be accompanied by fifteen dollars (\$15.00), and shall state the name and address of the real estate broker with whom the applicant is to be associated.

(b) Any person who files such application to the Board in proper manner for a license as real estate broker or a license as real estate salesman shall be required to take an oral or written examination to determine his qualifications with due regard to the paramount interests of the public as to the honesty, truthfulness, integrity and competency of the applicant. If the results of the examination shall be satisfactory to the Board, then the Board shall issue to such a person a license, authorizing such person to act as a real estate broker or real estate salesman in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law. Anyone failing to pass an examination may be re-examined without payment of additional fee, under such rules as the Board may adopt in such cases.

Provided, however, that any person who, at the time of the passage or at the effective date of this chapter, has a license to engage in, and is engaged in business as a real estate broker or real estate salesman and who shall file a sworn application with the Board setting forth his qualifications, including a statement that such applicant has not within 5 years preceding the filing of the application been convicted of any felony or any misdemeanor involving moral turpitude, shall not be required to take or pass such examination, but all such persons shall be entitled to receive such license from the Board under the provisions of this chapter on proper application therefor and payment of a fee of ten dollars (\$10.00).

(c) All licenses granted and issued by the Board under the provisions of this chapter shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless renewed. Renewal of such license may be effected at any time during the months of May or June preceding the date of expiration of such license upon proper application to the Board accompanied by the payment of a renewal fee of ten dollars (\$10.00) to the secretary-treasurer of the Board. Duplicate licenses may be issued by the Board upon payment of a fee of one dollar (\$1.00) by the licensee.

(d) The Board is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter.

(e) Nothing contained in this chapter shall be construed as giving any authority to the Board nor any licensee of the Board as authorizing any licensee whether by examination or under the grandfather clause or by comity to engage in the practice of law or to render any legal service as specifically set out in G. S. 84-2.1 or any other legal service not specifically referred to in said section. (1957, c. 744, s. 4.)

§ 93A-5. Register of applicants; roster of brokers and salesmen; financial report to Secretary of State.—(a) The secretary-treasurer of the Board shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The secretary-treasurer of the Board shall also keep a roster showing the names and places of business and residence of all licensed real estate brokers and real estate salesmen, which roster shall be prepared during the month of July of each year. Such roster shall be printed by the Board and a copy thereof

mailed to and placed on file in the office of the clerk of the superior court of each county in the State of North Carolina.

(c) On or before the first day of September of each year, the Board shall file with the Secretary of State a copy of the roster of real estate brokers and real estate salesmen holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Board for the preceding fiscal year ending June 30th attested by the affidavit of the secretary-treasurer of the Board. (1957, c. 744, s. 5.)

§ 93A-6. Revocation of licenses; hearings; grounds; powers of Board.—(a) The Board shall have power to revoke or suspend licenses as herein provided. The Board may upon its own motion, and shall upon the verified complaint in writing of any persons, provided such complaint with the evidence, documentary or otherwise, presented in connection therewith, shall make out a prima facie case, hold a hearing as hereinafter provided and investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity, and shall have power to suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representations obtained a license or where the licensee in performing or attempting to perform any of the acts mentioned herein is deemed to be guilty of:

- (1) Making any substantial and willful misrepresentations, or
- (2) Making any false promises of a character likely to influence, persuade, or induce, or
- (3) Pursuing a course of misrepresentation or making of false promises through agents or salesmen or advertising or otherwise, or
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts, or
- (5) Accepting a commission or valuable consideration as a real estate salesman for the performances of any of the acts specified in this chapter, from any person, except the licensed broker by whom he is employed, or
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he is engaged or associated, without the express knowledge and consent of the broker with whom he is associated, or
- (7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others, or
- (8) Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public, or
- (9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this chapter, or
- (10) Any other conduct whether of the same or a different character from that hereinbefore specified which constitutes improper, fraudulent or dishonest dealing.
- (11) For performing or undertaking to perform any legal service as set forth in G. S. 84-2.1 or any other such acts not specifically set forth in said section.

(b) Before revoking or suspending any license, however, the Board shall in all such cases set the matter down for a hearing and shall, at least ten (10) days prior to the date set for such hearing, notify in writing the accused licensee of the charges made or the question to be determined, including notice of time and place, when and where the charges will be heard, and afford such licensee an opportunity to be present and to be heard in person or by counsel, and an opportunity to offer evidence orally or by affidavit or depositions in reference thereto. The Board shall have power to administer oaths and to prescribe all necessary

and reasonable rules for the conduct of such a hearing. The Board shall have power to subpoena and bring before it any person in this State or take testimony of any such person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure of courts of this State in civil cases. Such fees and mileage shall be paid by the party at whose request such witness is subpoenaed. If the Board shall determine that the licensee is guilty under the provisions of this chapter, his or its license may be suspended or revoked; but in the event of such adverse decision, the accused shall have the right within thirty (30) days to appeal therefrom to the superior court, where he shall be entitled to a trial de novo. The venue of the trial de novo in the superior court shall be in the county of the residence of the licensee. The venue of an appeal to the superior court for a nonresident licensee shall be in the county in which the alleged violation occurred. The affirmative vote of a majority of the Board shall be necessary to revoke or suspend a license. (1957, c. 744, s. 6.)

Section Is Penal.—The portion of this section which empowers the Board to revoke the license of a real estate broker or salesman is penal in its nature and should not be construed to include anything as a ground for revocation which is not embraced within its terms. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Adequate procedure for judicial review is provided by this section. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Licensee on Appeal Is Entitled to Trial de Novo. — The provision of subsection (b) of this section that on an appeal to the superior court from an adverse decision by the Board the accused licensee "shall be entitled to a trial de novo" means a trial de novo without any qualification and in all such appeals. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

It is not for the court to write into this section that the accused licensee shall be entitled to a trial de novo only when the Board has entered an order and made no record. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

The words of subsection (a) "any of the acts mentioned herein" must mean the acts of a real estate broker or real estate salesman for which a license is required in § 93A-1. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Subsection (a) (8) Applies Only to Misconduct Connected with Licensed Privilege.—The general language of subsection

(a) (8) of this section must be construed as applying exclusively to activities in which the licensee has actually engaged in the pursuit of his licensed privilege as a real estate broker or salesman and not to some outside activity not connected in any way with the pursuit of his licensed privilege. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Sale of Broker's Own Notes Secured by Deeds of Trust.—A real estate broker, in selling his own notes secured by deeds of trust, did not act as a real estate broker as defined in § 93A-2, and any misconduct in performing such acts does not warrant the Board or the court on appeal to revoke his license on such ground. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Keeping Disorderly House. — Evidence offered by the Board to the effect that a real estate broker had pleaded guilty to a charge of operating a disorderly house, and had consented to the signing of a judgment against him padlocking for one year premises maintained and operated by him as a house of prostitution shows acts of a vile and decadent character committed by him, but such acts are not connected in any way with the pursuit of his licensed privilege as a real estate broker, and are not a ground for revocation of his license, and such evidence was correctly excluded as irrelevant and immaterial. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

§ 93A-7. Power of courts to revoke.—Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described and shall file suit upon such claim against such licensee in any court of record in this State and shall recover judgment thereon, such court may as part of its judgment or decree in such case, if it deem it a proper case in which so to do, order a written copy of the transcript of record in said case to be forwarded by

the clerk of court to the chairman of the said Board with a recommendation that the licensee's certificate of license be revoked. (1957, c. 744, s. 7.)

§ 93A-8. **Penalty for violation of chapter.**—Any person violating the provisions of this chapter shall upon conviction thereof be deemed guilty of a misdemeanor and shall be punished by a fine or imprisonment, or by both fine and imprisonment, in the discretion of the court. (1957, c. 744, s. 8.)

§ 93A-9. **Licensing nonresidents.** — A nonresident may become a real estate broker or real estate salesman by conforming to all of the provisions of this chapter. Any nonresident real estate broker or real estate salesman regularly engaged in the real estate business as a vocation maintaining a definite place of business in another state, and who has been licensed as a real estate salesman or broker in such state, which offers the same privileges to licensed brokers or salesmen of this State, shall, by reason of such foreign license and upon payment of the license fee fixed by this chapter, be authorized to transact the business of a real estate broker or real estate salesman in this State during the period for which his original license shall be in force. (1957, c. 744, s. 9.)

§ 93A-10. **Nonresident licensees; filing of consent as to service of process and pleadings.**—Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in any of the courts of record of this State, by the service of any process or pleading authorized by the laws of this State in any county in which the plaintiff may reside, by serving the same on the secretary of the commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be valid and binding as if due service had been made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if made by a corporation, shall be authenticated by its seal. An application from a corporation shall be accompanied by a duly certified copy of the resolution of the board of directors, authorizing the proper officers to execute it. In all cases where process or pleadings shall be served, under the provisions of this chapter, upon the secretary of the commission, such process or pleadings shall be served in duplicate, one of which shall be filed in the office of the commission and the other shall be forwarded immediately by the secretary of the commission, by registered mail, to the last known business address of the nonresident licensee against which such process or pleadings are directed. (1957, c. 744, s. 10.)

Chapter 93B.

Occupational Licensing Boards.

<p>Sec. 93B-1. Definitions. 93B-2. Annual reports required; contents; open to inspection. 93B-3. Register of persons licensed; information as to licensed status of individuals.</p>	<p>Sec. 93B-4. Annual audit of books and records; payment of cost; report of financial operations. 93B-5. Employment of members by board; secretary.</p>
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§ 93B-1. Definitions.—As used in this chapter:

“License” means any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

“Occupational licensing board” means any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; “occupational licensing board” does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses. (1957, c. 1377, s. 1.)

§ 93B-2. Annual reports required; contents; open to inspection.—

Each occupational licensing board shall file with the Secretary of State an annual financial report, and an annual report containing the following information:

- (1) The address of the board, and the names of its members and officers;
- (2) The number of persons who applied to the board for examination;
- (3) The number who were refused examination;
- (4) The number who took the examination;
- (5) The number to whom initial licenses were issued;
- (6) The number who applied for license by reciprocity or comity;
- (7) The number who were granted licenses by reciprocity or comity;
- (8) The number of licenses suspended or revoked; and
- (9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

The reports required by this section shall be open to public inspection. (1957, c. 1377, s. 2.)

§ 93B-3. Register of persons licensed; information as to licensed status of individuals.—

Each occupational licensing board shall prepare a register of all persons currently licensed by the board and shall supplement said register annually by listing the changes made in it by reason of new licenses issued, licenses revoked or suspended, death, or any other cause. The board shall, upon request of any citizen of the State, inform the requesting person as to the licensed status of any individual. (1957, c. 1377, s. 3.)

§ 93B-4. Annual audit of books and records; payment of cost; report of financial operations.—

The books and records of each occupational licensing board shall be audited annually by the State Auditor, or under his direction and supervision by a person approved by him, or by an independent certified public accountant who shall certify the results of the audit to the State Auditor, and include such information as the State Auditor may direct. The cost of all audits shall be paid out of the funds of the board. The State Auditor shall issue annually a report containing a summary of the financial operations of each board. (1957, c. 1377, s. 4.)

§ 93B-5. **Employment of members by board; secretary.**—If members of an occupational licensing board are employed by the board to perform inspectional and similar ministerial tasks for the board, such employment shall not exceed thirty days for any one member in any year, and the compensation for such services shall not exceed the per diem and allowances authorized for boards and commissions of the State generally. The board may employ one of its members as secretary for such compensation as it deems reasonable. The secretary may perform, in addition to his other duties, inspectional and similar ministerial tasks, but without additional compensation, except the expense allowance authorized for boards and commissions of the State generally. The first sentence of this section does not apply to any board whose members are full-time employees of the board; but members of such boards may not receive additional compensation for such services, other than the expense allowance authorized for boards and commissions of the State generally. (1957, c. 1377, s. 5.)

Division XIII. Employer and Employee.

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Chapter 94.

Apprenticeship.

<p>Sec. 94-1. Purpose. 94-2. Apprenticeship Council. 94-3. Director of Apprenticeship. 94-4. Powers and duties of Director of Apprenticeship. 94-5. Local and State joint apprenticeship committees.</p>	<p>Sec. 94-6. Definition of an apprentice. 94-7. Contents of agreement. 94-8. Approval of apprentice agreements; signatures. 94-9. Rotation of employment. 94-10. [Repealed.] 94-11. Limitation.</p>
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§ 94-1. **Purpose.**—The purposes of this chapter are: To open to young people the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprentice agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an Apprenticeship Council and local and State joint apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a Director of Apprenticeship within the Department of Labor; to provide for reports to the legislature and to the public regarding the status of apprentice training in the State; to establish a procedure for the determination of apprentice agreement controversies; and to accomplish related ends. (1939, c. 229, s. 1.)

Editor's Note. — For comment on this chapter, see 17 N. C. Law Rev. 327.

§ 94-2. **Apprenticeship Council.**—The Commissioner of Labor shall appoint an Apprenticeship Council, composed of three representatives each from employer and employee organizations respectively. The State official who has been designated by the State Board for Vocational Education as being in charge of trade and industrial education shall ex officio be a member of said Council, without vote. The terms of office of the members of the Apprenticeship Council first appointed by the Commissioner of Labor shall expire as designated by the Commissioner at the time of making the appointment: One representative each of employers, employees, being appointed for one year; one representative each of employers, employees, being appointed for two years, and one representative each of employers and employees for three years. Thereafter, each member shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. Each member of the Council, not otherwise compensated by public monies, shall be reimbursed for transportation and shall receive such per diem compensation as is provided generally for boards and commissions under the biennial Maintenance Appropriation Acts for each day spent in attendance at meetings of the Apprenticeship Council.

The Apprenticeship Council shall meet at the call of the Commissioner of Labor and shall aid him in formulating policies for the effective administration of this chapter. Subject to the approval of the Commissioner, the Apprenticeship Council shall establish standards for apprentice agreement which in no case shall be lower than those prescribed by this chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said chapter, and shall perform such other functions as the Commissioner may direct. Not less than once a year the Apprenticeship Council shall make a report through the

Commissioner of Labor of its activities and findings to the legislature and to the public. (1939, c. 229, s. 2.)

§ 94-3. Director of Apprenticeship. — The Commissioner of Labor is hereby directed to appoint a Director of Apprenticeship which appointment shall be subject to the confirmation of the State Apprenticeship Council by a majority vote. The Commissioner of Labor is further authorized to appoint and employ such clerical, technical, and professional help as shall be necessary to effectuate the purposes of this chapter. (1939, c. 229, s. 3.)

§ 94-4. Powers and duties of Director of Apprenticeship.—The Director, under the supervision of the Commissioner of Labor and with the advice and guidance of the Apprenticeship Council is authorized to administer the provisions of this chapter; in co-operation with the Apprenticeship Council and local and State joint apprenticeship committees, to set up conditions and training standards for apprentice agreements, which conditions or standards shall in no case be lower than those prescribed by this chapter; to act as secretary of the Apprenticeship Council and of each State joint apprenticeship committee; to approve for the Council if in his opinion approval is for the best interest of the apprenticeship any apprentice agreement which meets the standards established under this chapter; to terminate or cancel any apprentice agreement in accordance with the provisions of such agreement; to keep a record of apprentice agreements and their disposition; to issue certificates of completion of apprenticeship; and to perform such other duties as are necessary to carry out the intent of this chapter, including other on-job training necessary for emergency and critical civilian production: Provided, that the administration and supervision of related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of State and local boards responsible for vocational education. (1939, c. 229, s. 4; 1951, c. 1031, s. 1.)

Editor's Note. — The 1951 amendment inserted "including other on-job training necessary for emergency and critical civilian production" immediately preceding the proviso at the end of the section.

§ 94-5. Local and State joint apprenticeship committees. — A local joint apprenticeship committee may be appointed, in any trade or group of trades in a city or trade area, by the Apprenticeship Council, whenever the apprentice training needs of such trade or group of trades justifies such establishment: Provided, that when a State joint apprenticeship committee in any trade or group of trades shall have been established, as hereinafter authorized, such State committee shall thereafter have the power of appointment of local joint apprenticeship committees in the trade or group of trades which it represents. Such local joint apprenticeship committee shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide local employer or employee organization, the committee shall be appointed from persons known to represent the interests of employers and of employees respectively. The function of a local joint apprenticeship committee shall be: To co-operate with school authorities in regard to the education of apprentices; in accordance with the standards set up by the apprenticeship committee for the same trade or group of trades, where such committee has been appointed, to work in an advisory capacity with employers and employees in matters regarding schedule of operations, application of wage rates, and working conditions for apprentices and to specify the number of apprentices which shall be employed locally in the trade under apprentice agreements under the chapter; and to adjust apprenticeship disputes, subject to the approval of the director. Until the appointment of a state joint apprenticeship committee for any trade or group of trades, as hereinafter provided,

the local joint apprenticeship committee for that trade or group of trades shall, for the city or trade area for which it is appointed, exercise the functions of the State joint apprenticeship committee for the said trade or group of trades which it represents.

When two or more local joint apprenticeship committees have been established in the State for a trade or group of trades, or at the request of any trade or group of trades, the Apprenticeship Council may appoint a State joint apprenticeship committee for such trade or group of trades, composed of an equal number of employer and employee representatives chosen from names submitted by the respective employer and employee organizations. In a trade or group of trades in which there is no bona fide employer or employee organization, the Apprenticeship Council may appoint such a committee from persons known to represent the interests of employers and employees respectively. The functions of a State joint apprenticeship committee shall be: To co-ordinate the activities of local joint apprenticeship committees in the trade or group of trades which it represents; to ascertain the prevailing rate for journeymen in the respective trade areas within the State in such trade or trades and specify the graduated scale of wages applicable to apprentices in such trade or trades in each such area; to ascertain employment needs in such trade or trades and specify the appropriate current ratio of apprentices to journeymen; and to make recommendations for the general good of apprentices engaged in the trade or trades represented by the committee. The members of a State joint apprenticeship committee shall be reimbursed for transportation and shall receive such per diem compensation as is provided generally for boards and commissions under the biennial Maintenance Appropriation Acts for each day spent in attendance at meetings of the committee. (1939, c. 229, s. 5.)

§ 94-6. Definition of an apprentice.—The term “apprentice,” as used herein, shall mean a person at least sixteen years of age who is covered by a written agreement, with an employer, an association of employers, or an organization of employees acting as employer’s agent, and approved by the Apprenticeship Council; which apprentice agreement provides for not less than four thousand hours of reasonably continuous employment for such person for his participation in an approval schedule of work experience and for at least one hundred forty-four hours per year of related supplemental instruction. The required hours for apprenticeship agreements may vary in accordance with standards adopted by local or State joint apprenticeship committees, subject to approval of the State Apprenticeship Council and Commissioner of Labor. (1939, c. 229, s. 6.)

§ 94-7. Contents of agreement. — Every apprentice agreement entered into under this chapter shall contain:

- (1) The names of the contracting parties.
- (2) The date of birth of the apprentice.
- (3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.
- (4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than one hundred forty-four hours per year: Provided, that in no case shall the combined weekly hours of work and of required related and supplemental instruction of the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age and sex of the apprentice.
- (5) A statement setting forth a schedule of the processes in the trade or industry division in which the apprentice is to be taught and the approximate time to be spent at each process.

- (6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.
- (7) A statement providing for a period of probation of not more than five hundred hours of employment and instruction extending over not more than four months, during which time the apprentice agreement shall be terminated by the Director at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the Director by mutual agreement of all parties thereto, or canceled by the Director for good and sufficient reason. The Council at the request of a joint apprentice committee may lengthen the period of probation.
- (8) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally in accordance with § 94-5 shall be submitted to the Director for determination.
- (9) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may with the approval of the Director transfer such contract to any other employer: Provided, that the apprentice consents and that such other employer agrees to assume the obligations of said apprentice agreement.
- (10) Such additional terms and conditions as may be prescribed or approved by the Director not inconsistent with the provisions of this chapter. (1939, c. 229, s. 7; 1945, c. 729, s. 1.)

Editor's Note. — The 1945 amendment "94-10" formerly appearing at the end of struck out the phrase "as provided for in § subdivision (8).

§ 94-8. Approval of apprentice agreements; signatures. — No apprentice agreement under this chapter shall be effective until approved by the Director. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 94-9, and by the apprentice, and if the apprentice is a minor, by the minor's father: Provided, that if the father be dead or legally incapable of giving consent or has abandoned his family, then by the minor's mother; if both father and mother be dead or legally incapable of giving consent, then by the guardian of the minor. Where a minor enters into an apprentice agreement under this chapter for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority. (1939, c. 229, s. 8.)

§ 94-9. Rotation of employment.—For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the Director of Apprenticeship be signed by an association of employers or an organization of employees instead of by an individual employer. In such a case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for such apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in said agreement between the apprentice and employer association or employee organization during the period of each such employment. The apprentice agreement in such a case shall also expressly provide for the transfer of the apprentice, subject to the approval of the Director, to such employer or employers who shall sign in written agreement with the apprentice, and if the apprentice is a minor with his parent or guardian, as specified in § 94-8, contracting to employ said apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the said agreement entered into between the apprentice and employer association or employee organization. (1939, c. 229, s. 9.)

§ 94-10: Repealed by Session Laws 1945, c. 729, s. 2.

Editor's Note. —The repealed section related to the settlement of controversies and complaints.

§ 94-11. **Limitation.**—Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees, setting up higher apprenticeship standards; provided, that none of the terms or provisions of this chapter shall apply to any person, firm, corporation or crafts unless, until, and only so long as such person, firm, corporation or crafts voluntarily elects that the terms and provisions of this chapter shall apply. Any person, firm, corporation or crafts terminating an apprenticeship agreement, shall notify the Director of Apprenticeship. (1939, c. 229, s. 11; 1945, c. 729, s. 3.)

Editor's Note. — The 1945 amendment added the proviso and the second sentence.

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ARTICLE 1.

Department of Labor.

§ 95-1. Department of Labor established. —A Department of Labor is hereby created and established. The duties of said Department shall be exercised and discharged under the supervision and direction of a commissioner, to be known as the Commissioner of Labor. (Rev., s. 3909; 1919, c. 314, s. 4; C. S., s. 7309; 1931, c. 312, s. 1.)

Editor's Note.—Public Laws 1931, c. 312, effected a reorganization of the Department of Labor and Printing, henceforth to be known as the Department of Labor. For comment on the 1931 act, see 9 N. C. Law Rev. 413.

§ 95-2. Election of Commissioner; term; salary; vacancy.—The Commissioner of Labor shall be elected by the people in the same manner as is provided for the election of the Secretary of State. His term of office shall be four years, and he shall receive a salary of eighteen thousand dollars (\$18,000.00) per annum, payable in equal monthly installments. Any vacancy in the office shall be filled by the Governor, until the next general election. The office of the Department of Labor shall be kept in the city of Raleigh and shall be provided for as are other public offices of the State. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; C. S., s. 7310; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 349; 1943, c. 499, s. 2; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 5.)

Editor's Note.—The 1931 amendment added provisions as to salary and filling vacancies, substituted "Commissioner of Labor" for "Commissioner of Labor and Printing," and omitted a former provision relating to the Assistant Commissioner. The 1937, 1939, 1943, 1947, 1949, 1953, 1957 and 1963 amendments increased the salary of the Commissioner.

§ 95-3. Divisions of Department; Commissioner; administrative officers.—The Department of Labor shall consist of the following officers, divisions and sections:

- A Commissioner of Labor.
- A Division of Standards and Inspections.
- A Division of Statistics.

Each division shall be in the charge of a chief administrative officer and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division concerned, with the approval of the Governor, shall prescribe and promulgate. The Commissioner of Labor, with the approval of the Governor, may make provision for one person to act as chief administrative officer of two or more divisions, when such is deemed advisable. The chief adminis-

trative officers of the several divisions shall be appointed by the Commissioner of Labor with the approval of the Governor. The Commissioner of Labor, with the approval of the Governor may combine or consolidate the activities of two or more of the divisions of the department, or provide for the setting up of other divisions when such action shall be deemed advisable for the more efficient and economical administration of the work and duties of the department. (1931, c. 277; c. 312, s. 4; 1933, c. 46; 1963, c. 313, s. 2.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section so as to eliminate all references to the Division of Workmen's Compensation or Industrial Commission.

§ 95-4. Authority, powers and duties of Commissioner.—The Commissioner of Labor shall be the executive and administrative head of the Department of Labor. In addition to the other powers and duties conferred upon the Commissioner of Labor by this article, the said Commissioner shall have authority and be charged with the duty:

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, with approval of said director of division, as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Budget Bureau. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subsection shall not apply to the Industrial Commission, or the Division of Workmen's Compensation.
- (2) To make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said Commissioner and the work of the Department; such rules and regulations to be made subject to the approval of the Governor.
- (3) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within thirty days of the receipt of said list of questions.
- (4) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the Commissioner of Labor.
- (5) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.
- (6) To enforce the provisions of this section and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating houses, and commercial institutions in this State before any justice of the peace or court of competent jurisdiction. It shall be the duty of the solicitor of the proper

district or the prosecuting attorney of any city or county court, upon the request of the Commissioner of Labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said Commissioner of Labor to enforce. (1925, c. 288; 1931, c. 277; c. 312, ss. 5, 6; 1933, cc. 46, 244; 1945, c. 723, s. 2.)

Editor's Note.—The 1933 amendment added subdivisions (3), (4), (5) and (6) of this section as they now appear. See 11 N. C. Law Rev. 234.

The 1945 amendment struck out a for-

mer subdivision authorizing the Commissioner "to aid veterans of the World War in securing adjustment of claims against the federal government."

§ 95-5. Annual report to Governor; recommendation as to legislation needed.—The Commissioner of Labor shall annually, on or before the first day of January, file with the Governor a report covering the activities of the Department, and the report so made on or before January first of the years in which the General Assembly shall be in session shall be accompanied by recommendations of the Commissioner with reference to such changes in the law applying to or affecting industrial and labor conditions as the Commissioner may deem advisable. The report of the Commissioner of Labor shall be printed and distributed in such manner and form as the Director of the Budget shall authorize. (1931, c. 312, s. 7.)

§ 95-6. Statistical report to Governor; publication of information given by employers.—It shall be the duty of the Commissioner of Labor to collect in the manner herein provided for, and to assort, systematize, and present to the Governor as a part of the report provided for in § 95-5, statistical details relating to all divisions of labor in the State, and particularly concerning the following: The extent of unemployment, the hours of labor, the number of employees and sex thereof, and the daily wages earned; the conditions with respect to labor in all manufacturing establishments, hotels, stores, and workshops; and the industrial, social, educational, moral, and sanitary conditions of the labor classes, in the productive industries of the State. Such statistical details shall include the names of firms, companies, or corporations, where the same are located, the kind of goods produced or manufactured, the period of operation of each year, the number of employees, male or female, the number engaged in clerical work and the number engaged in manual labor, with the classification of the number of each sex engaged in such occupation and the average daily wage paid each: Provided, that the Commissioner shall not, nor shall anyone connected with his office, publish or give or permit to be published or given to any person the individual statistics obtained from any employer, and all such statistics, when published, shall be published in connection with other similar statistics and be set forth in aggregates and averages. (1931, c. 312, s. 8.)

§ 95-7. Power of Commissioner to compel the giving of such information; refusal as contempt.—The Commissioner of Labor, or his authorized representative, for the purpose of securing the statistical details referred to in § 95-6, shall have power to examine witnesses on oath, to compel the attendance of witnesses and the giving of such testimony and production of such papers as shall be necessary to enable him to gain the necessary information. Upon the refusal of any witness to comply with the requirements of the Commissioner of Labor or his representative in this respect, it shall be the duty of any judge of the superior court, upon the application of the Commissioner of Labor, or his representative, to order the witness to show cause why he should not comply with the requirements of the said Commissioner, or his representative, if in the discretion of the judge such requirement is reasonable and proper. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court. (1931, c. 312, s. 9.)

§ 95-8. Employers required to make statistical report to Commissioner; refusal as contempt.—It shall be the duty of every owner, operator,

or manager of every factory, workshop, mill, mine, or other establishment, where labor is employed, to make to the Department, upon blanks furnished by said Department, such reports and returns as the said Department may require, for the purpose of compiling such labor statistics as are authorized by this article, and the owner or business manager shall make such reports and returns within the time prescribed therefor by said Commissioner, and shall certify to the correctness of the same. Upon the refusal of any person, firm, or corporation to comply with the provisions of this section, it shall be the duty of any judge of the superior court, upon application by the Commissioner or by any representative of the Department authorized by him, to order the person, firm, or corporation to show cause why he or it should not comply with the provisions of this section. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court. (1931, c. 312, s. 10.)

§ 95-9. **Employers to post notice of laws.**—It shall be the duty of every employer to keep posted in a conspicuous place in every room where five or more persons are employed a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Commissioner of Labor shall furnish the printed form of such notice upon request. (1933, c. 244, s. 6.)

§ 95-10: Repealed by Session Laws 1963, c. 313, s. 1, effective July 1, 1963.

§ 95-11. **Division of Standards and Inspection.**—(a) The chief administrative officer of the Division of Standards and Inspection shall be known as the Director of the Division. It shall be his duty, under the direction and supervision of the Commissioner of Labor, and under rules and regulations to be adopted by the Department as herein provided, to make or cause to be made all necessary inspections to see that all laws, rules, and regulations concerning the safety and well-being of labor are promptly and effectively carried out.

(b) The Division shall make studies and investigations of special problems connected with the labor of women and children, and create the necessary organization, and appoint an adequate number of investigators, with the consent of the Commissioner of Labor and the approval of the Governor; and the Director of said Division, under the supervision and direction of the Commissioner of Labor and under such rules and regulations as shall be prescribed by said Commissioner, with the approval of the Governor, shall perform all duties devolving upon the Department of Labor, or the Commissioner of Labor with relation to the enforcement of laws, rules, and regulations governing the employment of women and children.

(c) The Director shall report annually to the Commissioner of Labor the activities of the Division, with such recommendations as may be considered advisable for the improvement of the working conditions for women and children.

(d) The Division shall collect and collate information and statistics concerning the location, estimated and actual horsepower and condition of valuable water powers, developed and undeveloped, in this State; also concerning farm lands and farming, the kinds, character, and quantity of the annual farm products in this State; also of timber lands and timbers, truck gardening, dairying, and such other information and statistics concerning the agricultural and industrial welfare of the citizens of this State as may be deemed to be of interest and benefit to the public. The Director shall also perform the duties of mine inspector as prescribed in the chapter on Mines and Quarries.

(e) The Division shall conduct such research and carry out such studies as will contribute to the health, safety, and general well-being of the working classes of the State. The finding of such investigations, with the approval of the Commissioner of Labor and the Governor and the co-operation of the chief administrative officer of the Division or Divisions directly concerned, shall be promulgated as rules and regulations governing work places and working conditions. All recom-

mendations and suggestions pertaining to health, safety, and well-being of employees shall be transmitted to the Commissioner of Labor in an annual report which shall cover the work of the Division of Standards and Inspection.

(f) The Division shall make, promulgate and enforce rules and regulations for the protection of employees from accident and from occupational disease; and shall upon request, and after such investigation as it deems proper, issue certificates of compliance to such employers as are found by it to be in compliance with the rules and regulations made and promulgated in accordance with the provisions of this paragraph. (1931, c. 312, s. 12; c. 426; 1935, c. 131.)

Editor's Note. — Subsection (f) was added by the 1935 amendment.

Section Does Not Create Criterion for Negligence. — Neither the legislature, when it authorized the Division of Standards and Inspection of the Department of Labor to promulgate rules and regulations to protect the health, safety and general well-being of the working classes of the State, nor the Division when it wrote the rules, intended to create a criterion for negligence in civil damages suits. *Swaney v. Peden Steel Co.*, 259 N. C. 531, 131 S. E. (2d) 601 (1963).

Hence, Violation of Rule May Not Be Asserted as Contributory Negligence. —

The violation of a rule issued by the Department of Labor under this section for the purpose of protecting construction employees from dangerous methods of work may not be asserted by a third person tort-feasor as contributory negligence of the employee so as to relieve itself of liability for injury to the employee proximately caused by its negligence. *Swaney v. Peden Steel Co.*, 259 N. C. 531, 131 S. E. (2d) 601 (1963).

§ 95-12. **Division of Statistics.**—The Division of Statistics shall be in charge of a Chief Statistician. It shall be his duty, under the direction and supervision of the Commissioner of Labor, to collect, assort, systematize, and print all statistical details relating to all divisions of labor in this State as is provided in § 95-6. (1931, c. 312, s. 13.)

§ 95-13. **Enforcement of rules and regulations.**—In the event any person, firm or corporation shall, after notice by the Commissioner of Labor, violate any of the rules or regulations promulgated under the authority of this article or any laws amendatory hereof relating to safety devices, or measures, the Attorney General of the State, upon the request of the Commissioner of Labor, may take appropriate action in the civil courts of the State to enforce such rules and regulations. Upon request of the Attorney General, any solicitor of the State of North Carolina in whose district such rule or regulation is violated may perform the duties hereinabove required of the Attorney General. (1939, c. 398.)

Stated in *Swaney v. Peden Steel Co.*, 259 N. C. 531, 131 S. E. (2d) 601 (1963).

§ 95-14. **Agreements with certain federal agencies for enforcement of Fair Labor Standards Act.**—The North Carolina State Department of Labor may and it is hereby authorized to enter into agreements with the Wage and Hour Division, and the Children's Bureau, United States Department of Labor, for assistance and co-operation in the enforcement within this State of the act of Congress known as the Fair Labor Standards Act of one thousand nine hundred thirty-eight, approved June twenty-fifth, one thousand nine hundred thirty-eight, and is further authorized to accept payment and/or reimbursement for its services as provided by said act of Congress. Any such agreement may be subject to the regulations of the administrator of the Wage and Hour Division, or the chief of the Children's Bureau of the United States Department of Labor, as the case may be, and shall be subject to the approval of the Director of the State Budget. Nothing in this section shall be construed as authorizing the State Department of Labor to spend in excess of its appropriation from State funds, except to the extent that such excess may be paid and/or reimbursed to it by the United States Department of Labor. All payments received by the State Department of Labor under this section shall be

deposited in the State treasury and are hereby appropriated to the State Department of Labor to enable it to carry out the agreements entered into under this section. (1939, c. 245.)

ARTICLE 2.

Maximum Working Hours.

§ 95-15. **Title of article.**—This article shall be known and may be cited as the “Maximum Hour Law.” (1937, c. 409, s. 1.)

§ 95-16. **Declaration of public policy; enactment under police power.**—As a guide to interpretation and application of this article, the public policy of this State is declared as follows: The relationship of hours of labor to the health, morals and general welfare of the people is a subject of general concern which requires appropriate legislation to limit hours of labor to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry.

The General Assembly, therefore, declares that in its considered judgment the general welfare of the State requires enactment of this law under the police power of the State. (1937, c. 409, s. 2.)

§ 95-17. **Limitations of hours of employment; exceptions.**—No employer shall employ a female person for more than forty-eight hours in any one week or nine hours in any one day, or on more than six days in any period of seven consecutive days.

No employer shall employ a male person for more than fifty-six hours in any one week, or more than twelve days in any period of fourteen consecutive days or more than ten hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: Provided, that any male person employed working in excess of fifty-five hours in any one week shall be paid time and a half at his regular rate of pay for such excess hours: Provided, in case of emergencies, repair crews, engineers, electricians, firemen, watchmen, office and supervisory employees and employees engaged in hereinafter defined continuous process operations and in work, the nature of which prevents second shift operations, may be employed for not more than sixty hours in any one week: Provided, also, that the ten hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment: Provided, also, that the ten hours per day maximum shall not apply to any employee who is employed as a motor vehicle mechanic on a commission, or who is employed partly on commission and partly on wage or salary basis: Provided, that boys over fourteen years of age delivering newspapers on fixed routes and working not more than twenty-four hours per week, and watchmen may be employed seven days per week: Provided, further, that for a period of one week’s duration between Thanksgiving and Christmas and also for two periods of one week’s duration each during the year for purpose of taking inventory, female persons over sixteen years of age in mercantile establishments may be employed not to exceed ten hours in any one day: Provided, further, that female persons engaged in the operation of seasonal industries in the process of conditioning and preserving perishable or semiperishable commodities may be employed for not more than ten hours in any one day and not more than fifty-five hours in any one week.

No provision in this article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same em-

ployee, the employer shall provide that all such periods shall be within twelve consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining rooms, and public eating places, such periods shall be within fourteen consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this article shall apply to the employment of persons in agricultural occupations, ice plants, cotton gins and cottonseed oil mills or in domestic service in private homes and boardinghouses, or to the work of persons over eighteen years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, motion picture theatres, seasonal hotels and club houses, commercial fishing or tobacco redrying plants, tobacco warehouses, employers employing a total of not more than eight persons in each place of business, charitable institutions and hospitals: Provided further, that nothing in this section or in any other provision of this article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the Interstate Commerce Commission or the North Carolina Utilities Commission, and utilities operated by municipalities or any transportation agencies now regulated by the federal government: Provided, further, that the limitation on daily and weekly hours and the number of days in any period of fourteen consecutive days provided for in this section shall not apply to any male employee eighteen years of age and over whose employment is covered by or in compliance with the Fair Labor Standards Act of 1938 (Public No. 718; 75th Congress; Chapter 676-3rd Session), as amended or as same may be amended: Provided, nothing in this article shall apply to the State or to municipal corporations or their employees, or to employees in hotels.

When, by reason of a seasonal rush of business, any employer finds or believes it to be necessary that the employees of his or its manufacturing plant shall work for more than fifty-six hours per week, the employer may apply to the Commissioner of Labor of the State of North Carolina for permission to allow the employees of such establishment to work a greater number of hours than fifty-six for a definite length of time not exceeding sixty days; and the Commissioner after investigation, may, in his discretion, issue such permit on the condition that all such employees shall receive one and one-half times the usual compensation for all hours worked over fifty-six per week: Provided, this shall not apply to the hours of any female person or any person under the age of eighteen years: Provided further, employees in all laundries and dry cleaning establishments shall not be employed more than fifty-five hours in any one week: Provided further, nothing contained in this article shall be construed to limit the hours of employment of any outside salesman on commission basis. Provided, that this article shall not apply to male clerks in mercantile establishments. Provided, that this article shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: One week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day. (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, c. 629; 1961, c. 1070.)

Cross Reference.—Compare §§ 95-26, 95-27.

Editor's Note.—The 1939 amendment added the last proviso in the section.

The 1943 amendment substituted "fifty-six" for "fifty-five" near the beginning of the second paragraph and in three places in the last paragraph. It also inserted the first proviso in the second paragraph.

The 1947 amendment inserted the second proviso in the sixth paragraph. The

1949 amendment inserted the fourth proviso in the second paragraph.

For discussion of the 1947 amendment, see 25 N. C. Law Rev. 449.

The 1959 amendment inserted in the second proviso of the next to last paragraph "and the number of days in any period of fourteen consecutive days".

The 1961 amendment struck out "that from the eighteenth of December to and including the following twenty-fourth of

December and," formerly appearing after "further" in the next to the last proviso of the second paragraph and inserted in lieu thereof "that for a period of one week's duration between Thanksgiving and Christmas and also."

§ 95-18. **Definitions.**—Whenever used in this article

- (1) "Employ" includes permit or suffer to work.
- (2) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative or foreman, or other person having control or custody of any employment, place of employment or of any employee.
- (3) "Day" includes any period of twenty-four consecutive hours.
- (4) "Continuous process operations" includes bleaching, dyeing, finishing, redrying, dry kiln operations, and any other proceeding requiring continuous handling or work for completion. (1937, c. 409, s. 4.)

§ 95-19. **Posting of law.**—Every employer shall post and keep conspicuously posted in or about the premises wherein any employee is employed, a printed abstract of this article to be furnished by the State Commissioner of Labor upon request. (1937, c. 409, s. 5.)

§ 95-20. **Time records kept by employers.**—Every employer shall keep a time book and/or record which shall state the name and occupation of each employee employed and which shall indicate the number of hours worked by him or her on each day of the week, and the amount of wages paid each pay period to each such employee. Such time and/or record shall be kept on file at least one year after the entry of the record. The State Commissioner of Labor or his duly authorized representative shall, for the purpose of examination, have access to and the right to copy from such time book and/or record for the purpose for prosecuting violations of the provisions of the article. Any employer who fails to keep such time book and/or record, or knowingly and intentionally makes any false statement therein, or refuses to make such time book and/or record accessible, upon request, to the State Commissioner of Labor or his duly authorized representative shall be deemed to have violated this section. (1937, c. 409, s. 6.)

§ 95-21. **Enforcement by Commissioner of Labor.**—It shall be the duty of the State Commissioner of Labor to enforce all the provisions of this article. The State Commissioner of Labor and his authorized representatives shall have the power and authority to enter any place of employment, and, in the enforcement of this article, the State Commissioner of Labor and his authorized representatives may enter and inspect as often as practicable all such places of employment. They may investigate all complaints of violations of this article received by them, and may institute prosecutions as hereinafter provided for violations of this article. (1937, c. 409, s. 7.)

§ 95-22. **Interference with enforcement prohibited.**—No person shall hinder or delay the State Commissioner of Labor or any of his authorized representatives in the performance of his duties; nor shall any person refuse to admit to, or lock out from, any place of employment the State Commissioner of Labor or any of his authorized representatives, or refuse to give the State Commissioner of Labor or his authorized representatives information required for the proper enforcement of this article. (1937, c. 409, s. 8.)

§ 95-23. **Violation a misdemeanor.**—Any person who, whether on his own behalf or for another, or through an agent, manager, representative, foreman or other person, shall knowingly and intentionally violate any provisions of this article, shall be guilty of a misdemeanor. (1937, c. 409, s. 9.)

§ 95-24. **Penalties.**—Whoever knowingly and intentionally violates any provisions of § 95-17, upon complaint lodged by the State Commissioner of Labor,

shall be punished by a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty days in the discretion of the court; and whenever any person shall have been notified by the State Commissioner of Labor or his authorized representative, or by the service of a summons in a prosecution, that he is violating such provision, he shall be subject to like penalties in addition for each and every day that such violation shall have been continued after such notification.

Whoever knowingly and intentionally violates any of the provisions of §§ 95-19, 95-20, or 95-22 of this article shall be punished, for the first offense, by a fine of not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars, or imprisonment for not more than thirty days, in the discretion of the court, and whenever any person shall have been notified by the State Commissioner of Labor or his authorized representative that he is violating such provisions, and shall have been given a reasonable time in which to remedy the conditions which shall constitute such violations, he shall be subject to like penalties in addition to the penalties aforesaid, for each and every day that such violation shall have continued after the expiration of the time allowed by the State Commissioner of Labor or his authorized representative for remedying the aforesaid conditions. (1937, c. 409, s. 10.)

§ 95-25. **Intimidating witnesses.**—Whoever shall, by force, intimidation, threat or procuring dismissal from employment, or by any other manner whatsoever, induce or attempt to induce an employee to refrain from giving testimony in any investigation or proceeding relating to or arising under this article or whoever discharges or penalizes any employee for so testifying, shall be subject to a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty days. (1937, c. 409, s. 11.)

ARTICLE 3.

Various Regulations.

§ 95-26. **Week's work of women to be fifty-five hours.**—Not more than fifty-five hours shall constitute a week's work for women over sixteen in any laundry, dry-cleaning establishment, pressing club, workshop, factory, manufacturing establishment, or mill, of the State, and no woman over sixteen employed in any of the above-named places shall be worked exceeding eleven hours in any one day or over fifty-five hours in any one week. Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, and each day's work exceeding the said hours shall constitute a separate offense. Provided, that this section shall not apply to those employed in the operation of seasonal industries in their process of conditioning and of preserving perishable or semiperishable commodities, or to those engaged in agricultural work. Provided, further, that this section shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: One week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day. (1915, c. 148, s. 2; C. S., s. 6554; 1931, c. 289; 1935, c. 406; 1939, c. 312, s. 2.)

Cross Reference.—For hours law applicable to employers hiring nine or more employees, see §§ 95-15 to 95-25. substituted a section making no provision for male workers.

Editor's Note.—The 1931 amendment struck out the former section, which provided a sixty-hour week for men and women, permitting the men to exceed it under special contract for overtime, and

The 1935 amendment made this section applicable to laundries, dry-cleaning establishments, pressing clubs and workshops.

The 1939 amendment added the second proviso.

§ 95-27. **Hours of work for women in certain industries.**—It shall be unlawful for any person, firm, or corporation, proprietor or owner of any re-

tail or wholesale mercantile establishment or other business where any female help is employed for the purpose of serving the public in the capacity of clerks, salesladies or waitresses and other employees of public eating places, to employ or permit to work any female longer than ten hours in any one day or over fifty-five hours in any one week; nor shall any female be employed or permitted to work for more than six hours continuously at any one time without an interval of at least half an hour except where the terms of employment do not call for more than six and a half hours in any one day or period.

Nothing in this section shall be construed to apply to females whose full time is employed as bookkeepers, cashiers or office assistants or to any establishment that does not have in its employment three or more persons at any one time.

Every employer shall post in a conspicuous place in every room of the establishment in which females are employed a printed notice stating the provisions of this section and the hours of labor. The printed form of such notice shall be furnished, upon request, by the Commissioner of Labor.

Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars or imprisoned not exceeding sixty days and each day's work exceeding the said hours shall constitute a separate offense. (1933, c. 35; 1935, c. 407.)

Cross Reference.—For hours law applicable to employers hiring nine or more employees, see §§ 95-15 to 95-25.

appeared in the second paragraph, stating that the section should not apply to establishments in towns of less than five thousand inhabitants.

Editor's Note.—The 1935 amendment omitted a proviso, which formerly ap-

§ 95-28. Working hours of employees in State institutions.—It shall be unlawful for any person or official or foreman or other person in authority in Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, or any penal or correctional institution of the State of North Carolina, excepting the State prison and institutions under the control of the State Commission of Highways and Public Works, to require any employee to work for a greater number of hours than twelve (12) during any twenty-four (24) hour period, or not more than eighty-four (84) hours during any one week, or permit the same, during which period the said employee shall be permitted to take one continuous hour off duty; except in case of an emergency as determined by the superintendent, in which case the limitation of twelve (12) hours in any consecutive twenty-four (24) hours shall not apply. Nothing in this section shall be construed to affect the hours of doctors and superintendents in these hospitals. Any violation of this section shall be a misdemeanor, punishable within the discretion of the court. (1935, c. 136; 1959, c. 1028, ss. 1-3.)

Editor's Note.—The 1959 amendment changed the names of the State Hospital at Raleigh, the State Hospital at Morganton and the State Hospital at Goldsboro to Dorothea Dix Hospital, Broughton Hospital and Cherry Hospital, respectively.

G. S. 148-1 created the State Prison Department and transferred to it all duties and powers respecting the control and management of the State Prison System formerly vested in and imposed upon the State Highway and Public Works Commission.

§ 95-29. Seats for women employees; failure to provide, a misdemeanor.—All persons, firms, or corporations who employ females in a store, shop, office, or manufacturing establishment, as clerks, operatives, or helpers in any business, trade, or occupation carried on or operated in the State of North Carolina, shall be required to procure and provide proper and suitable seats for all such females, and shall permit the use of such seats, rests, or stools as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such seats, stools, or rests when such female employee or employees are not actively employed or engaged in their work in such business or employment.

If any employer of female help fails to provide seats, as required in this article, or makes any rules, orders or regulations in his or its shop, store, or other place of business requiring females to remain standing when not necessarily employed or engaged in service or labor therein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or both, within the discretion of the court.

The Commissioner of Labor, or his duly authorized agents, may at any time enter and inspect all stores, shops, offices, or manufacturing or other establishments coming within the provisions of this section, and he may make such rules and regulations as he deems necessary to enforce the provisions of this section. It shall be unlawful for any person, firm or corporation to refuse permission to enter, obstruct, or prevent any duly authorized agent of the Commissioner in his effort to make the inspection herein provided for. (1909, c. 857, ss. 1, 2; 1919, c. 100, s. 12; C. S., s. 6555.)

§ 95-30. Medical chests in factories; failure to provide, a misdemeanor.—Every person, firm, or corporation operating a factory or shop employing over twenty-five laborers, in which machinery is used for any manufacturing purpose, or for any purpose except for elevation or for heating or hoisting apparatus, shall at all times keep and maintain free of expense to the employees a medical or surgical chest which shall contain two porcelain pans, two tourniquets, gauze, absorbent cotton, adhesive plasters, bandages, antiseptic soap, one bottle of carbolic acid with directions on bottle, one bottle antiseptic tablets, one pair scissors, one folding stretcher, for the treatment of persons injured or taken ill upon the premises: Provided, this section does not require any employer to spend over ten dollars for such equipment.

Any person, firm, or corporation violating this section shall be subject to a fine not less than five dollars nor more than twenty-five dollars for every week during which such violation continues. (1911, c. 57; C. S., s. 6556.)

§ 95-31. Acceptance by employer of assignment of wages.—No employer of labor shall be responsible for any assignment of wages to be earned in the future, executed by an employee, unless and until such assignment of wages is accepted by the employer in a written agreement to pay same. (1935, c. 410; 1937, c. 90.)

Editor's Note.—The 1937 amendment struck out a proviso exempting Cabarrus, Iredell, Rockingham and Rowan counties from the provisions of this section.

Section Is Constitutional.—The provisions of this section, rendering an assignment invalid unless accepted in writing by the employer, do not deprive the assignee of due process of law or the equal protection of the laws. *Morris v. Holshouser*, 220 N. C. 293, 17 S. E. (2d) 115, 137 A. L. R. 733 (1941).

When applied to contracts executed after its effective date this section cannot be held unconstitutional as impairing the obligations of contracts. *Morris v. Holshouser*, 220 N. C. 293, 17 S. E. (2d) 115, 137 A. L. R. 733 (1941).

This section is a regulation of contracts growing out of the relationship of employer and employee imposed for the general welfare and is a valid exercise of the police power of the State. *Morris v. Holshouser*, 220 N. C. 293, 17 S. E. (2d) 115, 137 A. L. R. 733 (1941).

The fact that this section permits an employer, at his election to accept an assignment of unearned wages executed by his employee does not in itself constitute an unconstitutional discrimination, since in the absence of legislative restraint, one engaged in private business may exercise his own pleasure as to the parties with whom he will deal. *Morris v. Holshouser*, 220 N. C. 293, 17 S. E. (2d) 115, 137 A. L. R. 733 (1941).

Purpose.—The end in view was not only to relieve the employer of unnecessary responsibility, but also to restrain the activities of those who were engaged in the business of buying at a discount the unearned wages of employees. *Morris v. Holshouser*, 220 N. C. 293, 17 S. E. (2d) 115, 137 A. L. R. 733 (1941).

Section Applies Only to Wages to Be Earned.—An assignment by an employee of wages earned and due him from the employer is valid without acceptance by the employer, and the assignee may sue the employer thereon, the provision of this

section being applicable only to wages to houser, 217 N. C. 377, 8 S. E. (2d) 199
 be earned in the future. Rickman v. Hols- (1940).

ARTICLE 4.

Conciliation Service and Mediation of Labor Disputes.

§ 95-32. **Declaration of policy.**—It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the conciliation and voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this article is hereby declared as a matter of legislative determination. (1941, c. 362, s. 1.)

Cross Reference.—For subsequent statute affecting this article, see §§ 95-36.1 to 95-36.7.

§ 95-33. **Scope of article.**—The provisions of this article shall apply to all labor disputes in North Carolina. (1941, c. 362, s. 2.)

§ 95-34. **Administration of article.**—The administration of this article shall be under the general supervision of the Commissioner of Labor of North Carolina. (1941, c. 362, s. 3.)

§ 95-35. **Conciliation service established; personnel; removal; compensation.**—There is hereby established in the Department of Labor a conciliation service. The Commissioner of Labor may appoint such employees as may be required for the consummation of the work under this article, prescribe their duties and fix their compensation, subject to existing laws applicable to the appointment and compensation of employees of the State of North Carolina. Any member of or employee in the conciliation service may be removed from office by the Commissioner of Labor, acting in his discretion. (1941, c. 362, s. 4.)

§ 95-36. **Powers and duties of Commissioner and conciliator.**—Upon his own motion in an existent or imminent labor dispute, the Commissioner of Labor may, and, upon the direction of the Governor, must order a conciliator to take such steps as seem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

The conciliator shall promptly put himself in communication with the parties to such controversy, and shall use his best efforts, by mediation, to bring them to agreement.

The Commissioner of Labor, any conciliator or conciliators and all other employees of the Commissioner of Labor engaged in the enforcement and duties prescribed by this article, shall not be compelled to disclose to any administrative or judicial tribunal any information relating to, or acquired in the course of their official activities under the provisions of this article, nor shall any reports, minutes, written communications, or other documents or copies of documents of the Commissioner of Labor and the above employees pertaining to such information be subject to subpoena: Provided, that the Commissioner of Labor, any conciliator or conciliators and all other employees of the Commissioner of Labor

engaged in the enforcement of this article, may be required to testify fully in any examination, trial, or other proceeding in which the commission of a crime is the subject of inquiry. (1941, c. 362, s. 5; 1949, c. 673.)

Editor's Note.—The 1949 amendment on the amendment, see 27 N. C. Law added the last paragraph. For brief com- Rev. 465.

ARTICLE 4A.

Voluntary Arbitration of Labor Disputes.

§ 95-36.1. **Declaration of policy.**—It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties to such disputes, should always be considered, respected and protected; and, where efforts at amicable settlement have been unsuccessful, that the voluntary arbitration of such disputes will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policies, the necessity for the enactment of the provisions of this article is hereby declared as a matter of legislative determination. (1945, c. 1045, s. 1; 1951, c. 1103, s. 1.)

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

For note on labor arbitration in North Carolina, see 29 N. C. Law Rev. 460.

Remedy Provided by Article Is Cumulative.—The statutory methods of arbitration provide cumulative and concurrent rather than exclusive procedural remedies. *Lammonds v. Aleo Mfg. Co.*, 243 N. C. 749, 92 S. E. (2d) 143 (1956).

Effect on Employee's Right to Sue for Wages and Benefits Due under Labor Contract.—The fact that disputed provisions of a collective labor contract have

been arbitrated under the procedure outlined in the contract does not make the question of an accounting for an employee's wages and other benefits under the terms of the contract one of arbitration and award under the Uniform Arbitration Act, G. S. 1-544 et seq. Nor does the statutory procedure for the voluntary arbitration of labor disputes as contained in this article preclude maintenance of an action by the employee for such accounting. *Lammonds v. Aleo Mfg. Co.*, 243 N. C. 749, 92 S. E. (2d) 143 (1956).

§ 95-36.2. **Scope of article.**—The provisions of this article shall apply only to voluntary agreements to arbitrate labor disputes including, but not restricted to, all controversies between employers, employees and their respective bargaining representatives, or any of them, relating to wages, hours, and other conditions of employment. (1945, c. 1045, s. 2; 1951, c. 1103, s. 1.)

§ 95-36.3. **Administration of article.**—(a) The administration of this article shall be under the general supervision of the Commissioner of Labor of North Carolina.

(b) There is hereby established in the Department of Labor an arbitration service. The Commissioner of Labor may appoint such employees as may be required for the consummation of the work under this article, prescribe their duties and fix their compensation, subject to existing laws applicable to the appointment and compensation of employees of the State of North Carolina. Any member of or employee in the arbitration service may be removed from office by the Commissioner of Labor, acting in his discretion.

(c) The Commissioner of Labor, with the written approval of the Attorney General as to legality, shall have power to adopt, alter, amend or repeal appropriate rules of procedure for selection of the arbitrator or panel and for conduct of the arbitration proceedings in accordance with this article: Provided, however, that such rules shall be inapplicable to the extent that they are inconsistent with the arbitration agreement of the parties. (1945, c. 1045, s. 3; 1951, c. 1103, s. 1.)

§ 95-36.4. **Voluntary arbitrators.**—(a) It shall be the duty of the Commissioner of Labor to maintain a list of qualified and public-spirited citizens who will serve as arbitrators. All appointments of a single arbitrator or member of an arbitration panel by the Commissioner of Labor shall be made from the list of qualified arbitrators maintained by him.

(b) No person named by the Commissioner of Labor to act as an arbitrator in a dispute shall be qualified to serve as such arbitrator if such person has any financial or other interest in the company or labor organization involved in the dispute. (1945, c. 1045, s. 4; 1951, c. 1103, s. 1.)

§ 95-36.5. **Fees and expenses.**—(a) All the costs of any arbitration proceeding under this article, including the fees and expenses of the arbitrator or arbitration panel, shall be paid by the parties to the proceeding in accordance with any agreement between them. In the absence of such an agreement, the award in the proceeding shall normally require the payment of such fees, expenses and other proper costs by one or more of the parties: Provided, that if the Commissioner of Labor deems that the public interest so requires, he may provide for the payment to any arbitrator appointed by him of per diem compensation at the rate established by the Commissioner, and actual travel and other necessary expenses incurred while performing duties arising under this article.

(b) In cases where an arbitrator has been appointed by the Commissioner, the Department of Labor may furnish necessary stenographic, clerical and technical service and assistance to the arbitrator or arbitration panel.

(c) Expenditures of public funds authorized under this section shall be paid from funds appropriated for the administration of this article. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

Editor's Note.—For discussion of 1947 amendment affecting this and following sections, see 25 N. C. Law Rev. 446.

§ 95-36.6. **Appointment of arbitrators.** — The parties may by agreement determine the method of appointment of the arbitrator or arbitration panel. If the parties have agreed upon arbitration under this article and have not otherwise agreed upon the number of arbitrators or the method for their appointment, the controversy shall be heard and decided by a single arbitrator designated in such manner as the Commissioner of Labor shall determine. Any person or agency selected by agreement or otherwise to appoint an arbitrator or arbitrators shall send by registered mail to each of the parties to the proposed proceeding notice of the demand for arbitration. The arbitrator or arbitration panel, as the case may be, shall have such powers and duties as are conferred by the voluntary agreement of the parties, and, if there is no agreement to the contrary, shall have power to decide the arbitrability as well as the merits of the dispute. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

This section is modified by § 95-36.9 (b), giving the courts and not the arbitrators power to decide whether or not a party has agreed to the arbitration of the contro-

versy involved. *Charlotte City Coach Lines, Inc. v. Brotherhood of Railroad Trainmen*, 254 N. C. 60, 118 S. E. (2d) 37 (1961).

§ 95-36.7. **Arbitration procedure.**—Upon the selection or appointment of an arbitrator or arbitration panel in any labor dispute, a statement of the issues or questions in dispute shall be submitted to said arbitrator or panel in writing, signed by one or more of the parties or their authorized agents. The arbitrator or panel shall appoint a time and place for the hearing, and notify the parties thereof, and may postpone or adjourn the hearing from time to time as may be necessary, subject to any time limits which are agreed upon by the parties. If any party neglects to appear before the arbitrator or panel after reasonable notice, the arbitrator or panel may nevertheless proceed to hear and determine the controversy. Unless the parties have otherwise agreed, the findings and decision of a majority of an arbitration panel shall constitute the award of the panel and, if a majority vote of

the panel cannot be obtained, then the findings and decision of the impartial chairman of the panel shall constitute such award. To be enforceable, the award shall be handed down within sixty (60) days after the written statement of the issues or questions in dispute has been received by the arbitrator or panel, or within such further time as may be agreed to by the parties. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

§ 95-36.8. Enforcement of arbitration agreement and award.—(a) Written agreements to arbitrate labor disputes, including but not restricted to controversies relating to wages, hours and other conditions of employment, shall be valid, enforceable and irrevocable, except upon such grounds as exist in law or equity for the rescission or revocation of any contract, in either of the following cases:

- (1) Where there is a provision in a collective bargaining agreement or any other contract, hereafter made or extended, for the settlement by arbitration of a controversy or controversies thereafter arising between the parties;
- (2) Where there is an agreement to submit to arbitration a controversy or controversies already existing between the parties.

(b) Any arbitration award, made pursuant to an agreement of the parties described in subsection (a) of this section and in accordance with this article, shall be final and binding upon the parties to the arbitration proceedings. (1945, c. 1045, s. 5; 1947, c. 379, ss. 1-3; 1951, c. 1103, s. 1.)

§ 95-36.9. Stay of proceedings. -- (a) If any action or proceeding be brought in any court upon any issue referable to arbitration under an agreement described in subsection (a) of G. S. 95-36.8, the court where the action or proceeding is pending or a judge of the superior court having jurisdiction in any county where the dispute arose shall stay the action or proceeding, except for any temporary relief which may be appropriate pending the arbitration award, until such arbitration has been had in accordance with the terms of the agreement. The application for stay may be made by motion in writing of a party to the agreement, but such motion must be made before answer or demurrer to the pleading by which the action or proceeding was begun.

(b) Any party against whom arbitration proceedings have been initiated may, within 10 days after receiving written notice of the issue or questions to be passed upon at the arbitration hearing, apply to any judge of the superior court having jurisdiction in any county where the dispute arose for a stay of the arbitration upon the ground that he has not agreed to the arbitration of the controversy involved. Any such application shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions generally, except that it shall be entitled to priority in the interest of prompt disposition. If no such application is made within said ten-day period, a party against whom arbitration proceedings have been initiated cannot raise the issue of arbitrability except before the arbitrator and in proceedings subsequent to the award.

(c) Any party against whom an arbitration award has been issued may, within 10 days after receiving written notice of such award, apply to any judge of the superior court having jurisdiction in any county where the dispute arose for a stay of the award upon the ground that it exceeds the authority conferred by the arbitration agreement. Any such application shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions generally, except that it shall be entitled to priority in the interest of prompt disposition. If no such application is made within said ten-day period, a party against whom arbitration proceedings have been initiated cannot raise the issue of arbitrability except before the arbitrator or arbitrators, or in proceedings to enforce the award. Any failure to abide by an award shall not constitute a breach of the contract to arbitrate, pending disposition of a

timely application for stay of the award pursuant to this paragraph. (1951, c. 1103, s. 1.)

Section 95-36.6 is modified by this section, giving the courts and not the arbitrators power to decide whether or not a party has agreed to the arbitration of the controversy involved. *Charlotte City Coach Lines, Inc. v. Brotherhood of Railroad*

Trainmen, 254 N. C. 60, 118 S. E. (2d) 37 (1961).

Applied in *Calvine Cotton Mills, Inc. v. Textile Workers Union*, 238 N. C. 719, 79 S. E. (2d) 181 (1953).

ARTICLE 5.

Regulation of Employment Agencies.

§ 95-37. **Employment agency defined.**—Employment agency within the meaning of this article shall include any business operated by any person, firm or corporation for profit and engaged in procuring employment for any person, firm or corporation in the State of North Carolina and making a charge on the employee or employer for the service. (1929, c. 178, s. 1.)

§ 95-38. **License from Commissioner of Labor; investigation of applicant.**—No person, firm or corporation shall engage in the business of operating any employment agency, as designated in § 95-37, in North Carolina without first making a written application to the Commissioner of Labor and being licensed by him as herein provided, to engage in such business. Upon receiving an application from such person, firm or corporation it shall be the duty of the Commissioner of Labor to make an investigation into the character and moral standing of the person, firm or corporation. If after such investigation, the Commissioner of Labor shall be satisfied that such person, firm or corporation is of such character and moral standing as to warrant the issuance of a license to engage in the business covered by this article, he shall issue a license to such person, firm or corporation as provided herein. (1929, c. 178, s. 2; 1931, c. 312, s. 3.)

§ 95-39. **Rules and regulations governing issuance of licenses.**—The Commissioner of Labor is authorized and empowered to make general rules and regulations in relation to the licensing of such employment agencies and for the general supervision thereof in accordance with this article. (1929, c. 178, s. 3; 1931, c. 312, s. 3.)

§ 95-40. **Investigation of records of agencies; hearing; rescission of licenses.**—The Commissioner of Labor may investigate the books and records of any employment agency licensed under this article, and may rescind the license of the agency for cause if he finds that the agency is not complying with the terms and conditions of this article. No license shall be revoked until the Commissioner shall hold a hearing at the courthouse of the county in which the licensee is doing business. The licensee shall be given ten days' notice to appear at the hearing and show cause why the license should not be revoked. At the hearing the result of the Commissioner's investigation shall be presented under oath, and the licensee may prevent evidence to show that the license should not be revoked. The licensee may appeal to the superior court within ten days after the Commissioner's decision. (1929, c. 178, s. 4; 1931, c. 312, s. 3.)

§ 95-41. **Subpoenas; oaths.**—The Commissioner of Labor, his assistant or deputy shall be empowered to subpoena witnesses and administer oaths in making investigations and taking testimony to be presented at the hearing to be held before the Commissioner of Labor as hereinbefore provided for. (1929, c. 178, s. 5; 1931, c. 312, s. 3.)

§ 95-42. **Service of subpoenas and fees for, governed by general law.**—The county sheriffs and their respective deputies shall serve all subpoenas of the Commissioner of Labor, and shall receive the same fees as are now provided by law for like services, and each witness who appears in obedience to

such subpoena shall receive for attendance the fees and mileage for witnesses in civil cases of courts of the county in which the hearing is held. (1929, c. 178, s. 6; 1931, c. 312, s. 3.)

§ 95-43. Production of books, papers and records.—The superior court shall, on the application of the Commissioner of Labor, his assistant or duly authorized deputy, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records. (1929, c. 178, s. 7; 1931, c. 312, s. 3.)

§ 95-44. License fee to be paid into special fund.—The license fee, charged under the provisions of this article, shall be paid into a special fund of the Department of Labor, and the proceeds of such license fees shall be used for the purpose of the supervision and regulation of the employment agencies, including costs of investigations or hearings to revoke licenses and the necessary traveling expenses and other expenditures incurred in administering this article. (1929, c. 178, s. 8; 1931, c. 312, s. 3.)

§ 95-45. Violations.—Any person, firm or corporation conducting an employment agency in the State of North Carolina, in violation of this article shall be guilty of a misdemeanor, and if a person punishable by a fine of not less than five hundred dollars, or imprisonment of not less than six months, or both; and if a corporation by a fine of not less than five hundred dollars and not more than one thousand dollars. (1929, c. 178, s. 9.)

§ 95-46. Government employment agencies unaffected.—This article shall not in any manner affect or apply to any employment agency operated by the State of North Carolina, the government of the United States, or any city, county or town, or any agency thereof. (1929, c. 178, s. 10.)

§ 95-47. License taxes placed upon agencies under Revenue Act, not affected.—This article shall in nowise conflict with or affect any license tax placed upon such employment agencies by the General Revenue Act of North Carolina but instead shall be construed as supplementary thereto in exercising the police powers of the State. (1929, c. 178, s. 11.)

ARTICLE 6.

Separate Toilets for Sexes.

§ 95-48. Separate toilets required.—In the interest of public health and in compliance with G. S. 130-160 and 143-138, adequate, well-lighted and ventilated toilet facilities plainly lettered and marked, for each sex shall be provided and maintained in a sanitary condition by all persons and corporations employing both males and females. Such toilet facilities shall be separated by full and substantial walls. (1913, c. 83, s. 1; C. S., s. 6559; 1963, c. 1114, s. 1.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 95-49. Intruding on toilets unlawful. — It shall be unlawful, and punishable as provided in G. S. 95-50, for any employee to wilfully intrude or use any toilet not intended for his or her sex. (1913, c. 83, s. 4; C. S., s. 6560; 1963, c. 1114, s. 2.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 95-50. Punishment for violation of article. — If any person, firm, or corporation refuses to comply with the provisions of this article, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 83, s. 2; 1919, c. 100, s. 12; C. S., s. 6561.)

§ 95-51. **Police in towns to enforce article.**—The police officers of any town or city shall investigate the places of business of any person or corporation employing males and females and see that the provisions of this article are put in force, and shall swear out a warrant before the mayor or other proper officer of any town or city and prosecute all persons, corporations, and managers of corporations violating any of the provisions of this article. (1913, c. 83, s. 3; C. S., s. 6562.)

§ 95-52. **Sheriff in county to enforce article.**—When any persons or corporations locate their manufacturing plant or other business outside of any city or town, the sheriff of the county shall investigate the condition of the toilets used by such manufacturing plant or business and see that the provisions of this article are complied with, and shall swear out a warrant before a justice of the peace and prosecute anyone violating the provisions of this article. (1913, c. 83, s. 5; C. S., s. 6563.)

Local Modification.—Cleveland, Harnett, Polk, Rutherford and Sampson: C. S., § Henderson, Johnston, Lee, Northampton, 6564.

§ 95-53. **Enforcement by Department of Labor.**—The Department of Labor shall investigate the places of business of any person or corporation employing males and females, and shall make such rules and regulations for enforcing and carrying out this article as may be necessary. (1919, c. 100, s. 7; C. S., s. 6563(a); 1931, c. 312, ss. 12, 14.)

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-54. **Board of Boiler Rules created; members, appointment, and qualifications; terms of office; vacancies; meetings.**—There is hereby created the North Carolina Board of Boiler Rules consisting of six members, of whom five shall be appointed to the Board by the Governor, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each. Upon the death or incapacity of any member, the vacancy for the remainder of the term shall be filled with a representative of the same class. Of these five appointed members, one shall be a representative of the owners and users of steam boilers within the State of North Carolina, one a representative of the boiler manufacturers or a boilermaker who has had not less than five years' practical experience as a boilermaker within the State of North Carolina, one a representative of a boiler inspection and insurance company licensed to do business within the State of North Carolina, one a representative of the operating steam engineers in the State of North Carolina, and one a licensed heating contractor. The sixth member shall be the Commissioner of Labor, who shall be chairman of the Board. The Board shall meet at least twice yearly at the State capitol or other place designated by the Board. (1935, c. 326, s. 1; 1953, c. 569.)

Editor's Note.—The 1953 amendment rewrote this section.

§ 95-55. **Formulation of rules and regulations.**—The Board shall formulate rules and regulations for the safe and proper construction, installation, repair, use and operation of steam boilers, steam and hot water heating boilers, and hot water supply tanks and steam or hot water boilers fired or unfired in this State. The rules and regulations so formulated shall conform as nearly as possible to the boiler code of the American Society of Mechanical Engineers and amend-

ments and interpretations thereto made and approved by the council of the Society. (1935, c. 326, s. 1; 1951, c. 1107, s. 1.)

Editor's Note.—The 1951 amendment inserted “steam and hot water heating boilers, and hot water supply tanks and steam or hot water boilers fired or unfired” in the first sentence. The amendatory act also provided: “Nothing in this act shall apply to vessels or equipment used in refrigeration, air conditioning or cooling systems.”

§ 95-56. Approval of rules and regulations by Governor.—The rules and regulations formulated by the Board of Boiler Rules shall become effective upon approval by the Governor, except that rules applying to the construction of new boilers shall not become effective to prevent the installation of such new boilers until six months after approval by the Governor. Changes in the rules which would raise the standards governing the methods of construction of new boilers or the quality of material used in them shall not become effective until six months after approval by the Governor. (1935, c. 326, s. 2.)

§ 95-57. Compensation and expenses of Board.—The members of the Board of Boiler Rules, exclusive of the chairman thereof, shall serve without salary but shall be paid a subsistence and travel allowance in accordance with the general provisions of the biennial Appropriations Act, for not to exceed twenty days in any year while in the performance of their duties as members of the Board, to be paid in the same manner as in case of other State officers. The chairman of the Board of Boiler Rules shall countersign all vouchers for expenditures under this section. (1935, c. 326, s. 3; 1951, c. 1107, s. 11.)

Editor's Note.—The 1951 amendment rewrote the first sentence.

§ 95-58. Effect of article on boilers installed prior to enactment.—This article shall not be construed as in any way preventing the use or sale of steam boilers and steam and hot water heating boilers and hot water supply tanks and boilers in this State which shall have been installed or in use in this State prior to the taking effect of this article and which shall have been made to conform to the rules and regulations of the Board of Boiler Rules governing existing installations as provided in § 95-66. (1935, c. 326, s. 4; 1951, c. 1107, s. 2.)

Editor's Note.—The 1951 amendment inserted “and steam and hot water heating boilers”.

§ 95-59. Commissioner of Labor empowered to appoint chief inspector; qualifications; salary.—After the passage of this article and at any time thereafter that the office may become vacant, the Commissioner of Labor shall appoint, and may remove for cause when so appointed, a citizen of this State who shall have had at the time of such appointment not less than five years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector, or who has passed the same kind of examination as that prescribed for deputy or special inspectors in § 95-63, to be chief inspector for a term of two years or until his successor shall have been appointed, at an annual salary to be fixed by the Commissioner of Labor with the approval of the Assistant Director of the Budget. (1935, c. 326, s. 5; 1943, c. 469.)

Editor's Note.—Prior to the 1943 amendment the salary was fixed at \$2,000.

§ 95-60. Certain boilers excepted.—This article shall not apply to boilers under federal control or to stationary boilers used by railroads which are inspected regularly by competent inspectors, or to boilers used solely for propelling motor road vehicles; or to boilers of steam fire engines brought into the State for temporary use in times of emergency to check conflagrations; or to portable boilers used for agricultural purposes only or for pumping or drilling in the open field for water, gas or coal, gold, talc or other minerals and metals; or to hot

water supply tanks and boilers fired or unfired, which are located in private residences or in apartment houses of less than six (6) families; or to steam boilers used for heating purposes carrying a pressure of not more than 15 pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six (6) families; or to hot water heating boilers carrying a pressure of not more than 30 pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six (6) families. (1935, c. 326, s. 6; 1937, c. 125, s. 1; 1951, c. 1107, s. 3.)

Editor's Note.—Prior to the 1937 amendment this section excepted boilers used for heating purposes. The 1951 amendment rewrote all of this section following the first semicolon.

§ 95-61. Powers of Commissioner of Labor; creation of Bureau of Boiler Inspection.—The Commissioner of Labor is hereby charged, directed and empowered:

- (1) To set up in the Division of Standards and Inspections of the Department of Labor, a Bureau of Boiler Inspection to be supervised by the chief inspector provided for in § 95-59 and one or more deputy inspectors of boilers, who shall have passed the examination provided for in § 95-63, at a salary not to exceed the salary of a senior factory inspector, and such office help as may be necessary.
- (2) To have free access for himself and his chief boiler inspector and deputies, during reasonable hours, to any premises in the State where a steam boiler or steam or hot water heating boiler or hot water supply tank or boiler fired or unfired is built or being built or is being installed or operated, for the purpose of ascertaining whether such boiler or tank is built, installed or operated in accordance with the provisions of this article.
- (3) To prosecute all violators of the provisions of this article.
- (4) To issue, suspend and revoke inspection certificates allowing steam boilers to be operated, as provided in this article.
- (5) To enforce the laws of the State governing the use of steam boilers and steam and hot water heating boilers and hot water supply tanks and boilers fired and unfired and to enforce the rules and regulations of the Board of Boiler Rules.
- (6) To keep a complete record of the type, dimensions, age, condition, pressure allowed upon, location and date of the last inspection of all steam boilers and steam and hot water heating boilers and hot water supply tanks and boilers fired and unfired to which this article applies.
- (7) To publish and distribute among boiler manufacturers and others requesting them, copies of the rules and regulations adopted by the Board of Boiler Rules. (1935, c. 326, s. 7; 1951, c. 1107, s. 4.)

Editor's Note.—The 1951 amendment made subdivisions (2), (5) and (6) applicable to steam and hot water heating boilers, hot water supply tanks and boilers fired and unfired.

§ 95-62. Special inspectors; certificate of competency; fees.—In addition to the deputy boiler inspectors authorized by § 95-61, the Commissioner of Labor shall, upon the request of any company authorized to insure against loss from explosion of boilers in this State, issue commissions as special inspectors to any qualified boiler inspectors of said company who have certificates of competency. To be entitled to a certificate of competency a boiler inspector must either—

- (1) Have passed the examination for inspectors provided for by G. S. 95-63, or
- (2) Have passed an examination on boiler inspection in a state having standards therefor equal to this State, or

(3) Hold a certificate from the National Board of Boiler and Pressure Vessel Inspectors.

The commission shall be in the form of a credential card for which a fee of \$2.00 must be paid. The commission remains in force until the next succeeding December 31, and must be renewed annually thereafter.

Such special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the State, and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of a boiler inspection and insurance company duly authorized as aforesaid and upon his maintenance of the standards imposed by this article. Such special inspectors shall inspect all steam boilers insured by their respective companies, and the owners of such insured boilers shall be exempt from the payment of the fees provided for in § 95-68. Each company employing such special inspectors shall, within 30 days following each annual internal inspection made by such inspectors, file a report of such inspection with the Commissioner of Labor. (1935, c. 326, s. 8; 1951, c. 544, s. 1.)

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

§ 95-63. Examination for inspectors; revocation of commission.—Application for examination as an inspector of boilers shall be in writing, and in duplicate, upon forms furnished by the Department of Labor, and shall be accompanied by a fee of ten (\$10.00) dollars.

Examination for deputy or special inspectors shall be given by the Board of Boiler Rules or by at least two examiners to be appointed by said Board and must be written or part written and part oral recorded in writing and must be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service and must be of uniform grade throughout the State. In case an applicant for an inspector's appointment or commission fails to pass this examination, he may appeal to the Board of Boiler Rules for a second examination which shall be given by said Board, or if by examiners appointed by said Board, then by examiners other than those by whom the first examination was given and these examiners shall be appointed forthwith to give said second examination. Upon the result of this examination on appeal, the Board shall determine whether the applicant be qualified. The record of any applicant's examination, whether original or on appeal, shall be accessible to him and his employer. If the applicant is successful in passing the said examination, he is entitled to a certificate of competency.

A commission may be revoked by the Commissioner of Labor upon the recommendation of the chief inspector of boilers, for the incompetence or untrustworthiness of the holder thereof or for willful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission is revoked may appeal from the revocation to the Board of Boiler Rules which shall hear the appeal and either set aside or affirm the revocation and its decision shall be final. The person whose commission has been revoked shall be entitled to be present in person and by counsel on the hearing of the appeal. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. A person who has failed to pass the examination for a commission or whose commission has been revoked shall be entitled to apply for a new examination and commission after ninety days from such failure or revocation. (1935, c. 326, s. 9; 1951, c. 544, s. 2; c. 1107, s. 5.)

Editor's Note.—The first 1951 amendment added the first paragraph and the last sentence of the present second paragraph. The second 1951 amendment de-

leted "steam" formerly appearing before "boilers" in the first sentence of the last paragraph.

§ 95-64. Boiler inspections; fee; certificate; suspension.—On and after April first, nineteen hundred and thirty-five, each steam boiler used or

proposed to be used within this State, except boilers exempt under § 95-60, shall be thoroughly inspected internally and externally while not under pressure by the chief inspector or by one of the deputy inspectors or special inspectors provided for herein, as to its design, construction, installation, condition and operation; and if it shall be found to be suitable, and to conform to the rules and regulations of the Board of Boiler Rules, the owner or user of a steam boiler as required in this article to be inspected shall pay to the chief inspector the sum of one dollar (\$1.00) for each inspection certificate issued, and the chief inspector shall issue to the owner or user thereof an inspection certificate specifying the maximum pressure which it may be allowed to carry. Such inspection certificate shall be valid for not more than fourteen months from its date, and it shall be posted under glass in the engine or boiler room containing such boiler, or an engine operated by it, or, in the case of a portable boiler, in the office of the plant where it is located for the time being. No inspection certificate issued for a boiler inspected by a special inspector shall be valid after the boiler for which it was issued shall cease to be insured by a duly authorized insurance company. The chief inspector or any deputy inspector may, at any time, suspend an inspection certificate when, in his opinion, the boiler for which it was issued may not continue to be operated without menace to the public safety, or when the boiler is found not to comply with the rules herein provided for and a special inspector shall have corresponding powers with respect to inspection certificates for boilers insured by the company employing him. Such suspension of an inspection certificate shall continue in effect until said boiler shall have been made to conform to the rules and regulations of the Board of Boiler Rules and until said inspection certificate shall have been reinstated by a State inspector, if the inspection certificate was suspended by a State inspector, or by a special inspector, if it was suspended by a special inspector. Not more than fourteen months shall elapse between such inspections and there shall be at least four such inspections in thirty-seven consecutive months. Each such boiler shall also be inspected externally while under pressure with at least the same frequency, and at no greater intervals. (1935, c. 326, s. 10; 1937, c. 125, s. 2; 1939, c. 361, s. 1.)

Editor's Note.—The 1937 amendment, first sentence, was repealed by the 1939 which struck out the fee provision in the amendment.

§ 95-64.1. Inspection of low pressure steam heating boilers, hot water heating and supply boilers and tanks.—(a) This section applies only to low pressure steam heating boilers, hot water heating boilers, hot water supply boilers and hot water supply tanks, fired or unfired.

(b) On and after July 1, 1951, each boiler or tank used or proposed to be used within this State, except boilers or tanks exempt under G. S. 95-60, shall be thoroughly inspected as to their construction, installation, condition and operation as follows:

- (1) Boilers and tanks shall be inspected both internally and externally biennially where construction will permit; provided that a grace period of two (2) months longer than the twenty-four (24) months' period may elapse between internal inspections of a boiler or tank while not under pressure or between external inspections of a boiler or tank while under pressure. The inspection herein required shall be made by the chief inspector, or by a deputy inspector or by a special inspector, provided for in this article.
- (2) If at any time a hydrostatic test shall be deemed necessary, it shall be made, at the discretion of the inspector, by the owner or user thereof.
- (3) All boilers or tanks to be installed in this State after the date upon which the rules and regulations of the Board relating to such boilers or tanks become effective shall be inspected during construction as required by the applicable rules and regulations of the Board by an inspector authorized to inspect boilers and tanks in this State, or, if

constructed outside the State, by an inspector holding a certificate from the National Board of Boiler and Pressure Vessel Inspectors, or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this State provided by G. S. 95-63.

- (4) If upon inspection, a boiler or tank is found to comply with the rules and regulations of the Board, the owner or user thereof shall pay directly to the chief inspector, the sum of one dollar (\$1.00) and the chief inspector, or his duly authorized representative, shall issue to such owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which such boiler or tank may be operated. Such inspection certificate shall be valid for not more than twenty-six (26) months. Certificates shall be posted under glass in the room containing the boiler or tank inspected or in the case of a portable boiler or tank in a metal container to be fastened to the boiler or to be kept in a tool box accompanying the boiler.
- (5) No inspection certificate issued for an insured boiler or tank inspected by a special inspector shall be valid after the boiler or tank for which it was issued shall cease to be insured by a company duly authorized by this State to carry such insurance.
- (6) The chief inspector or his authorized representative may at any time suspend an inspection certificate when, in his opinion, the boiler or tank for which it was issued, cannot be operated without menace to public safety, or when the boiler or tank is found to comply with the rules and regulations herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or tanks insured by the company employing him. Such suspension of an inspection certificate shall continue in effect until such boiler or tank shall have been made to conform to the rules and regulations of the Board, and until said inspection certificate shall have been reinstated. (1951, c. 1107, s. 6.)

§ 95-65. Operation of unapproved boiler prohibited.—On and after July first, nineteen hundred and thirty-five, it shall be unlawful for any person, firm, partnership or corporation to operate under pressure in this State a steam boiler to which this article applies without a valid inspection certificate as provided for in this article. The operation of a steam boiler without an inspection certificate shall constitute a misdemeanor on the part of the owner, user or operator thereof and be punishable by a fine not exceeding one hundred dollars (\$100) or imprisonment not to exceed thirty days, or both, in the discretion of the court. (1935, c. 326, s. 11.)

§ 95-65.1. Operation of unapproved low pressure steam heating boilers, or hot water heating and supply boilers and tanks prohibited.—On and after July 1, 1951, it shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this State a low pressure steam heating boiler, hot water heating boiler, hot water supply boiler or hot water supply tank, fired or unfired, to which this article applies without a valid inspection certificate as provided for in this article. The operation of any such boiler or tank without an inspection certificate shall constitute a misdemeanor on the part of the owner, user, or operator thereof and be punishable by a fine not exceeding one hundred dollars (\$100) or imprisonment not to exceed 30 days, or both in the discretion of the court. (1951, c. 1107, s. 7.)

§ 95-66. Installation of boilers not conforming to requirements prohibited; boilers now in use to conform.—No steam boiler or steam or hot water heating boiler or hot water supply tank or boiler, fired or unfired which

does not conform to the rules and regulations formulated by the Board of Boiler Rules governing new installations shall be installed in this State after six months from the date upon which the said rules and regulations shall become effective by the approval of the Governor.

All boilers and tanks installed and ready for use, or being used, before the said six months shall have elapsed, shall be made to conform to the rules and regulations of the Board of Boiler Rules governing existing installations and the formula therein prescribed shall be used in determining the maximum allowable working pressure for such boilers and tanks. (1935, c. 326, s. 12; 1951, c. 1107, s. 8.)

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

§ 95-67. Inspection of boilers during construction in State; outside State.—All steam boilers and steam and hot water supply tanks and boilers to be installed after six months from the date upon which the rules and regulations of the Board of Boiler Rules shall become effective by the approval of the Governor shall be inspected during construction by an inspector authorized to inspect boilers in this State, or if constructed outside the State, by an inspector holding a certificate of authority from the Commissioner of Labor of this State, which certificate shall be issued by the said Commissioner of Labor to any inspector who holds a certificate of authority to inspect steam boilers issued by a state which shall have adopted boiler rules that require standards of construction and operation substantially equal to those of this State, or an inspector who holds a certificate of inspection issued by the National Board of Boiler and Pressure Vessel Inspectors. (1935, c. 326, s. 12; 1951, c. 1107, s. 9.)

Editor's Note.—The 1951 amendment of "all boilers" formerly appearing at the inserted "all steam boilers and steam and hot water supply tanks and boilers" in lieu beginning of the section.

§ 95-68. Fees for internal and external inspections.—The person using, operating or causing to be operated any boiler listed in this section, required by this article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector, for the inspection of any such boiler, fees in accordance with the following schedule:

Miniature boilers, which do not exceed 18 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:	
General inspection	\$ 5.00
Fire tube boilers with hand holes only:	
Internal inspection	6.00
External inspection while under pressure	4.00
Fire tube boilers with manholes:	
Internal inspection	12.00
External inspection while under pressure	4.00
Water tube boiler (coil type):	
General inspection	6.00
Water tube boilers with not more than 500 square feet of heating surface:	
Internal inspection	6.00
External inspection while under pressure	4.00
Water tube boilers with more than 500 but not more than 3000 square feet of heating surface:	
Internal inspection	12.00
External inspection while under pressure	4.00
Water tube boilers with more than 3000 square feet of heating surface:	
Internal inspection	20.00
External inspection while under pressure	6.00

Provided, that one (\$1.00) dollar of each internal inspection fee shall be the fee for the certificate of inspection required by § 95-64. The inspector shall give

receipts for said fees and shall pay all sums so received to the Commissioner of Labor, who shall pay the same to the Treasurer of the State. The Treasurer of the State shall hold the fees collected under this section and under § 95-64 in a special account to pay the salaries and expenses incident to the administration of this article, the surplus, with the approval of the Director of the Budget, to be added to the appropriation of the Division of Standards and Inspections of the Department of Labor for its general inspectional service. (1935, c. 326, s. 13; 1937, c. 125, s. 3; 1939, c. 361, s. 2; 1951, c. 544, s. 3.)

Editor's Note.—The 1951 amendment rewrote the first paragraph and the appended schedule.

§ 95-68.1. Other inspection fees.—The person using, operating or causing to be operated any low pressure steam heating boiler, hot water heating boiler, hot water supply boiler, or hot water supply tank, fired or unfired, required by this article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector for the biennial inspection of any such boiler or tank fees in accordance with the following schedule: Provided that one dollar (\$1.00) of each inspection fee shall be the fee for the certificate of inspection required by G. S. 95-64.1:

Low pressure steam and hot water boilers, equipped only with hand holes and washout plugs	\$3.00
Low pressure steam and hot water boilers, equipped with manhole	5.00
Hot water supply boilers	2.00
Tanks that are not equipped with manhole	2.00
Tanks equipped with manhole	4.00

(1951, c. 1107, s. 10.)

§ 95-69. Bonds of chief inspector and deputy inspectors.—The chief inspector shall furnish a bond in the sum of five thousand dollars (\$5,000), and each of the deputy inspectors shall furnish a bond in the sum of one thousand dollars (\$1,000), conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively, and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the State Treasurer out of the special fund provided for in § 95-68. (1935, c. 326, s. 14; 1937, c. 125, s. 4.)

Editor's Note. — Prior to the 1937 amendment this section excepted certain counties and ground sawmills.

§ 95-69.1. Appeals to Board.—Any person aggrieved by an order or act of the Commissioner of Labor, or the chief inspector, under this article may, within 15 days after notice thereof, appeal from such order or act to the Board which shall, within 30 days thereafter, hold a hearing after having given at least 10 days' written notice to all interested parties. The Board shall, within 30 days after such hearing, issue an appropriate order either approving, modifying or disapproving said order or act. A copy of such order by the Board shall be delivered to all interested parties. (1951, c. 1107, s. 12.)

§ 95-69.2. Court review of orders and decisions.—(a) Any order or decision made, issued or executed by the Board shall be subject to review in the superior court of the county in which the inspection took place on petition by any person aggrieved filed within 30 days from the date of the delivery of a copy of the order or decision made by the Board to such person. A copy of such petition for review as filed with and certified to by the clerk of said court shall be served upon the chairman of the Board. If such petition for review is not filed within the said 30 days the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed and there shall be

no trial of the merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of the same.

(b) The chairman of the Board shall within 30 days, unless the time be extended by order of court, after the service of the copy of the petition for review as provided in paragraph (a) of this section, cause to be prepared and filed with the clerk of the superior court of Wake County a complete transcript of the record of the hearing, if any, had before the Board, and a true copy of the order or decision duly certified. The order or decision of the Board if supported by substantial evidence shall be presumed to be correct and proper. The court may change the place of hearing,

(1) Upon consent of the parties; or

(2) When the convenience of witnesses and the end of justice would be promoted by the change; or

(3) When the judge has at any time been interested as a party or counsel.

The cause shall be heard by the trial judge as a civil case upon transcript of the record for review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear and determine such petition with all convenient speed and to this end the cause shall be placed on the calendar for the next succeeding term for hearing ahead of all other cases except those already given priority by law. If on the hearing before the trial judge it shall appear that the record filed by the chairman of the Board is incomplete, he may by appropriate order direct the chairman to certify any or all parts of the record so omitted.

(c) The trial judge shall have jurisdiction to affirm or to set aside the order or decision of the Board and to restrain the enforcement thereof.

(d) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the Board may be taken to the Supreme Court of North Carolina by any party to the action as in other civil cases.

(e) The commencement of proceedings under this section shall not operate as a stay of the Board's order or decision, unless so ordered by the court.

(f) The following rights may be exercised by any party in lieu of the right of review provided by the above subsections (a) through (d):

The person aggrieved by any order or decision of the Board may, within 30 days after delivery to him of a copy of the Board's order or decision, file an appeal and a request for trial de novo and right to jury trial in the superior court of the county in which the inspection took place. Such right must be granted. However, unless such appeal and request for right to trial de novo and jury trial is filed as provided above, such right shall be deemed waived. In the event of such trial de novo, the Board shall file with the clerk of said superior court a certified copy of the Board's order or decision from which appeal is taken, and also, upon written request filed 10 days prior to the trial, furnish to the appealing party a copy of the transcript of the record of the hearing held before the Board. Any party to the action may take appeal to the superior court from any final order and judgment entered by the superior court after any such trial de novo or jury trial, which appeal shall be as in other civil actions. (1951, c. 1107, s. 12; 1953, c. 675, s. 10.)

Editor's Note.—The 1953 amendment inserted "as" preceding "in other civil cases" at the end of subsection (d).

ARTICLE 8.

Bureau of Labor for the Deaf.

§ 95-70. **Creation.**—There shall be created in the Department of Labor a division devoted to the deaf. (1923, c. 122, s. 1; C. S., s. 7312(j); 1931, c. 312, s. 3.)

§ 95-71. **Appointment of chief of Bureau; duties.**—The Commissioner of Labor shall appoint a competent deaf man to take charge of such division, who shall devote his time to the special work of labor for the deaf under the supervision of the Commissioner of Labor, and who shall be designated chief of the Bureau of Labor for the Deaf. He shall collect statistics of the deaf, ascertain what trades or occupations are most suitable for them and best adapted to promote their interest, and use his best efforts to aid them in securing such employment as they may be fitted to engage in. He shall study the methods in use in the education of the deaf as exemplified in the deaf themselves, with a view to determining their practicability and respective values in lifting them to become self-supporting, useful citizens and enabling them to obtain the greatest amount of happiness in life. He shall keep a census of the deaf and obtain facts, information and statistics as to their condition in life, with a view to the betterment of their lot. He shall endeavor to obtain statistics and information of the condition of labor and employment and education of the deaf in other states, with a view to promoting the general welfare of the deaf in this State. He shall make reports and recommendations from time to time as may be provided by law, and he shall also issue special reports or pamphlets as may be deemed necessary, giving results and information that may be helpful. (1923, c. 122, ss. 2, 3; C. S., s. 7312(k); 1931, c. 312, s. 3.)

§ 95-72. **Assignment of other duties.**—In case the duties herein enumerated should not occupy all of the time of such chief of the Bureau of Labor for the Deaf, he shall perform such other duties in the Department of Labor as may be assigned him by the Commissioner of Labor. (1923, c. 122, s. 5; C. S., s. 7312(m); 1931, c. 312, s. 3.)

ARTICLE 9.

Earnings of Employees in Interstate Commerce.

§ 95-73. **Collections out of State to avoid exemptions forbidden.**—No resident creditor or other holder of any book account, negotiable instrument, duebill or other monetary demand arising out of contract, due by or chargeable against any resident wage earner or other salaried employee of any railway corporation or other corporation, firm, or individual engaged in interstate business shall send out of the State, assign, or transfer the same, for value or otherwise, with intent to thereby deprive such debtor of his personal earnings and property exempt by law from application to the payment of his debts under the laws of the State of North Carolina, by instituting or causing to be instituted thereon against such debtor, in any court outside of this State, in such creditor's own name or in the name of any other person, any action, suit, or proceeding for the attachment or garnishment of such debtor's earnings in the hands of his employer, when such creditor and debtor and the railway corporation or other corporation, firm, or individual owing the wages or salary intended to be reached are under the jurisdiction of the courts of this State. (1909, c. 504, s. 1; C. S., s. 6568.)

The resident creditor is not forbidden to send his claim out of the State for collection by suit or otherwise, provided no effort is made, in the foreign state by attachment or garnishment, to deprive the resident debtor of his personal earnings and property exempt from application to the payment of his debts under the laws of this State. *Padgett v. Long*, 235 N. C. 392, 35 S. E. (2d) 234 (1945).

§ 95-74. **Resident not to abet collection out of State.**—No person residing or sojourning in this State shall counsel, aid, or abet any violation of the provisions of § 95-73. (1909, c. 504, s. 2; C. S., s. 6569.)

§ 95-75. **Remedies for violation of § 95-73 or 95-74; damages; indictment.**—Any person violating any provisions of § 95-73 or 95-74 shall be answerable in damages to any debtor from whom any book account, negotiable

instrument, duebill, or other monetary demand arising out of contract shall be collected, or against whose earnings any warrant of attachment or notice of garnishment shall be issued, in violation of the provisions of § 95-73, to the full amount of the debt thus collected, attached, or garnisheed, to be recovered by civil action in any court of competent jurisdiction in this State; and any person so offending shall likewise be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars. (1909, c. 504, s. 3; C. S., s. 6570.)

Necessary Allegation.—In a suit to recover damages for violation of the provisions of § 95-73, an allegation that the forbidden purpose was accomplished, by instituting in the foreign state an action, suit or proceeding for the attachment or garnishment of the debtor's earnings in the hands of his employer, would seem to

be an essential element of the cause of action. An allegation that the debtor was threatened with attachment or garnishment of his wages and was forced to pay the foreign judgment in order to avoid same, is not sufficient. *Padgett v. Long*, 225 N. C. 392, 35 S. E. (2d) 234 (1945).

§ 95-76. Institution of foreign suit, etc., evidence of intent to violate.—In any civil or criminal action instituted in any court of competent jurisdiction in this State for any violation of the provisions of §§ 95-73 and 95-74, proof of the institution or prosecution of any action, suit, or proceeding in violation of the provisions of § 95-73, or the issuance of service therein of any warrant of attachment, notice, or garnishment or other like writ for the garnishment of earnings of the defendant therein, or of the payment by the garnishee therein of any final judgment rendered in any such action, suit, or proceeding shall be deemed prima facie evidence of the intent of the creditor or other holder of the debt sued upon to deprive such debtor of his personal earnings and property exempt from application to the payment of his debts under the laws of this State, in violation of the provisions of this article. (1909, c. 504, s. 4; C. S., s. 6571.)

§ 95-77. Construction of article.—No provision of this article shall be so construed as to deprive any person entitled to its benefits of any legal or equitable remedy already possessed under the laws of this State. (1909, c. 504, s. 5; C. S., s. 6572.)

ARTICLE 10.

Declaration of Policy as to Labor Organizations.

§ 95-78. Declaration of public policy.—The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization or association. (1947, c. 328, s. 1.)

Editor's Note.—For discussion of this article, see 25 N. C. Law Rev. 447.

For note on pre-emption and State injunctive enforcement of the "Right-to-Work" Law, see 36 N. C. Law Rev. 502.

Article Is Constitutional.—This article does not abridge the freedom of speech and the opportunities of unions and their members "peaceably to assemble and to petition the government for a redress of grievances," which are guaranteed by the First Amendment and made applicable to the states by the Fourteenth Amendment. Nor does it conflict with Art. I, § 10, of the Constitution, insofar as it impairs the obligation of contracts made prior to its enactment. Nor does it deny unions and

their members equal protection of the laws contrary to the Fourteenth Amendment. Nor does it deprive employers, unions or members of unions of their liberty without due process of law in violation of the Fourteenth Amendment. *Lincoln Federal Labor Union v. Northwestern Iron, etc., Co.*, 335 U. S. 525, 69 S. Ct. 251, 93 L. Ed. 201 (1949), affirming *State v. Whitaker*, 228 N. C. 352, 45 S. E. (2d) 860 (1947).

This article is a valid exercise of the police power of the State, and does not violate § 17, Art. I, of the State Constitution. *State v. Whitaker*, 228 N. C. 352, 45 S. E. (2d) 860 (1947), affirmed in *Lincoln Federal Labor Union v. Northwestern Iron,*

etc., Co., 335 U. S. 525, 69 S. Ct. 251, 93 L. Ed. 201 (1949).

Not Discriminatory.—This article is applicable to all employers and employees within the State, and therefore the fact that persons or groups coming within its scope must perforce be affected in different degrees because of the difference of their economic, social or political positions, does not render the act unconstitutional as discriminatory. *State v. Whitaker*, 228 N. C. 352, 45 S. E. (2d) 860 (1947), affirmed in *Lincoln Federal Labor Union v. Northwestern Iron, etc., Co.*, 335 U. S. 525, 69 S. Ct. 251, 93 L. Ed. 201 (1949).

By this article the legislature in emphatic language declared its public policy with respect to conditions incident to the right to employment. *Douglas Aircraft Co. v. Local Union 379*, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

Provisions for a "closed shop" in agreements executed subsequent to the effective date of this article, and such provisions in extensions of prior contracts executed subsequent to that date, are contrary to public policy and void. In *re Port Publishing Co.*, 231 N. C. 395, 57 S. E. (2d) 366, 14 A. L. R. (2d) 842 (1950).

Article Is in Force Except as Limited by National Labor Legislation.—Except to the extent Congress, in enacting labor legislation related to interstate commerce, has pre-empted the field, this article is in full force and effect. *Hudson v. Atlantic Coast Line R. Co.*, 242 N. C. 650, 89 S. E. (2d) 441 (1955); *Allen v. Southern Ry. Co.*, 249 N. C. 491, 107 S. E. (2d) 125 (1959).

Union Shop Agreement Valid under Federal Railway Labor Act.—A union shop agreement, complying in all respects with the provisions of the Union Shop Amendment of 1951 to the Federal Railway Labor Act is not void by virtue of this article. *Hudson v. Atlantic Coast Line R. Co.*, 242 N. C. 650, 89 S. E. (2d) 441 (1955).

A union shop agreement authorized by the Union Shop Amendment of 1951 to

the Federal Railway Labor Act is valid in instances governed by the federal act, notwithstanding that otherwise it would be void under the North Carolina "Right to Work" Act embodied in this and sections following. *Allen v. Southern Ry. Co.*, 249 N. C. 491, 107 S. E. (2d) 125 (1959).

In an action to restrain alleged unlawful picketing pursuant to a conspiracy to force plaintiff to violate the State Right to Work Law, on motion to show cause why a temporary restraining order should not be continued, the facts were insufficient to show that continuance of the temporary restraining order enjoined the exercise of any rights of defendants protected by the Federal Labor Management Act, and the order would not be disturbed, the question being determinable upon the evidence to be offered upon the hearing upon the merits. *J. A. Jones Constr. Co. v. Local Union 755, etc.*, 246 N. C. 481, 98 S. E. (2d) 852 (1957).

The violation of this article is a criminal offense. *State v. Whitaker*, 228 N. C. 352, 45 S. E. (2d) 860 (1947), affirmed in *Lincoln Federal Labor Union v. Northwestern Iron, etc., Co.*, 335 U. S. 525, 69 S. Ct. 251, 93 L. Ed. 201 (1949).

Punishable as for Misdemeanor.—This article is declaratory of public policy and was enacted in the interest of the public welfare, and therefore the violation of its provisions is a criminal offense punishable as for a misdemeanor, notwithstanding the failure of the statute to prescribe a penalty for its breach. The fact that the act incidentally provides for the redress of private injuries does not alter this result. *State v. Bishop*, 228 N. C. 371, 45 S. E. (2d) 858 (1947).

Applied in Brotherhood of Ry. & Steamship Clerks, etc. v. Allen, 373 U. S. 113, 83 S. Ct. 1158, 10 L. Ed. (2d) 235 (1963), reversing 256 N. C. 700, 124 S. E. (2d) 871 (1962).

Cited in Willard v. Huffman, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

§ 95-79. Certain agreements declared illegal.—Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina. (1947, c. 328, s. 2.)

Picketing for the purpose of forcing an employer to employ only union labor is for an unlawful purpose by virtue of this section. *Douglas Aircraft Co. v. Local*

Union 379, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

Where orderly and peaceful picketing is for the unlawful purpose of forcing an employer to breach the Right to Work Law embraced in this section by employing only union labor, and also constitutes an unfair labor practice within the purview of the Federal Labor Management Relations Act, the North Carolina courts have no authority to issue a restraining order enjoining such picketing, since under the federal decisions the federal law exclusively pre-empts the field and removes the matter from the jurisdiction of the State courts. *Douglas Aircraft Co. v. Local Union 379*, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

Void Agreement.—An agreement be-

§ 95-80. Membership in labor organization as condition of employment prohibited.—No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer. (1947, c. 328, s. 3.)

Cross Reference.—See note under § 95-79.

§ 95-81. Nonmembership as condition of employment prohibited.—No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. (1947, c. 328, s. 4.)

Cross Reference.—See note to § 95-83.

Void Agreement.—An agreement between an employer and its employees makes nonmembership in a labor union a prerequisite of employment is void in this jurisdiction. In *re Port Publishing Co.*, 231 N. C. 395, 57 S. E. (2d) 366, 14 A. L. R. (2d) 842 (1950).

Jurisdiction over Violation.—Where the National Labor Relations Board has de-

tween an employer and its employees which makes union membership a prerequisite of employment is void in this jurisdiction. In *re Port Publishing Co.*, 231 N. C. 395, 57 S. E. (2d) 366, 14 A. L. R. (2d) 842 (1950).

With Valid Severable Provisions.—While §§ 95-79 to 95-84 preclude “closed shop” agreements, these sections do not preclude provisions relating to working conditions, hours, rates of pay, training of journeymen, overtime, vacation and severance pay, and such provisions are severable and may be sustained irrespective of the invalidity of a “closed shop” provision in the contract. In *re Port Publishing Co.*, 231 N. C. 395, 57 S. E. (2d) 366, 14 A. L. R. (2d) 842 (1950).

clined jurisdiction because the amount of interstate commerce involved is less than the jurisdictional amount fixed by the Board, a state court has jurisdiction of an action for damages brought for an alleged violation of this section. *Willard v. Huffman*, 250 N. C. 396, 109 S. E. (2d) 233 (1959). See *Keller v. Huffman Full Fashioned Mills, Inc.*, 251 N. C. 92, 110 S. E. (2d) 480 (1959).

§ 95-82. Payment of dues as condition of employment prohibited.—No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization. (1947, c. 328, s. 5.)

§ 95-83. Recovery of damages by persons denied employment.—Any person who may be denied employment or be deprived of continuation of his employment in violation of §§ 95-80, 95-81 and 95-82 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him by appropriate action in the courts of this State such damages as he may have sustained by reason of such denial or deprivation of employment. (1947, c. 328, s. 6.)

What Plaintiff Must Show.—In order for the plaintiff in the instant case to recover for damages allegedly sustained as a result of his discharge in violation of the provisions of § 95-81, the burden is on him to show by competent evidence, and by the greater weight thereof, that he was discharged solely by reason of his partici-

pation in the discussions with his fellow employees in connection with their proposed plan to join a labor union or that such participation therein was the “motivating” or “moving cause” for the discharge. *Willard v. Huffman*, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

What Jury Must Find.—Where there is

a conflict in the evidence as to the reason for discharge, in an action brought under the provisions of § 95-81 and the following sections, in order for a plaintiff to recover damages thereunder, the jury must find that the discharge resulted solely from the plaintiff's exercise of rights protected un-

der this statute, or that the plaintiff's exercise of such rights was the motivating or moving cause for such discharge. *Willard v. Huffman*, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

Jurisdiction over Violation. — See same catchline under § 95-81.

§ 95-84. **Application of article.**—The provisions of this article shall not apply to any lawful contract in force on the effective date hereof but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of any existing contract. (1947, c. 328, s. 7.)

Editor's Note.—The act inserting this article became effective on March 18, 1947.

Cited in *Willard v. Huffman*, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

ARTICLE 11.

Minimum Wage Act.

§ 95-85. **Short title.**—This article shall be known as the North Carolina Minimum Wage Act. (1959, c. 475.)

Editor's Note.—The act inserting this article is effective as of Jan. 1, 1960.

§ 95-86. **Definition of terms.**—As used in this article:

- (1) "Commissioner" means the Commissioner of Labor;
- (2) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;
- (3) "Employee" includes any individual employed by an employer but shall not include:
 - a. Any person employed as a farm laborer or farm employee;
 - b. Any person employed in domestic service or in or about a private home or in or about a public or private nursing home for the aged and/or infirm, or in or about all hospitals of every kind and character both public and private, or in an eleemosynary institution primarily supported by public funds;
 - c. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact exist, or where the services rendered to such organizations are on a voluntary basis;
 - d. Newsboys, shoe-shine boys, caddies on golf courses, baby sitters, ushers, doormen, concession attendants and cashiers in theaters, pin boys in bowling alleys;
 - e. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;
 - f. Any person employed on a part-time basis during the school year and who is a student at any recognized school or college while so employed;
 - g. Any person under the age of twenty-one (21) in the employ of his father or mother;
 - h. Any person receiving tips or gratuities as the principal part of his wage;
 - i. Any person confined in any penal, corrective, or mental institution of the State or any of its political subdivisions;
 - j. Employees of boys' and girls' summer camps;
 - k. Any person under the age of sixteen (16), regardless of by whom employed;

- 1. Those employed in the sea food or fishing industry on a part-time basis or who normally work and are paid for in the amount of work accomplished;
- m. Any person who shall have reached his or her sixty-fifth (65) birthday.

(4) "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value: Provided, wages may include the reasonable cost to the employer, as determined by the Commissioner, of furnishing meals and for lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee. (1959, c. 475; 1961, c. 652.)

Editor's Note.—The 1961 amendment added "taxicab drivers and operators" at the end of paragraph e of subdivision (3).

§ 95-87. **Minimum wages.**—Every employer shall pay to each of his employees wages at a rate not less than eighty-five cents (85¢) per hour. (1959, c. 475; 1963, c. 816.)

Editor's Note. — The 1963 amendment, effective Jan. 1, 1964, substituted "eighty-five cents (85¢)" for "seventy-five cents (75¢)."

§ 95-88. **Certain establishments excluded.** — This article shall not apply to any establishment that does not have four or more persons employed at any one time: Provided, a husband, wife, son, daughter or parent of the employer shall not be enumerated in determining the number of persons employed. (1959, c. 475; 1961, c. 602; 1963, c. 1123.)

Editor's Note. — Prior to the 1961 amendment, effective Jan. 1, 1962, this article did not apply where the employer had five or less employees. The 1963 amendment added the proviso.

§ 95-89. **Handicapped workers.**—The Commissioner may provide by regulation for the employment in any occupation at such wages lower than the minimum wages applicable under this article of persons whose earning capacity is impaired by physical or mental deficiency, as he may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship and to safeguard the applicable minimum wages under this article. (1959, c. 475.)

§ 95-90. **Learners and apprentices.** — The Commissioner may provide by regulation, with the assent and approval of the State Apprenticeship Council, for employment in such occupation at wages lower than the minimum wage provided under this article for learners and apprentices as the Commissioner may find appropriate. (1959, c. 475.)

§ 95-91. **Posting of law and orders.**—Every employer subject to the provisions of this article shall keep a summary of this article and any applicable wage orders and regulations posted in a conspicuous and accessible place in or about the premises of his place of business. (1959, c. 475.)

§ 95-92. **Responsibility for enforcement.**—The provisions of this article shall be enforced by the Department of Labor under the Commissioner of Labor. (1959, c. 475.)

§ 95-93. **Enforcement powers.**—The Commissioner of Labor or any authorized representative thereof shall have the authority to:

- (1) Investigate and ascertain the wages of any person employed in any occupation in this State;
- (2) Enter and inspect the places of business of any employer, subject to the provisions of this article for the purpose of inspecting the payroll records of such employer;

- (3) Require from any employer subject to this article a full and correct statement in writing with respect to wages, hours, names, addresses of any of his employees;
- (4) Administer rules and to require by subpoena the attendance of witnesses, the production of books, records and other evidence relative to any matter under investigation;
- (5) Carry out the provisions of this chapter. (1959, c. 475.)

§ 95-94. **Penalties.** — Whoever knowingly and intentionally violates any provisions of this article, upon complaint lodged by the Commissioner, shall be punished by a fine of not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) or by imprisonment for not more than thirty (30) days in the discretion of the court, and whenever any person or business shall have been notified by the Commissioner or his authorized representative that he is violating such provision, each and every pay period in which said violation continues shall constitute a separate and indictable offense. (1959, c. 475.)

§ 95-95. **Employee's remedies.** — Any employer who violates the minimum wage requirements of this law shall be liable to the employee or employees affected in the amount of the unpaid minimum wages, plus interest at six per cent (6%) per annum upon such unpaid wages as may be due the plaintiff, said interest to be awarded from the date or dates said wages were due the employee or employees. Action to recover may be maintained in any court of competent jurisdiction. The court shall, in addition to any judgment awarded to the employee or employees, require defendant to pay court costs and reasonable attorney's fees incurred by the employee or employees. (1959, c. 475.)

§ 95-96. **Relation to other laws.**—Nothing in this article shall be construed so as to affect the State maximum hour law. (1959, c. 475.)

ARTICLE 12.

Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.

§ 95-97. **Employees of units of government prohibited from becoming members of trade unions or labor unions.**—No employee of the State of North Carolina, or of any agency, office, institution or instrumentality thereof, or any employee of a city, town, county, or other municipality or agency thereof, or any public employee or employees of an entity or instrumentality of government shall be, become, or remain a member of any trade union, labor union, or labor organization which is, or may become, a part of or affiliated in any way with any national or international labor union, federation, or organization, and which has as its purpose or one of its purposes, collective bargaining with any employer mentioned in this article with respect to grievances, labor disputes, wages or salary, rates of pay, hours of employment, or the conditions of work of such employees. Nor shall such an employee organize or aid, assist, or promote the organization of any such trade union, labor union, or labor organization, or affiliate with any such organization in any capacity whatsoever.

The terms "employee", "public employee" or "employees" whenever used in this section shall mean any regular and full-time employee engaged exclusively in law enforcement or fire protection activity. (1959, c. 742.)

§ 95-98. **Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.** — Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union,

or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect. (1959, c. 742.)

§ 95-99. **Penalty for violation of article.**—Any violation of the provisions of this article is hereby declared to be a misdemeanor, and upon conviction, plea of guilty or plea of nolo contendere shall be punishable in the discretion of the court. (1959, c. 742.)

§ 95-100. **No provisions of article 10 of chapter 95 applicable to units of government or their employees.**—The provisions of article 10 of chapter 95 of the General Statutes shall not apply to the State of North Carolina or any agency, institution, or instrumentality thereof or the employees of same nor shall the provisions of article 10 of chapter 95 of the General Statutes apply to any public employees or any employees of any town, city, county or other municipality or the agencies or instrumentalities thereof, nor shall said article apply to employees of the State or any agencies, instrumentalities or institutions thereof or to any public employees whatsoever. (1959, c. 742.)

ARTICLE 13.

Payments to or for Benefit of Labor Organizations.

§ 95-101. **Definition.**—As used in this article, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employee or employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (1963, c. 244.)

Editor’s Note.—In the 1963 act adding with the system of numbering in use in this article, the sections were numbered the General Statutes, they have been re-numbered 95-101.1 through 95-101.4. In accordance numbered 95-101 through 95-104.

§ 95-102. **Certain payments to and agreements to pay labor organizations unlawful.**—It shall be unlawful for any carrier or shipper of property or any association of such carriers or shippers to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways and any such agreement shall be void and unenforceable. (1963, c. 244.)

§ 95-103. **Acceptance of such payments unlawful.**—It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in § 95-102 above. (1963, c. 244.)

§ 95-104. **Penalty.** — Any person, firm, corporation, association or partnership which or who agrees to pay, or does pay, or agrees to receive, or does receive, any payment described in this article shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00) for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense. (1963, c. 244.)

Chapter 96. Employment Security.

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Employment Security Commission.

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ARTICLE 1.

Employment Security Commission.

§ 96-1. Title.—This chapter shall be known and may be cited as the “Employment Security Law.” (Ex. Sess. 1936, c. 1, s. 1; 1947, c. 598, s. 1.)

Cross Reference.—For provision not applicable to activities of Commission in respect to veterans, see § 165-11.

Editor's Note.—The 1947 amendment, effective April 1, 1947, substituted “Employment Security Law” for “Unemployment Compensation Law.”

For article discussing unemployment compensation, see 15 N. C. Law Rev. 377. For discussion of the 1939 and 1947 amendments to this chapter, see 17 N. C. Law Rev. 415, and 25 N. C. Law Rev. 415.

For explanation of the purposes and effects of the 1957 amendments to this chapter, see 36 N. C. Law Rev. 53.

One of the major purposes of the Em-

ployment Security Act was to provide a fund by systematic accumulations during periods of employment to be retained and used for the benefit of persons furloughed from their jobs through no fault of their own. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The General Assembly may determine the scope of this chapter, and the definitions and tests prescribed will be applied by the courts in accordance with the legislative intent. Unemployment Compensation Comm. v. City Ice, etc., Co., 216 N. C. 6, 3 S. E. (2d) 290 (1939).

Construction in Favor of Validity.—The intent of the legislature to provide a wide

scope in the application of this chapter to mitigate the economic evils of unemployment and to bring within its provisions employments therein defined beyond the scope of existing definitions or categories, is apparent from the language used, and all doubts as to constitutionality should be resolved in favor of the validity of the chapter and all its provisions. *State v. Willis Barber, etc., Shop*, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

The "Employment Security Law" must be construed to promote and not to defeat the legislative policy as declared in this chapter, and the courts will not construe the chapter in such manner as to discourage parties from entering into contracts designed to lessen the hardships incident to termination of employment. *In re Tyson*, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-1.1. Change in title of Law and names of Commission and funds.—Wherever the words "Unemployment Compensation Law" are used or appear in any statute of this State, heretofore or hereafter enacted, the same shall be stricken out and the words "Employment Security Law" shall be inserted in lieu thereof; wherever the words "Unemployment Compensation Commission" are used or appear in any statute of this State, heretofore or hereafter enacted, the same shall be stricken out and the words "Employment Security Commission" shall be inserted in lieu thereof; wherever the words "Unemployment Compensation Administration Fund" are used or appear in any statute of this State, heretofore or hereafter enacted, the same shall be stricken out and the words "Employment Security Administration Fund" shall be inserted in lieu thereof; wherever the words "Special Unemployment Compensation Administration Fund" are used or appear in any statute of this State, heretofore or hereafter enacted, the same shall be stricken out and the words "Special Employment Security Administration Fund" shall be inserted in lieu thereof; wherever the words "State Unemployment Commission" are used or appear in any statute of this State, heretofore or hereafter enacted, the same shall be stricken out and the words "Employment Security Commission" shall be inserted in lieu thereof; wherever the words "North Carolina Unemployment Commission" are used or appear in any statute of this State, heretofore or hereafter enacted, the same shall be stricken out and the words "Employment Security Commission" shall be inserted in lieu thereof.

The sole purpose of this section is to effectuate a change in the name of the "Unemployment Compensation Commission of North Carolina" to the "Employment Security Commission of North Carolina;" to change the name of the "Unemployment Compensation Law" to "Employment Security Law;" to change the name of the "Unemployment Compensation Administration Fund" to "Employment Security Administration Fund;" to change the name of the "Special Unemployment Compensation Administration Fund" to "Special Employment Security Administration Fund;" to change the words "State Unemployment Commission" to "Employment Security Commission;" to change the words "North Carolina Unemployment Commission" to "Employment Security Commission" wherever such names are used or appear in any statute of this State, heretofore or hereafter enacted. (1947, c. 598, s. 1.)

§ 96-1.2. Members of Unemployment Compensation Commission; tenure of office and rights and duties.—The present members of the Unem-

Weight to Be Given Official Construction.—Our State Unemployment Compensation Act (now Employment Security Law) was passed pursuant to a plan national in scope, and therefore serious consideration is to be given to the construction placed upon similar language of the federal statute by the Commissioner of Internal Revenue, but the interpretation of the act is finally for our courts, and neither the ruling of the Commissioner nor that of the State Unemployment Compensation Commission (now Employment Security Commission) is conclusive. *Unemployment Compensation Comm. v. Wachovia Bank, etc., Co.*, 215 N. C. 491, 2 S. E. (2d) 592 (1939).

Cited in *B-C Remedy Co. v. Unemployment Compensation Comm.*, 226 N. C. 52, 36 S. E. (2d) 733, 163 A. L. R. 773 (1946).

ployment Compensation Commission of North Carolina shall continue their tenure of office as commissioned by the Governor; and all rights, powers, duties and obligations of every nature heretofore exercised by such individuals as members of the Unemployment Compensation Commission of North Carolina shall continue in such individuals as members of the Employment Security Commission of North Carolina. (1947, c. 598, s. 2.)

§ 96-1.3. Succeeding to rights, powers and duties of Unemployment Compensation Commission.—The Employment Security Commission of North Carolina shall automatically succeed to all the rights, powers, duties and obligations of whatever nature of the present Unemployment Compensation Commission of North Carolina; and the duties and powers imposed upon and vested in the Unemployment Compensation Commission of North Carolina by law shall devolve and be imposed upon, vested in and merged with the duties and powers of the Employment Security Commission of North Carolina; and all obligations, liens and judgments in favor of the Unemployment Compensation Commission of North Carolina shall inure to and be vested in the Employment Security Commission of North Carolina; and the Employment Security Commission of North Carolina is authorized and empowered to enforce and collect any and all obligations, liens and judgments due the present Unemployment Compensation Commission of North Carolina; and the Employment Security Commission is authorized to continue to use any and all printed forms bearing the name of the Unemployment Compensation Commission or the Unemployment Compensation Commission of North Carolina, including warrants or vouchers against the State Treasurer, until the present supply of such printed forms and/or warrants or vouchers is exhausted; and the State Treasurer and State Auditor are hereby authorized, empowered and directed to honor any and all such warrants or vouchers as well as any and all warrants or vouchers bearing the name of the Employment Security Commission of North Carolina. (1947, c. 598, s. 3.)

§ 96-1.4. Records and funds transferred to Employment Security Commission.—All records, files and property of the Unemployment Compensation Commission of North Carolina are hereby transferred and made available to the Employment Security Commission of North Carolina. All unexpended balances of any appropriation or other funds of the Unemployment Compensation Commission of North Carolina are hereby transferred to the appropriate fund of the Employment Security Commission of North Carolina and made available to the Employment Security Commission of North Carolina. (1947, c. 598, s. 4.)

§ 96-1.5. Change in names of Division, funds, etc.—The purpose of this section is to effectuate a change in the name of the “Unemployment Compensation Division” of the Employment Security Commission to “Unemployment Insurance Division”; to change the name of “Unemployment Compensation Fund” to “Unemployment Insurance Fund”; to change “unemployment compensation funds” to “unemployment insurance funds”; to change “unemployment compensation” to “unemployment insurance”; to provide that the program administered by the Employment Security Commission with reference to payment of benefits to unemployed individuals under the law be referred to as “Unemployment Insurance Program” rather than “Unemployment Compensation Program.” All moneys now in the “Unemployment Compensation Fund” shall automatically inure to the “Unemployment Insurance Fund”. (1953, c. 401, s. 1.)

Editor's Note.—This section was codified from the second paragraph of Session Laws 1953, c. 401, s. 1, which in the first paragraph directed that “Unemployment

Insurance” be substituted for “Unemployment Compensation” in certain designated sections of this chapter.

§ 96-2. Declaration of State public policy.—As a guide to the interpretation and application of this chapter, the public policy of this State is declared to

be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. (Ex. Sess. 1936, c. 1, s. 2.)

Cross Reference.—As to intent to provide wide scope in application of chapter, see note to § 96-1.

The matter of policy is in the exclusive province of the legislature and the courts will not interfere therewith unless the pro-

visions relating thereto have no reasonable relations to the end sought to be accomplished. In re Steelman, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941), applying provisions seeking to make State neutral in labor disputes.

§ 96-3. Employment Security Commission. — (a) **Organization.** — There is hereby created a commission to be known as the Employment Security Commission of North Carolina. The Commission shall consist of seven (7) members to be appointed by the Governor on or before July 1, 1941. The Governor shall have the power to designate the member of said Commission who shall act as the chairman thereof. The chairman of the Commission shall not engage in any other business, vocation or employment, and no member of the Commission shall serve as an officer or a committee member of any political party organization. Three (3) members of the Commission shall be appointed by the Governor to serve for a term of two (2) years. Three (3) members shall be appointed to serve for a term of four (4) years, and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four (4) years each, thereafter, and the member of said Commission designated by the Governor as chairman shall be appointed for a term of four (4) years from and after his appointment. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Governor may at any time after notice and hearing, remove any Commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(b) **Divisions.**—The Commission shall establish two co-ordinate divisions: the North Carolina State Employment Service Division, created pursuant to § 96-20, and the Unemployment Insurance Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except in so far as the Commission may find that such separation is impracticable.

(c) **Salaries.**—The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission; and the members of the Commission, other than the chairman, shall each receive ten dollars (\$10.00) per day including necessary time spent in traveling to and from his place of residence within the State to the place of meeting

while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.

(d) Quorum.—The chairman and three (3) members of the Commission shall constitute a quorum. (Ex. Sess. 1936, c. 1, s. 10; 1941, c. 108, s. 10; c. 279, ss. 1-3; 1943, c. 377, s. 15; 1947, c. 598, s. 1; 1953, c. 401, s. 1; 1957, c. 541, s. 5.)

Editor's Note.—The first 1941 amendment struck out "budget" from the last sentence of subsection (b). The second 1941 amendment increased the membership of the Commission from three to seven and made other changes in subsection (a). It also made changes in subsections (c) and (d). Section 6 of the second amendatory act vested in the Commission created by the act all the rights, powers, duties, and obligations of the former Commission and of the State Advisory Council. For comment on amendment, see 19 N. C. Law Rev. 444.

The 1943 amendment inserted in subsection (c) "including necessary time spent in traveling to and from his place of residence within the State to the place of meeting."

The 1947 amendment substituted "Employment Security Commission" for "Unemployment Compensation Commission."

The 1953 amendment substituted "Unemployment Insurance Division" for "Unemployment Compensation Division" in subsection (b).

The 1957 amendment substituted in subsection (c) "subject to the approval of the Advisory Budget Commission" for "with the approval of the Council of State."

Commission Is State Agency.—The Commission is an agency created by statute for a public purpose and is an agency of the State. *Prudential Ins. Co. v. Powell*, 217 N. C. 495, 8 S. E. (2d) 619 (1940).

§ 96-4. Administration.—(a) Duties and Powers of Commission.—It shall be the duty of the Commission to administer this chapter. The Commission shall meet at least once in each sixty days and may hold special meetings at any time at the call of the chairman or any three (3) members of the Commission, and the Commission shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of this chapter. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. The chairman of said Commission shall, except as otherwise provided by the Commission, be vested with all authority of the Commission, including the authority to conduct hearings and make decisions and determinations, when the Commission is not in session and shall execute all orders, rules and regulations established by said Commission. Not later than November twentieth preceding the meeting of the General Assembly, the Commission shall submit to the Governor a report covering the administration and operation of this chapter during the preceding biennium, and shall make such recommendation for amendments to this chapter as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules.—General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given

by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(c) Publication.—The Commission shall cause to be printed for distribution to the public the text of this chapter, the Commission's regulations and general rules, its biennial reports to the Governor, and any other material the Commission deems relevant and suitable, and shall furnish the same to any person upon application therefor.

(d) Personnel.—Subject to other provisions of this chapter, the Commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. It shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments not to exceed six months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The Commission shall not employ or pay any person who is an officer or committee member of any political party organization. The Commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Advisory Councils.—The Governor shall appoint a State Advisory Council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and have such members representing the general public as the Governor may designate. Such councils shall aid the Commission in formulating policies and discussing problems related to the administration of this chapter, and in assuring impartiality and freedom from political influence in the solution of such problems. Such local advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses. The State Advisory Council shall be paid ten dollars per day per each member attending actual sitting of such Council, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials.

(f) Employment Stabilization.—The Commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) Records and Reports.—

- (1) Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. Any employing unit doing

business in North Carolina shall make available in this State to the Commission, such information with respect to persons, firms, or other employing units performing services for it which the Commission deems necessary in connection with the administration of this chapter. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claims. Any individual may be supplied with information as to his potential benefit rights from such records. Any employee or member of the Commission who violates any provision of this section shall be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200.00), or imprisoned for not longer than ninety days, or both. All reports, statements, information and communications of every character so made or given to the Commission, its deputies, agents, examiners and employees, whether same be written, oral or in the form of testimony at any hearing, or whether obtained by the Commission from the employing unit's books and records shall be absolute privileged communications in any civil or criminal proceedings other than proceedings instituted pursuant to this chapter and proceedings involving the administration of this chapter: Provided, nothing herein contained shall operate to relieve any employing unit from disclosing any information required by this chapter or as prescribed by the Commission involving the administration of this chapter.

- (2) If the Commission finds that any employer has failed to file any report or return required by this chapter or any regulation made pursuant hereto, or has filed a report which the Commission finds incorrect or insufficient, the Commission may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the Commission may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in § 96-10 (b) of this chapter: Provided, however, that no such report or return shall be made until the employer has first been given at least ten days' notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether such employing unit is an employer within the meaning of this chapter.

(h) Oaths and Witnesses.—In the discharge of the duties imposed by this chapter, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(i) Subpoenas.—In case of contumacy by, or refusal to obey a subpoena issued to any person by the Commission or its authorized representative, any clerk of a superior court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal

to obey is found or resides or transacts business, upon application by the Commission, or its duly authorized representatives, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, or its duly authorized representatives, there to produce evidence if so ordered, or there to give testimony touching upon the matter under investigation or in question; and any failure to obey such order of the said clerk of superior court may be punished by the said clerk of superior court as a contempt of said court. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, or other records in obedience to a subpoena of the Commission, shall be punished by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not longer than thirty days.

(j) Protection against Self-Incrimination. — No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof, or any duly authorized representative of the Commission, in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal Co-Operation. — In the administration of this chapter, the Commission shall co-operate, to the fullest extent consistent with the provisions of this chapter, with the federal agency, official, or bureau fully authorized and empowered to administer the provisions of the Social Security Act approved August fourteenth, one thousand nine hundred and thirty-five, as amended, shall make such reports, in such form and containing such information as such federal agency, official, or bureau may from time to time require, and shall comply with such provisions as such federal agency, official, or bureau may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by such agency, official, or bureau governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter. The Commission shall further make its records available to the Railroad Retirement Board, created by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies thereof as the Board shall deem necessary for its purposes in accordance with the provisions of section three hundred three (c) of the Social Security Act as amended.

Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits, and such recipient's rights to further benefits under this chapter.

The Commission is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any employment security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this State

by the agency charged with the administration of such other employment security or public employment service law.

The Commission shall fully co-operate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would, in its judgment, tend to effect complete or substantial federalization of State unemployment insurance funds or State employment security programs.

(1) Reciprocal Arrangements.—

- (1) The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:
- a. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states
 1. In which any part of such individual's service is performed or
 2. In which such individual has his residence or
 3. In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by the employing unit, approved by the agency charged with the administration of such state's employment security law, pursuant to which the services performed by such individual for such employing unit are deemed to be performed entirely within such state;
 - b. Potential rights to benefits accumulated under the employment security laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;
 - c. Wages or services, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter, and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages or services on the basis of which unemployment insurance under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the Commission finds will be fair and reasonable as to all affected interests; and
 - d. Contributions due under this chapter with respect to wages for insured work shall for the purposes of § 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to

the fund of such contributions as the Commission finds will be fair and reasonable as to all affected interests.

- e. The services of the Commission may be made available to such other agencies to assist in the enforcement and collection of judgments of such other agencies.
- f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.
- g. Services performed by an individual for a single employing unit which customarily operates in more than one state shall be deemed to be services performed entirely within any of the states

- 1. In which such individual has residence or

- 2. In which the employing unit maintains a place of business;

provided there is in effect as to such service an election approved by the agency charged with the administration of such state's employment security law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state; provided, further, that no such election shall apply to more than three such individuals.

- h. Wages earned by an individual in covered employment in more than one state which is less than the eligibility requirements of either of such states may be combined and constitute the basis for the payment of benefits through a single and appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund: Provided, that any benefits paid under the provisions of this subparagraph shall not be charged to the account of any employer as provided in § 96-9, subsection (c) (2) of this chapter: Provided further, that any such wages or services shall be deemed to be within the provisions of subparagraph c of this subsection.
- i. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this chapter.
- j. Wages earned by an individual in covered employment in one state which are as much as the eligibility requirements of such state may be combined with wages earned by such individual in one or more other states which are less than the eligibility requirements of such other state or states and may constitute the basis for the payment of benefits through a single and appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests; provided that any benefits paid based on wages earned in this State which are less than the eligibility requirements of this chapter shall not be charged to the account of the employer under the provisions of § 96-9 (c) (2).

- (2) Reimbursements paid from the fund pursuant to paragraph c of subdivision (1) of this subsection shall be deemed to be benefits for

the purpose of §§ 96-6, 96-9 and 96-12. The Commission is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.

- (3) To the extent permissible under the laws and Constitution of the United States, the Commission is authorized to enter into or co-operate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this State or under a similar law of such government.

(m) The Commission after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by § 96-8 (4) and § 96-8 (5) and subdivisions thereunder. The Commission shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the Commission by any employer. Hearings before the Commission shall be conducted and held at the office of the Commission and shall be open to the public and shall be stenographically reported and the Commission shall provide for the preparation of a record of all hearings and other proceedings. The Commission shall provide for the taking of evidence by a hearing officer who shall be a member of the legal staff of the Commission. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Commission and such hearings shall be stenographically reported, and he shall transmit all testimony and records of such hearings to the Commission for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the Commission may require additional testimony at any hearings held by it at its office in Raleigh. From all decisions or determinations made by the Commission any party affected thereby shall be entitled to an appeal to the superior court. Before such party shall be allowed to appeal, he shall within ten days after notice of such decision or determination, file with the Commission exceptions to the decision or the determination of the Commission, which exceptions will state the grounds of objection to such decision or determination. If any one of such exceptions shall be overruled then such party may appeal from the order overruling the exceptions, and shall, within ten days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Commission, the appeal shall be to the superior court in term time but the decision or determination of the Commission upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Commission, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within ten days after the notice of appeal has been served, file with the Commission exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the Commission shall, within thirty days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court hold-

ing court or residing in some district in which such appellant either resides, maintains a place of business or conducts business: Provided, however, the thirty-day period specified herein may be extended by agreement of parties. If there be no exceptions to any facts as found by the Commission the facts so found shall be binding upon the court and it shall be heard by the judge at chambers at some place in the district, above mentioned, of which all parties shall have ten days' notice.

(n) The cause shall be entitled "State of North Carolina on Relationship of the Employment Security Commission of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the Commission it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in § 96-10 (b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the Supreme Court from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that if an appeal shall be taken on behalf of the Employment Security Commission of North Carolina it shall not be required to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

(o) The decision or determination of the Commission when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the Commission that any employer is indebted to the Commission for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the Commission under § 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the said Employment Security Commission of North Carolina of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the Commission or to collect any amount of contribution, penalty or interest adjudged to be due the Commission by said decision or determination. In case of an appeal from any decision or determination of the Commission to the superior court or from any judgment of the superior court to the Supreme Court all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned

upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

(p) The conduct of hearings shall be governed by suitable rules and regulations established by the Commission. The manner in which appeals and hearings shall be presented and conducted before the Commission shall be governed by suitable rules and regulations established by it. The Commission shall not be bound by common-law or statutory rules of evidence or by technical or formal rules of procedure but shall conduct hearings in such manner as to ascertain the substantial rights of the parties.

(q) All subpoenas for witnesses to appear before the Commission, and all notices to employing units, employers, persons, firms, or corporations shall be issued by the Commission or its secretary; all such subpoenas shall be directed to any sheriff, constable, or to the marshal of any city or town, who shall execute the same and make due return thereof, as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court; all such notices to employing units, employers, persons, firms, or corporations shall be served by mailing to the last known address of such employing units, employers, persons, firms, or corporations, by registered mail with a return receipt requested, a copy of such notice at least ten days prior to the date of the scheduled hearing. Such notice shall set forth the hour, date, place, and purpose of the hearing. Any such return receipt issued by the postal authorities, signed by such employing units, employers, persons, firms, or corporations, shall be prima facie evidence of the service of such notice. All bonds or undertakings required to be given for the purpose of suspending or staying execution shall be payable to the Employment Security Commission of North Carolina, and may be sued on as are other undertakings which are payable to the State.

(r) None of the provisions or sections herein set forth in subsections (m)-(q) shall have the force and effect nor shall the same be construed or interpreted as repealing any of the provisions of § 96-15 which provide for the procedure and determination of all claims for benefits and such claims for benefits shall be prosecuted and determined as provided by said § 96-15. (Ex. Sess. 1936, c. 1, s. 11; 1939, c. 2; c. 27, s. 8; c. 52, s. 5; cc. 207, 209; 1941, c. 279, ss. 4, 5; 1943, c. 377, ss. 16-23; 1945, c. 522, ss. 1-3; 1947, c. 326, ss. 1, 3, 4, 26; c. 598, ss. 1, 6, 7; 1949, c. 424, s. 1; 1951, c. 332, ss. 1, 18; 1953, c. 401, ss. 1-4; 1955, c. 385, §§ 1, 2; c. 479; 1957, c. 1059, s. 1.)

Editor's Note.—The 1939 amendments made changes in subsections (d), (g) and (k), and added subsections (m)-(r).

The 1941 amendment made changes in subsections (a) and (e).

The 1943 amendment inserted in the fifth sentence of subsection (a) "including the authority to conduct hearings and make decisions and determinations." Prior to the amendment the first clause of the sixth sentence read: "Not later than the first day of February of each year." The amendment substituted in said sixth sentence "biennium" for "calendar year." It changed "annual" in subsection (c) to "biennial," and omitted the former proviso to the second sentence of subsection (d) which had been inserted by the 1939 amendment. Prior to the amendment subsection (e) provided for local advisory councils appointed by the Commission. The amendment inserted the sixth sentence of subsection (g), added the third paragraph of subsection (k) and rewrote

subsection (l). It also omitted "if it is in his power so to do" formerly appearing after "records" in the second sentence of subsection (i).

The 1945 amendment made changes in subsections (i) and (k), and added paragraphs e, f and g to subdivision (1) of subsection (l).

The 1947 amendments added paragraph (2) to subsection (g), the last paragraph of subsection (k) and paragraph h of subsection (l) (1); changed the next to the last sentence in subsection (m) and added the proviso thereto; rewrote subsection (q) and substituted "Employment Security Commission" for "Unemployment Compensation Commission" in subsections (n) and (o).

The 1949 amendment deleted "and the actual earnings thereon" formerly appearing after "contributions" near the end of paragraph d of subdivision (1) of subsection (l).

The 1951 amendment made changes in

subsection (k), and added paragraph i to subdivision (1) of subsection (l).

The 1953 amendment inserted the third sentence in subdivision (1) of subsection (g). It changed subsection (k) by substituting "federal agency, official, or bureau" for "Secretary of Labor," "Unemployment Insurance Fund" for "Unemployment Compensation Fund" and "unemployment insurance" for "unemployment compensation." The amendment also substituted "unemployment insurance" for "unemployment compensation" in subdivision (1) c of subsection (l), and inserted the third, fourth, fifth and sixth sentences of subsection (m) in lieu of the former third and fourth sentences.

The first 1955 amendment rewrote the first proviso to subsection (l), subdivision (1), paragraph h, and added paragraph j. The second 1955 amendment corrected a typographical error in the act inserting the first 1955 amendment.

The 1957 amendment struck out the former paragraph of subsection (k) authorizing and directing the Commission to apply for an advance to the Unemployment Insurance Fund and to accept responsibility for its repayment in accordance with conditions specified in the Social Security Act.

Authority of Chairman of Commission.—By subsection (a) of this section the chairman of the Employment Security Commission, except as otherwise provided by the Commission, is vested with all authority of the Commission, including authority to conduct hearings and make decisions when the Commission is not in session. *State v. Roberts*, 230 N. C. 262, 52 S. E. (2d) 890 (1949).

Merits of Labor Disputes.—The Commission is charged with administering the benefits provided in this chapter in accordance with the objective standards and criteria set up in the chapter, but the merits of labor disputes do not belong to the Commission, these being matters properly pertaining to the field of labor relations. *In re Steelman*, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941).

The Commission is made a fact-finding body under this section. The finding of facts is one of its primary duties and it is the accepted rule that when the facts are found they are, when supported by competent evidence, conclusive on appeal and not subject to review by the superior court or by the Supreme Court. *Graham v. Wall* 220 N. C. 84, 16 S. E. (2d) 691 (1941).

The procedure for hearings before the

Commission and incident to appeal to the superior court is set forth in detail in this section. The steps in the procedure are these: 1. Order for and notice of hearing at which testimony is taken. 2. Notice of hearing by Commission (or chairman), upon transcript of evidence (when Commission may require additional evidence), after which the Commission (or chairman) shall make findings of fact and its determinations predicated thereon. 3. Exceptions to the decision of Commission (or chairman), stating the grounds of objection thereto, must be filed with the Commission within ten days after notice of such decision. 4. Commission (or chairman), at a second hearing, passes upon the exceptions so filed; and if any exception is overruled then an appeal may be taken, within ten days after such decision, to the superior court, this appeal being from the order overruling the exceptions. *State v. Skyland Crafts, Inc.*, 240 N. C. 727, 83 S. E. (2d) 893 (1954).

Conclusiveness of Findings of Fact on Review.—The findings of fact of the Employment Security Commission are conclusive upon review when there is any competent evidence or reasonable inference from such evidence to support them. *State v. Champion Distributing Co.*, 230 N. C. 464, 53 S. E. (2d) 674 (1949). See *State v. Kermon*, 232 N. C. 342, 60 S. E. (2d) 580 (1950); *Employment Security Comm. v. Monsees*, 234 N. C. 69, 65 S. E. (2d) 887 (1951); *State v. Coe*, 239 N. C. 84, 79 S. E. (2d) 177 (1953); *In re Stutts*, 245 N. C. 405, 95 S. E. (2d) 919 (1957).

The Commission's findings of fact supported by competent evidence are conclusive and the court is bound thereby. *State v. Hennis Freight Lines, Inc.*, 248 N. C. 496, 103 S. E. (2d) 829 (1958).

Findings of fact by the Commission as to the eligibility of a claimant to benefits under this chapter are conclusive when supported by any competent evidence. *State v. Roberts*, 230 N. C. 262, 52 S. E. (2d) 890 (1949).

Scope of Review in Superior Court.—The mandatory provisions in subsection (m) of this section are controlling, and the trial in the superior court on appeal must be subject to the limitation that the decision or determination of the Commission upon such review in the superior court "shall be conclusive and binding as to all questions of fact supported by any competent evidence." *State v. Willis Barber etc., Shop*, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Review of exceptions to the findings of

the Employment Security Commission is limited to determining whether the findings are supported by any competent evidence, and the superior court may not disregard a finding and substitute its own finding in lieu thereof. *State v. Kermon*, 232 N. C. 342, 60 S. E. (2d) 580 (1950).

When, in a proceeding under this chapter to determine the liability of a defendant for taxation as an employer, exceptions are taken to the findings of fact made by the Commission in accordance with the procedure prescribed, defendant is not entitled to a trial de novo of the issues raised by his exceptions. *State v. Willis Barber, etc., Shop*, 219 N. C. 709 15 S. E. (2d) 4 (1941).

Right of Jury Trial Not Infringed.—The provisions of this section that the Commission's findings of fact in a proceeding before it should be conclusive on appeal when supported by competent evidence is constitutional, and objection thereto on the ground that it deprives a defendant of his right to trial by jury is untenable, since the provision relates to the administrations of a tax law and the machinery for the collection of taxes, and further, since in addition to the remedy of appeal from the decision of the Commission, the statute provides that a defendant may pay the tax under protest and sue for its recovery.

§ 96-5. Employment Security Administration Fund.—(a) Special Fund.—There is hereby created in the State treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this chapter, shall be subject to the provisions of the Executive Budget Act (§ 143-1 et seq.) and the Personnel Act (§ 143-35 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in § 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this State, all moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter: Provided, any interest collected on contributions and/or penalties collected pursuant to this chapter subsequent to June 30th, 1947, shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed

State v. Willis Barber, etc., Shop, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Appeal by Commission from Judgment of Superior Court.—The Commission is not entitled to appeal from a judgment of the superior court that the employer does not come within this chapter, entered in a proceeding by an employee for compensation; and where the Commission desired to have the liability of an employer for unemployment compensation contribution judicially determined on its contentions that the employer and another concern controlled by the same interests constituted but a single employing unit, it was held that it must follow the procedure prescribed by § 96-10. *In re Mitchell*, 220 N. C. 65, 16 S. E. (2d) 476, 142 A. L. R. 931 (1941).

Applied in *State v. Simpson*, 238 N. C. 296, 77 S. E. (2d) 718 (1953); as to subsection (m), in *Employment Security Comm. v. Smith*, 235 N. C. 104, 69 S. E. (2d) 32 (1952).

Cited in *Unemployment Compensation Comm. v. National Life Ins. Co.*, 219 N. C. 576, 14 S. E. (2d) 689, 139 A. L. R. 895 (1941); *Raynor v. Commissioners*, 220 N. C. 348, 17 S. E. (2d) 495 (1941); *In re Employment Security Comm.*, 234 N. C. 651, 68 S. E. (2d) 311 (1951).

in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in said fund.

(b) Replacement of Funds Lost or Improperly Expended.—If any moneys received after June 30th, 1941, from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered balances in the Employment Security Administration Fund as of that date, or any moneys granted after that date to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor for the proper administration of this chapter, it is the policy of this State that such moneys, not available from the Special Employment Security Administration Fund established by subsection (c) of this section, shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary of Labor, the Commission shall promptly pay from the Special Employment Security Administration Fund such sum if available in such fund; if not available, it shall promptly report the amount required for such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this State of its obligation with respect to funds received prior to July 1st, 1941, pursuant to the provisions of Title III of the Social Security Act.

(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this chapter subsequent to June 30th, 1947, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Commission for the administration of this chapter. Said fund shall be used by the Commission for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and also shall be used by the Commission for incidental extensions, repairs, enlargements or improvements. Refunds of interest allowable under § 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to § 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this chapter, shall be subject to the provisions of the Executive Budget Act (§ 143-1 et seq.) and the Personnel Act (§ 143-35 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and

under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this section.

(d) The other provisions of this section and § 96-6, to the contrary notwithstanding, the Commission is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America, in the manner permitted by federal law, such moneys standing to its credit in such fund, as are permitted by federal law to be used for expense of administering this chapter and to expend such moneys for such purpose, without regard to a determination of necessity by a federal agency. The State Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such moneys shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State treasury. (Ex. Sess. 1936, c. 1, s. 13; 1941, c. 108, ss. 12, 13; 1947, c. 326, s. 5; c. 598, s. 1; 1949, c. 424, s. 2; 1951, c. 332, s. 18; 1953, c. 401, ss. 1, 5.)

Editor's Note.—The 1947 amendments rewrote subsections (a) and (b) and added subsection (c).

The 1949 amendment added subsection (d).

The 1951 amendment substituted "Secretary of Labor" for "Social Security Administration."

The 1953 amendment substituted "Unemployment Insurance Fund" for "Unemployment Compensation Fund" in subsection (c). It also added "and also shall be used by the Commission for incidental extensions, repairs, enlargements or improvements" at the end of the fourth sentence of the subsection.

§ 96-6. Unemployment Insurance Fund. — (a) Establishment and Control.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the Commission exclusively for the purposes of this chapter. This fund shall consist of:

- (1) All contributions collected under this chapter, together with any interest earned upon any moneys in the fund;
- (2) Any property or securities acquired through the use of moneys belonging to the fund;
- (3) All earnings of such property or securities;
- (4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
- (5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U. S. C. A. Title 42, sec. 1103 (a)).

All moneys in the fund shall be commingled and undivided.

(b) Accounts and Deposit.—The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the Commission and in accordance with such regulations as the Commission shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account,
- (2) An unemployment trust fund account, and
- (3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to § 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in § 143-3.2 under the requisition of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section nine hundred and four of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond, conditioned upon the faithful performance of those duties as custodian of the fund, in an amount fixed by the Commission and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals.—Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the Commission. The Commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the accounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as provided in § 143-3.2 and requisitioned by the Commission for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the Budget Bureau or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be issued as provided in § 143-3.2 as requisitioned by the chairman of the Commission or a duly authorized agent of the Commission for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund.—The provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist, and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such

separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the Unemployment Insurance Fund of this State shall be transferred to the treasurer of the Unemployment Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commission, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or such investments as are now permitted by law for sinking funds of the State of North Carolina; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the Unemployment Insurance Fund only under the direction of the Commission.

(e) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the Unemployment Insurance Fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums. (Ex. Sess. 1936, c. 1, ss. 9, 18; 1939, c. 27, s. 7; c. 52, s. 4; c. 208; 1941, c. 108; 1945, c. 522, s. 4; 1947, c. 326, s. 6; 1953, c. 401, ss. 1, 6; 1959, c. 362, s. 1; 1961, c. 454, ss. 1-3.)

Editor's Note. — The 1941 amendment added several former provisions to the last paragraph of subsection (a). The amendment took no notice of Public Laws 1939, c. 27, s. 7, which had added somewhat similar provisions.

The 1945 amendment changed the second sentence of subsection (a), and the 1947 amendment rewrote the sentence.

The 1953 amendment substituted "Unemployment Insurance Fund" for "Unemployment Compensation Fund" in subsections (a), (d) and (e). It also rewrote the last paragraph of subsection (a), omitting

the provisions added by the 1941 amendment.

The 1959 amendment added subdivision (5) of subsection (a).

The 1961 amendment, effective July 1, 1961, changed subsection (b) by substituting "as provided in § 143-3.2" for "by the State Auditor" in the second sentence of the last paragraph. It also changed subsection (c) by making a similar substitution in the third sentence and rewriting the fifth sentence.

Applied in *State v. Skyland Crafts, Inc.*, 240 N. C. 727, 83 S. E. (2d) 893 (1954).

§ 96-7. Representation in court.—(a) In any civil action to enforce the provisions of this chapter, the Commission and the State may be represented by any qualified attorney who is designated by it for this purpose.

(b) All criminal actions for violation of any provision of this chapter, or of any rules or regulations issued pursuant thereto, shall be prosecuted as now provided by law by the solicitor or by the prosecuting attorney of any county or city in which the violation occurs. (Ex. Sess. 1936, c. 1, s. 17; 1937, c. 150.)

ARTICLE 2.

Unemployment Insurance Division.

§ 96-8. Definitions.—As used in this chapter, unless the context clearly requires otherwise:

- (1) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.
- (2) "Commission" means the Employment Security Commission established by this chapter.
- (3) "Contributions" means the money payments to the State Unemployment Insurance Fund required by this chapter.
- (4) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company,

insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has, on or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter unless such agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work: Provided, however, that nothing herein, on or after July first, one thousand nine hundred thirty-nine, shall be construed to apply to that part of the business of such "employers" as may come within the meaning of that term as it is defined in section one (a) of the Railroad Unemployment Insurance Act.

(5) "Employer" means:

a. With respect to any calendar year prior to 1956, any employing unit which was an employer during such year as previously defined in this chapter applicable to any such year. With respect to employment during the calendar year 1956, "employer" means any employing unit which in each of twenty different weeks within such calendar year (whether or not such weeks are or were consecutive) has, or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), and with respect to employment on and after January 1, 1957, "employer" means any employing unit which in each of twenty different weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive) has, or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week): Provided further, for the purpose of this subdivision, "week" means calendar week, and when a calendar week falls partly within each of two calendar years, such week shall be deemed to be within the calendar year within which such week ends: Provided further, that for purposes of this subdivision "employment" shall include services which would constitute "employment" but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the Commission pursuant to subsection (1) of § 96-4, and an agency charged with the administration of any other state or federal employment security law.

b. Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer subject to this chapter; provided, such

other would have been an employer under paragraph a of this subdivision, if such part had constituted its entire organization, trade, or business; provided further, that § 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of § 96-11 (a), to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within sixty days from the date the Commission mails him a notification of his liability and provided the Commission finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in § 96-11 of this chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the Commission within sixty days from the date the Commission mails him a notification of his liability and the Commission finds that the predecessor could have terminated by making the application under § 96-11 if the part acquired had constituted all of the predecessor's business.

- c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph a of this subdivision.
- d. Any employing unit which, having become an employer under paragraphs a, b, or c, has not, under § 96-11, ceased to be an employer subject to this chapter; or
- e. For the effective period of its election pursuant to § 96-11 (c) any other employing unit which has elected to become fully subject to this chapter.
- f. Any employing unit not an employer by reason of any other paragraph of this subdivision, for which, within any calendar year, services in employment are or were performed with respect to which such employing unit is or was liable for any federal tax against which credit may or could have been taken for contributions required to be paid into a State Unemployment Insurance Fund; provided, that such employer, notwithstanding the provisions of § 96-11, shall cease to be subject to the provisions of this chapter during any calendar year if the Commission finds that during such period the employer was not subject to the provisions of the Federal Unemployment Tax Act and any other provision of this chapter.

- g. Any employing unit with its principal place of business located outside of the State of North Carolina, which engages in business within the State of North Carolina, and which, during any period of twelve consecutive months, has in employment four or more individuals in as many as twenty different weeks shall be deemed to be an employer and subject to the other provisions of this chapter.
 - h. Any employing unit which maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled: Provided, the employing unit would be an employer by reason of any other paragraph of this subdivision.
 - i. Any employing unit which, after July 1, 1961, acquired a part of the organization, trade or business of another which if treated as a single unit with such part acquired would be an employer under paragraph a of this subdivision if such part acquired had constituted all of the organization, trade or business of the predecessor.
- (6) a. "Employment" means service performed prior to January 1, 1949, which was employment as defined in this chapter prior to such date, and any service performed after December 31, 1948, including service in interstate commerce, except employment as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act, performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing such service and the employing unit for which such service is rendered is, as to such service, the legal relationship of employer and employee. Provided, however, the term "employee" includes an officer of a corporation, but such term does not include (i) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (ii) any individual (except an officer of a corporation) who is not an employee under such common-law rules. An employee who is on paid vacation or is on paid leave of absence due to illness or other reason shall be deemed to be in employment irrespective of the failure of such individual to perform services for the employing unit during such period.
- b. The term "employment" shall include an individual's entire service, performed within or both within and without this State if:
 - 1. The service is localized in this State; or
 - 2. The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.
 - c. Services performed within this State but not covered under paragraph b of this subdivision shall be deemed to be employment

- subject to this chapter, if contributions are not required and paid with respect to such services under an employment security law of any other state or of the federal government.
- d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such service is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter, and services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to subsection (1) of § 96-4 shall be deemed to be employment during the effective period of such election.
 - e. Service shall be deemed to be localized within a state if:
 1. The service is performed entirely within such state; or
 2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the State; for example, is temporary or transitory in nature or consists of isolated transactions.
 - f. The term "employment" shall include:
 1. Services covered by an election pursuant to § 96-11, subsection (c), of this chapter; and
 2. Services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to § 96-4, subsection (1), of this chapter during the effective period of such election.
 3. Any service of whatever nature performed by an individual for an employing unit on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if such individual is employed on and in connection with such vessel when outside the United States: Provided, such service is performed on or in connection with the operations of an American vessel operating on navigable waters within or within and without the United States and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State: Provided further, that this subparagraph shall not be applicable to those services excluded in subdivision (6), paragraph g, subparagraph 6 of this section.
 4. Any service of whatever nature performed after December 31, 1961, by an individual for an employing unit on or in connection with an American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the

United States; provided such service is performed on or in connection with the operations of an American aircraft and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

g. The term "employment" shall not include:

1. Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;
2. Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States. From and after March 10, 1941, service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, that if this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in § 96-10 (e) with respect to contributions erroneously collected.
3. Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress: Provided, that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in § 96-4 (b) for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance under such act of Congress, acquired rights to benefits under this chapter;
4. Agricultural Labor.—For purposes of this chapter, the term "agricultural labor" includes all services performed: (i) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,

feeding, caring for, training, and management of live-stock, bees, poultry, and furbearing animals and wild-life; (ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (iii) in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, (46 Stat. 1550, sec. 3, 12 U. S. C. 1141 j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or (iiii) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subparagraph, the term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

5. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;
6. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if the individual is performing services on and in connection with such vessel or aircraft when outside the United States; or, service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more

- than ten net tons (determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States).
7. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
 8. Service performed prior to January 1, 1962, in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, 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 shareholder or individual; and employment shall not include after December 31, 1961, service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, 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 shareholder or individual and which is exempt from income tax under section 501 (a), Internal Revenue Code of 1954;
 9. Service performed on and after March 10, 1941, by an individual for an employing unit or an employer as an insurance agent or as an insurance solicitor or as a securities salesman if all such service performed by such individual for such employing unit or employer is performed for remuneration solely by way of commission; and service performed on and after January 1, 1959, by an individual during any calendar quarter for an employing unit or an employer as an insurance agent or as an insurance solicitor, or as a securities salesman, if all such service performed during such calendar quarter by such individual for such employing unit or employer is performed for remuneration solely by way of commission;
 10. From and after March 10, 1941, service performed in any calendar quarter by any officer, individual or committeeman of any building and loan association organized under the laws of this State, or any federal savings and loan association, where the remuneration for such service does not exceed forty-five dollars in any calendar quarter;
 11. Service performed before January 1, 1962, in connection with the collection of dues or premiums for a fraternal benefit society, order, or association performed away from the home office, or its ritualistic service in connection with any such society, order or association;
 12. Services performed in employment as a newsboy, selling or distributing newspapers or magazines on the street or from house to house.
 13. Except as provided in paragraph a of subdivision (5) of this section, service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law

- in accordance with an arrangement pursuant to subsection (1) of § 96-4 during the effective period of such election.
14. Notwithstanding any of the other provisions of this subsection, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment insurance fund.
 15. Casual labor not in the course of the employing unit's trade or business.
 16. The term "employment" shall not include services performed in the employ of any nationally recognized veterans' organization chartered by the Congress of the United States.
 17. Service performed after December 31, 1961, in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501 (a) of the Internal Revenue Code of 1954 (other than an organization described in section 401 (a) of said Internal Revenue Code of 1954) or under section 521 of the Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars (\$50.00).
 18. Service performed after December 31, 1961, in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university.
- (7) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices.
 - (8) "Fund" means the Unemployment Insurance Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.
 - (9) "State" includes, in addition to the states of the United States of America, Puerto Rico and the District of Columbia.
 - (10) "Total and partial unemployment."
 - a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services.
 - b. An individual shall be deemed "partially unemployed" in any week in which, because of lack of work, he worked less than sixty per cent of the customary scheduled full-time hours of the industry or plant in which he is employed, and with respect to which the wages payable to him are less than his weekly benefit amount plus an amount equal to one-half of such weekly benefit amount figured to the nearest multiple of one dollar (\$1.00). Provided, however, the Commission may find the customary scheduled full-time hours of any individual to be less or more than the customary scheduled full-time hours of the industry or plant in which he is employed, if such individual customarily performs services in an occupation which requires that he customarily work a greater or smaller number of hours than the customary scheduled full-time hours of the industry or plant in which he is employed.

- c. An individual shall be deemed "part totally unemployed" in any week in which his earnings from odd job or subsidiary work are less than his weekly benefit amount plus an amount equal to one-half his weekly benefit amount figured to the nearest multiple of one dollar (\$1.00).
 - d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.
- (11) "Employment Security Administration Fund" means the Employment Security Administration Fund established by this chapter, from which administrative expenses under this chapter shall be paid.
 - (12) From and after March 10, 1941, "wages" means all remuneration for services from whatever source.
 - (13) a. From and after March 10, 1941, "wages" shall include commissions and bonuses and any sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities shall be estimated and determined in accordance with rules prescribed by the Commission: Provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only shall be determined in such manner as may by authorized regulations be prescribed. Such regulations shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals: Provided further, that the term "wages" shall not include the amount of any payment with respect to services performed on and after January 1, 1953, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability, or (iiii) death: Provided, further, wages shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.
 - b. "Wages" shall not include any payment made to, or on behalf of, an employee or his beneficiary from or to a trust which qualifies under the conditions set forth in section 401 (a) (1) and (2) of the Internal Revenue Code of 1954 or under or to an annuity plan which at the time of such payment meets the requirements of section 401 (a) (3), (4), (5) and (6) of such code and exempt from tax under section 501 (a) of such code at the time of such payment, unless such payment is made to

- an employee of the trust as remuneration for services rendered as such employee and not as beneficiary of the trust.
- (14) "Week" means such period or periods of seven consecutive calendar days ending at midnight as the Commission may by regulations prescribe.
- (15) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the Commission may by regulation prescribe.
- (16) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment.
- (17) a. "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which such individual first registers for work and files a valid claim for benefits, and after the termination of such benefit year the next benefit year shall be the next one-year period beginning with the first day of the first week with respect to which such individual registers for work and files a valid claim for benefits; a valid claim shall be deemed to have been filed if such individual, at the time the claim is filed, is unemployed and has been paid wages for employment amounting to at least the minimum of the qualifying base period wage as set forth in the applicable table in § 96-12: Provided, however, that any individual whose employment under this chapter prior to July first, one thousand nine hundred and thirty-nine, shall have been for an employer subject after July first, one thousand nine hundred and thirty-nine, to the Railroad Unemployment Insurance Act and some other employer subject to this chapter, such individual's benefit year, if established before July first, one thousand nine hundred and thirty-nine, shall terminate on that date and if again unemployed after July first, one thousand nine hundred and thirty-nine, he shall establish another benefit year after such date with respect to employment subject to this chapter.
- b. As to claims filed on or after July 1, 1961, by individuals who do not have benefit years in progress, "benefit year" with respect to any such individual means the one-year period beginning with the first day of the first week with respect to which the individual first registers for work and files a valid claim for benefits. After the termination of such benefit year the next benefit year shall be the next one-year period beginning with the first day of the first week with respect to which such individual registers for work and files a valid claim. A valid claim shall be deemed to have been filed if such individual, at the time the claim is filed, is unemployed and has been paid wages in more than one calendar quarter of his base period amounting to at least the minimum of the qualifying base period wages as set forth in the applicable table in § 96-12 and when such individual has in his last established benefit year exhausted his maximum benefit entitlement, he must also have met the provisions of § 96-12 (b) (3).
- (18) For benefit years established on and after July 1, 1953, the term "base period" shall mean the first four of the last six completed calendar quarters immediately preceding the first day of an individual's bene-

fit year as defined in subdivision (17) of this section. For benefit years established prior to July 1, 1953, the term "base period" shall be the same as heretofore defined in this chapter immediately prior to this enactment.

- (19) Wages payable to an individual with respect to covered employment performed prior to January first, one thousand nine hundred and forty-one, shall, for the purpose of § 96-12 and § 96-9, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.
- (20) The term "American vessel", as used in this chapter, means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is performing service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state and the term "American aircraft" means an aircraft registered under the laws of the United States.
- (21) The words "Employment Security Law" as used in this chapter mean any law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits. (Ex. Sess. 1936, c. 1, s. 19; 1937, c. 448, s. 5; 1939, c. 27, ss. 11-13; c. 52, ss. 6, 7; c. 141; 1941, cc. 108, 198; 1943, c. 377, ss. 31-34; c. 552, ss. 1, 2; 1945, c. 522, ss. 5-10; c. 531, ss. 1, 2; 1947, c. 326, ss. 7-12; c. 598, ss. 1, 5, 8; 1949, c. 424, ss. 3-8½; cc. 523, 863; 1951, c. 322, s. 1; c. 332, ss. 2, 3, 18; 1953, c. 401, ss. 1, 7-11; 1955, c. 385, ss. 3, 4; 1957, c. 1059, ss. 2-4; 1959, c. 362, ss. 2-6; 1961, c. 454, ss. 4-15.)

Editor's Note. — The 1939 amendments added the proviso to subdivision (4), made changes in paragraph a of subdivision (6), and changed subdivisions (17) and (18).

The first 1941 amendment made changes in subdivisions (4) and (5); inserted the second sentence and proviso of clause 2 of paragraph g of subdivision (6) and added clauses 9, 10 and 11 of said paragraph g; rewrote subdivisions (12), (13) and (17) and added subdivision (19). The second 1941 amendment added clause 12 of paragraph g of subdivision (6).

The first 1943 amendment added paragraph f of subdivision (5), and the last clause of paragraph d of subdivision (6) containing the reference to § 96-4. It also added the proviso and made other changes in paragraph b of subdivision (10). Subdivision (17) was also changed by the amendment. The second 1943 amendment made an addition to paragraph a of subdivision (5), and clauses 13 and 14 to paragraph g of subdivision (6).

The first 1945 amendment made changes in paragraph b of subdivision (5) and added paragraph g of said subdivision. The amendment also made changes in subdivisions (6) and (10). The second 1945 amendment struck out a sentence of sub-

division (4) and added paragraph h to subdivision (5).

The 1947 amendments made changes in paragraph h of subdivision (5), made changes in subdivision (6), changed the name of the fund in subdivision (11), made changes in subdivision (12), rewrote subdivision (13) and added subdivisions (20) and (21).

The first 1949 amendment inserted the second proviso in paragraph a of subdivision (5) and made changes in paragraph f thereof. It rewrote paragraph a of subdivision (6), and made changes in paragraphs f and g. The amendment added the last proviso to paragraph a of subdivision (13), and changed subdivision (17). The second 1949 amendment added that part of paragraph b of subdivision (5) beginning with the second sentence, and the third 1949 amendment added clause 16 of paragraph g of subdivision (6).

The first 1951 amendment inserted in subdivision (4) "unless such agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act." The second 1951 amendment made changes in subparagraph 3 of paragraph f and subparagraph 2 of paragraph g of subdivision (6). It also re-

wrote subparagraph 12 of paragraph g, subdivision (6), and substituted in subdivision (17) "the minimum of the qualifying base period wage as set forth in the applicable table in § 96-12" for "two hundred dollars in the applicable base period."

The 1953 amendment substituted "unemployment insurance" for "unemployment compensation" at several places in the section. It also changed paragraph a of subdivision (5), added the last sentence of paragraph a of subdivision (6), and deleted the former proviso in subdivision (12). The amendment rewrote paragraph a of subdivision (13), added paragraph b to subdivision (13) and rewrote subdivision (18).

The 1955 amendment made an addition to paragraph a, subdivision (5), and added "and any sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge" beginning in the second line of paragraph a, subdivision (13).

The 1957 amendment changed subdivision (6) by adding to subparagraph 5 of paragraph g "local college club, or local chapter of a college fraternity or sorority." It changed subdivision (10) by inserting paragraph c. It also rewrote paragraph b of subdivision (13).

The 1959 amendment deleted former subdivision (1) and renumbered former subdivisions (2) through (22, to appear as (1) through (21), and changed "eight" in paragraph g of subdivision (5) to read "four." The amendment also changed paragraphs g 4 and g 9 of subdivision (6) and rewrote paragraphs b and c of subdivision (10).

The 1961 amendment, effective July 1, 1961, changed subdivision (5) by rewriting the first part of paragraph a, by substituting the present last two sentences of paragraph b for the former last sentence, and by adding paragraph i. The amendment made several changes in subdivision (6). It added subparagraph 4 of paragraph f. It changed the section number of the Federal Internal Revenue Code cited in the proviso at the end of subparagraph 2 of paragraph g. It also made changes in subparagraphs 6, 8 and 11 and added subparagraphs 17 and 18 of paragraph g. It substituted "Puerto Rico" for "Alaska, Hawaii" in subdivision (9) and rewrote b and c of subdivision (10). It further redesignated subdivision (17) as subdivision (17) a and added paragraph b. The amendment

added the provision as to American aircraft at the end of subdivision (20).

Amendments Affecting Decisions. — In considering the cases cited below, the many changes made in this section by the amendatory acts should be borne in mind.

Definitions and Tests Applied According to Legislative Intent. — The General Assembly has power to determine scope of the Unemployment Compensation Act, and the definitions and tests therein prescribed will be applied by the courts in accordance with the legislative intent. *Unemployment Compensation Comm. v. City Ice, etc., Co.*, 216 N. C. 6, 3 S. E. (2d) 290 (1939).

Common-Law Relationship of Master and Servant Extended. — Employments taxable under this chapter are not confined to the common-law relationship of master and servant, but the legislature, under its power to determine employments which shall be subject to the tax, has, by the definitions contained in the chapter and the administrative procedure set up therein for determining whether an employment is subject to the chapter, enlarged its coverage beyond the common-law definition of master and servant, and the scope of the chapter must be determined upon the facts of each particular case. *Unemployment Compensation Comm. v. National Life Ins. Co.*, 219 N. C. 576, 14 S. E. (2d) 689, 139 A. L. R. 895 (1941). See *State v. Harvey & Son Co.*, 227 N. C. 291, 42 S. E. (2d) 86 (1947).

This section is not violative of constitutional provisions when properly interpreted and applied. *State v. Willis Barber, etc., Shop*, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Former paragraph d of subdivision (5) of this section, relating to employing units owned or controlled by the same interests, etc., when properly interpreted and applied, was not open to successful attack on the ground that it would result in the deprivation of property without due process of law or constitute a denial of the equal protection of the laws. *State v. Willis Barber, etc., Shop*, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Liberal Construction.—The terms "employment," "employer," "employing unit," "wages," and "remuneration" as used in this chapter must be liberally construed to effectuate its purpose to relieve the evils of unemployment, and the definition of the terms as contained in the chapter are controlling and are broader than the common-law meaning of the terms, and the chapter includes in its scope relationships

which might be excluded by a strict common-law application of the definition of an independent contractor. *Unemployment Compensation Comm. v. Jefferson Standard Life Ins. Co.*, 215 N. C. 479, 2 S. E. (2d) 584 (1939).

Purchase of Assets of Covered Employer.—Read in context, subdivision (5) b of this section contemplates a transaction in which the purchaser, instead of buying physical assets as such, succeeds in some real sense to the organization, trade or business, or some part thereof, of a covered employer, ordinarily as a going concern. The underlying idea is that of continuity, the new employing unit succeeding to and continuing the business or some part thereof of the former employing unit. *State v. Skyland Crafts, Inc.*, 240 N. C. 727, 83 S. E. (2d) 893 (1954).

Where defendant company was composed of new persons, engaged in a new business, under a new name, and did not purchase the predecessor's accounts receivable, customer lists, good will, right to use trade name, or any assets except the equipment and raw materials in the plant, there was no continuity of organization, trade or business such as is contemplated by subdivision (5) b of this section. *State v. Skyland Crafts, Inc.*, 240 N. C. 727, 83 S. E. (2d) 893 (1954).

The provision that enterprises "controlled" by the same "interests" shall be considered a single employing unit, as contained in former paragraph d of subdivision (5) of this section, was given the distinct definite and commonly understood meaning of its wording. *Unemployment Compensation Comm. v. City Ice, etc., Co.*, 216 N. C. 6, 3 S. E. (2d) 290 (1939).

Where the three defendant corporations had common officers and directors and substantially identical stockholders, and maintained a central business office where each kept its records and handled all clerical matters, the three corporations were owned and controlled directly or indirectly by the same interests within the meaning of former paragraph d of subdivision (5) of this section and constituted but a single employing unit within the meaning of the section. *Unemployment Compensation Comm. v. City Ice, etc., Co.*, 216 N. C. 6, 3 S. E. (2d) 290 (1939).

An individual who operated three places of business, employing in the aggregate more than eight employees, was an "employer" as defined in former paragraph d of subdivision (5) of this section, relating to employing units owned or controlled by the same interests, etc. *State v.*

Willis Barber, etc., Shop, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

The employment contemplated by subdivision (6) a was to be one for personal services rendered for remuneration. *Unemployment Security Comm. v. Tinnin*, 234 N. C. 75, 65 S. E. (2d) 884 (1951).

Services of Insurance Soliciting Agents Constitute Employment.—Soliciting agents and managers, in their capacity as soliciting agents, are subject to a high degree of control by the insurance company employing them under their written contract, and usually their services are rendered to the company in the offices of the company, and are directly related and contribute to the primary purpose for which the company is organized, and therefore their services constitute an "employment" within this chapter. *Unemployment Compensation Comm. v. Jefferson Standard Life Ins. Co.*, 215 N. C. 479, 2 S. E. (2d) 584 (1939). But see subdivision (6) g 9 of this section.

Former Burden of Proving Services Do Not Constitute Employment.—Where services were rendered for remuneration, subdivision (6) f of this section formerly provided that the burden was on the party for whose benefit the services were rendered to prove that they were rendered free from his control or direction over the performance of such services, that they were outside the usual course of the business for which the services were performed, and that the person performing the service was customarily engaged in an independently established trade, occupation, profession, or business; and since the matters of exemption were stated conjunctively, all three elements were required to be shown in order that exemption from the chapter could be secured. *Unemployment Compensation Comm. v. Jefferson Standard Life Ins. Co.*, 215 N. C. 479, 2 S. E. (2d) 584 (1939); *State v. Coe*, 239 N. C. 84, 79 S. E. (2d) 177 (1953).

Before the 1949 amendment to subdivision (6), paragraphs a and f, it was held that the provisions of the Employment Security Law classifying and designating those persons who are subject to the provisions of this chapter, rather than the common-law definition of the relationship of master and servant, were controlling, when not capricious or unreasonable. And the burden was upon the employer to show to the satisfaction of the Employment Security Commission that persons performing services came within the exceptions enumerated in former paragraphs 1, 2 and 3 of subdivision (6) f. *State v. Champion*

Distributing Co., 230 N. C. 464, 53 S. E. (2d) 674 (1949).

This section provides the qualifications for benefits under the Employment Security Law. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

Employee Is Entitled to Benefits If He Does Not Work and Is Not Paid for Services.—A laid-off employee is entitled to the insurance benefits under the State law if he is totally unemployed; that is, if he does not work, and is not paid and not due pay for services. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

One is not entitled to unemployment benefits merely because he meets the legislative definition of "totally unemployed." In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

Deferment of Benefits Until Exhaustion of Severance and Vacation Pay. — Discharged employees who are entitled under a contract to severance and vacation pay are not entitled to unemployment benefits until the monies paid as severance and vacation pay have been exhausted by time elapsed at the employees' weekly wage rate. In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

The fact that the legislature not only amended the definition of "wages" in 1953, but added, in 1955, a disqualifying provision, is clear evidence of its intent to prevent the collection of unemployment benefits so long as the employee had vacation or severance pay payable to him. It is a clear declaration that the legislature did not intend that an employer should be required to provide greater compensation to an unemployed individual than to the same individual when at work. In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

Payments under Supplemental Unemployment Benefit Plan.—Under the wage and service test fixed by this section, payments to laid-off employees under a supplemental unemployment benefit plan do not constitute wages. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

Benefits received by a laid-off employee from a trust fund set up pursuant to a collective bargaining agreement should not be deducted from unemployment insurance benefits due such employee under the Employment Security Act. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

Driver of Truck Leased to Carrier Held Not Employee of Lessee.—Where an interstate carrier leased a motor vehicle for a trip under its franchise by agreement stipulating that lessor should furnish the equipment and pay the driver's salary and

fully maintain and service the equipment, in consideration of a lump sum payment, the driver of such leased vehicle, whether he be the lessor owner or an employee of the lessor owner, was not an employee of the lessee within the meaning of this section. State v. Hennis Freight Lines, Inc., 248 N. C. 496, 103 S. E. (2d) 829 (1958).

Evidence Held to Support Finding That Salesmen Were "Employees." — The evidence tended to show that the services performed by defendant's salesmen were in the usual course of defendant's business, that goods were loaded on the salesmen's cars on defendant's premises, and the unsold goods returned there, that the salesmen were bonded, were allotted territory by defendant, were not permitted to sell any competitor's merchandise, paid no license or sales tax, were reported as employees in federal returns and their taxes deducted from the payroll, were required to turn in all money for goods sold and were paid weekly on a commission basis. Held: The evidence supports the finding of the Employment Security Commission that the salesmen were "employees" within the meaning of this section. State v. Champion Distributing Co., 230 N. C. 464, 53 S. E. (2d) 674 (1949) But see the 1949 amendment to subdivision (6), paragraphs a and f.

Shoeshine Boy Held Employee of Barbershop. — Findings were held sufficient to support the conclusions of the Employment Security Commission that a shoeshine boy "engaged" by a barbershop was an employee and not an independent contractor, so as to bring the employer within the coverage of the Employment Security Law during the period in question. State v. Coe, 239 N. C. 84, 79 S. E. (2d) 177 (1953).

Evidence Sustaining Finding That Purchaser of Timber from Municipal Corporation Was Not Employee.—Evidence that a municipal corporation sold certain standing timber to defendant at a stipulated price per thousand board feet and that in connection with the purchase, and that defendant agreed to remove all sawdust, to keep the bushes down and to pile no brush on the premises of the corporation, supported the finding of the Employment Security Commission that the defendant was not in the employ of the municipal corporation, within the meaning of this section. State v. Simpson, 238 N. C. 296, 77 S. E. (2d) 718 (1953).

Determination of Liability for Contributions.—Former subdivision (4) merely determined who should be liable for the con-

tributions to the Commission on wages paid to employees as between an employing unit and a contractor or subcontractor under certain specified circumstances. *State v. Nissen*, 227 N. C. 216, 41 S. E. (2d) 734 (1947).

Employer Required to Pay Contributions.—Where, prior to the purchase of the business by defendant, there had been employed therein more than eight individuals for twelve weeks during the calendar year, and defendant, after purchasing the business, employs more than eight employees for sixteen weeks during the remainder of the year, defendant is an employer required to pay contributions upon the wages of his employees under the provisions of the Employment Security Act. *State v. Whitehurst*, 231 N. C. 497, 57 S. E. (2d) 770 (1950).

Corporation Held Contractee and Not Mere Lessor.—The corporate defendant operated a department store. Upon the discontinuance of its shoe department, it entered into a contract with the individual defendant under which he occupied space in the store at a rental of a fixed percentage of the gross and carried on the shoe business under the name of the corporation, with full authority to hire and fire employees and order stock, but under which the corporation required money from sales to be turned over to it immediately as received, controlled the extension of credit and owned all accounts, paid sales taxes and advertised in its own name with the individual defendant paying for the proportion of advertising devoted to shoes. It was held that the corporation was a contractee and not a mere landlord, and that the corporation was liable under former subdivision (4), for unemployment compensation tax on wages paid by the individual to his employees for the period of operation prior to the amendment of 1945. *State v. Harvey & Son Co.*, 227 N. C. 291, 42 S. E. (2d) 86 (1947).

Effect of Subdivision (5) b.—Subdivision (5) b of this section is a definitive statute by which it can be determined

whether or not an employing unit which is the transferee of all, substantially all, or a part of an organization, trade, or business of another, is subject to the provisions of the Employment Security Law and required to make the contributions as provided therein. *State v. News Publishing Co.*, 228 N. C. 332, 45 S. E. (2d) 391 (1947). But see the 1949 amendment to § 96-9 (c) (4).

Employing Unit Acquiring Part of Organization, Trade or Business of Another.

—In subdivision (5) b of this section, the employing unit that acquires only a part of the organization, trade, or business of another is expressly exempted from the lien imposed by § 96-10 (d) on the assets transferred, although the former owner may not have paid all the contributions due at the time of the transfer. If it had been the intent and purpose of the legislature in enacting § 96-9 (c) (4), to authorize the transfer of such percentage of the reserve account as the transferred assets bear to the entire assets of the transferor, when only a part of the organization, trade, or business is transferred, then there would be no sound reason for exempting such assets from the provisions of § 96-10 (d). *State v. News Publishing Co.*, 228 N. C. 332, 45 S. E. (2d) 391 (1947). But see the 1949 amendment to § 96-9 (c) (4).

Liability of Contractor under Former Provisions.—A person who is a contractor within the meaning of paragraph h of subdivision (5) of this section, as added by Session Laws 1945, c. 531, is liable for unemployment compensation taxes for wages paid to his employees for the period subsequent to the effective date of said chapter 531 until March 18, 1947, the effective date of the repeal of the said paragraph. *State v. Harvey & Son Co.*, 227 N. C. 291, 42 S. E. (2d) 86 (1947).

Evidence Showing Workmen Employees and Not Independent Contractors.—See *Employment Security Comm. v. Monsees*, 234 N. C. 69, 65 S. E. (2d), 887 (1951).

Cited in *State v. Kermon*, 232 N. C. 342, 60 S. E. (2d) 580 (1950).

§ 96-9. Contributions.—(a) Payment.—

- (1) On and after January first, one thousand nine hundred and thirty-six, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter, with respect to wages for employment (as defined in § 96-8 (6)). Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided that, on and after July first, one thousand nine hundred and forty-one, con-

tributions shall be paid for each calendar quarter with respect to wages paid in such calendar quarter for employment after December thirty-first, one thousand nine hundred and forty. Contributions shall become due on and shall be paid on or before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the Commission shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this chapter will be jeopardized by delay, the Commission may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Commission for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by § 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

- (2) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.
- (3) For the purposes of this section, the term "wages" shall not include that part of the remuneration which, after remuneration equal to \$3,000 has become payable to an individual by an employer with respect to employment during the calendar year 1940, becomes payable to such individual by such employer with respect to employment during such calendar year, and which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during the calendar year 1941, and during any calendar year thereafter, is paid to such individual by such employer with respect to employment occurring during such calendar year but after December 31, 1940: Provided, that from and after December 31, 1946, for the purpose of this section, the term "wages" shall not include that part of remuneration in excess of three thousand dollars (\$3,000.00) paid to an individual by an employer during any calendar year for employment, irrespective of the year in which such employment occurred.

From and after March 18, 1947, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that part of remuneration earned by an individual in this State, which, when added to wages previously earned by such individual in another state or states, exceeds the sum of three thousand dollars (\$3,000.00), and the employer has paid contributions to such other state or states on the wages earned therein by such individual during the calendar year applicable. This provision shall be applicable only to wages earned by such individual in the employ of one and the same employer.

From and after January 1, 1953, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that

part of remuneration earned by an individual in the employ of a successor employer, which when added to remuneration previously earned by such individual in the employ of the predecessor employer exceeds the sum of three thousand dollars (\$3,000.00) in the calendar year in which the successor acquired the organization, trade or business of the predecessor as provided in § 96-8 (5) b; provided, however, such individual was an employee of the predecessor at the time of the acquisition of the business by the successor and was taken over by the successor as a part of the organization acquired; provided further that the predecessor employer has paid contributions on the earnings of such individual while in his employ during such year, and the account of the predecessor is transferred to the successor as provided in § 96-9 (c) (4) a.

(b) Rate of Contributions.—

(1) Each employer shall pay contributions with respect to employment during any calendar year prior to January 1, 1955, as required by this chapter prior to such January 1, 1955, and each employer shall pay contributions equal to two and seven-tenths (2.7) per cent of wages paid by him during the calendar year 1955 and each year thereafter with respect to employment occurring after December 31, 1954, which shall be deemed the standard rate of contributions payable by each employer except as provided herein.

(2) a. No employer's contribution rate shall be reduced below the standard rate for any calendar year unless and until his account has been chargeable with benefits throughout the twelve consecutive calendar-month period ending July 31 immediately preceding the computation date and his credit reserve ratio meets the requirements of that schedule used in the computation.

b. The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance and has been chargeable with benefits as set forth in G. S. 96-9 (b) (2) a of this chapter. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the thirty-six calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all such past periods.

c. The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all his contributions paid and credited for all past periods together with all other lawful credits is less than the total benefits charged to his account for all such periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the thirty-six calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

- (3) a. The applicable schedule of rates for a calendar year shall be determined by the fund ratio resulting when the total amount available for benefits in the unemployment insurance fund, as of the computation date, is divided by the total amount of the taxable payroll of all subject employers for the twelve-month period ending June 30 preceding such computation date. Schedule A, B, C, D, E, F, G, or H appearing on the line opposite such fund ratio in the table below shall be applicable in determining and assigning each eligible employer's contribution rate for the calendar year immediately following the computation date:

FUND RATIO SCHEDULES

When the Fund Ratio Is:		Applicable Schedule
As Much As	But Less Than	
	4.5%	A
4.5%	5.5%	B
5.5%	6.5%	C
6.5%	7.5%	D
7.5%	8.5%	E
8.5%	9.5%	F
9.5%	10.5%	G
10.5%	and in excess thereof	H

Variations from the standard rate of contributions shall be determined and assigned with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefor according to each such employer's credit reserve ratio, and each such employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, E, F, G, or H on the line opposite his credit reserve ratio as set forth in the Experience Rating Formula below:

EXPERIENCE RATING FORMULA

When the Credit Reserve Ratio Is:		Schedules								
As Much As	But Less Than	A	B	C	D	E	F	G	H	
	1.4%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	
1.4%	1.6%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5	
1.6%	1.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3	
1.8%	2.0%	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1	
2.0%	2.2%	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9	
2.2%	2.4%	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7	
2.4%	2.6%	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5	
2.6%	2.8%	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3	
2.8%	3.0%	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1	
3.0%	3.2%	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9	
3.2%	3.4%	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7	
3.4%	3.6%	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5	
3.6%	3.8%	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4	
3.8%	4.0%	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3	
4.0%	4.2%	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2	
4.2%	4.4%	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1	
4.4%	and in excess thereof	0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1	

- b. New rates shall be assigned to eligible employers effective January 1, 1955, and each January 1 thereafter, in accordance with the foregoing Fund Ratio Schedule and Experience Rating Formula.
- c. Each employer whose account as of the computation date of any year shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS

When the Debit Ratio Is: As Much As	But Less Than	Assigned Rate:
	0.2%	2.8%
0.2%	0.4%	2.9%
0.4%	0.6%	3.0%
0.6%	0.8%	3.1%
0.8%	1.0%	3.2%
1.0%	1.2%	3.3%
1.2%	1.4%	3.4%
1.4%	1.6%	3.5%
1.6%	1.8%	3.6%
1.8% and over		3.7%

The above rates for employers with overdrawn accounts shall first be assigned with respect to contributions payable for the calendar year 1958.

- d. The computation date for all contribution rates shall be August 1 of the calendar year preceding the calendar year with respect to which such rates are effective.
- e. Any employer may at any time make a voluntary contribution, additional to the contributions required under this chapter, to the fund to be credited to his account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as said term is used in G. S. 96-8 (8). Any voluntary contributions so made by an employer within thirty days after the date of mailing by the Commission pursuant to G. S. 96-9 (c) (3) herein, of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to his account as of the previous July 31. Provided, however, any voluntary contribution made as provided herein after July 31 of any year shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G. S. 96-9 (b) (3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of such voluntary contribution by any employer.
- f. If, within the calendar month in which the computation date occurs, the Commission finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the Commission finds incorrect or insufficient, the Commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail

addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, the Commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

- (c) (1) The Commission shall maintain a separate account for each employer and shall transfer to such account such employer's reserve account balance as of July 31, 1952, and shall credit his account with all the contributions which he has paid or is paid on his own behalf subsequent to July 31, 1952. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.
- (2) Charging of benefit payments.—
- a. Benefits paid shall be charged against the account of each base period employer on wages paid to an eligible individual in any quarter prior to April 1, 1959, in the base period as provided by this chapter prior to April 1, 1959. Benefits paid shall be charged against the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter subsequent to March 31, 1959, by each such employer bears to the total wages paid by all base period employers during the base period, except as provided in paragraph b of this subdivision. Benefits paid on and after August 1, 1952, shall be charged to employers' accounts upon the basis of benefits paid to claimants whose maximum total benefits have been exhausted or whose benefit years have expired during each twelve-months' period ending on the July 31, preceding the computation date.
 - b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages earned prior to the date of
 - (i) the voluntary leaving of work by the claimant without good

cause attributable to the employer, or (ii) the discharge of claimant for misconduct in connection with his work, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding the separation of the individual from work as are or may be required by the regulations of the Commission.

- (3) As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the Commission shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The Commission may redetermine on its own motion within the same period of time.
- (4) Transfer of account.—
 - a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner, succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in § 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within sixty days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. This provision shall not be retroactive with respect to the transfer of a part of an account of the predecessor in those cases in which an employing unit succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in § 96-8, subdivision (5), paragraph b, and shall apply only when the transfer of such distinct and severable portion of the organization, trade, or business of another occurred after March 31, 1949.
 - b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this chapter prior to the date of acquisition of the business, his rate of contribution for the period from such date to the end of the then

current contribution year shall be the same as his rate in effect on the date of such acquisition. If the successor was not an employer prior to the date of the acquisition of the business he shall be assigned a standard rate of contribution set forth in § 96-9 (b) (1) for the remainder of the year in which he acquired the business of the predecessor; however, if such successor makes application for the transfer of the account within sixty days after notification by the Commission of his right to do so and the account is transferred, he shall be assigned for the remainder of such year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, provided there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard rate of contributions of two and seven-tenths per cent (2.7%) and shall continue to pay at such rate until he qualifies for a reduction, or is subject to an increase in rate under the conditions prescribed in § 96-9 (b) (2) and (3).

- c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

- (5) In the event any employer subject to this chapter ceases to be such an employer, his account shall be closed and the same shall not be used in any future computation of such employer's rate nor shall any period prior to the effective date of the termination of such employer during which benefits were chargeable be considered in the application of § 96-9 (b) (2) of this chapter.

(d) In order that the Commission shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the Commission may deem necessary shall be made. (Ex. Sess. 1936, c. 1, s. 7; 1939, c. 27, s. 6; 1941, c. 108, ss. 6, 8; c. 320; 1943, c. 377, ss. 11-14; 1945, c. 522, ss. 11-1^c; 1947, c. 326, ss. 13-15, 17; c. 881, s. 3; 1949, c. 424, ss. 9-13; c. 969; 1951, c. 322, s. 2; c. 332, ss. 4-7; 1953, c. 401, ss. 12-14; 1955, c. 385, ss. 5, 6; 1957, c. 1059, ss. 5-11; 1959, c. 362, ss. 7, 8.)

Editor's Note. — The 1943 amendment changed subdivision (1) of subsection (a) and subdivision (4) of subsection (c).

The 1945 amendment made changes in subdivisions (2), (3) and (4) of subsection (c).

The 1947 amendments made changes in subdivision (2) of subsection (a) and in subdivisions (2) and (3) of subsection (c).

The 1949 amendments made changes in subdivisions (1), (2) and (4) of subsection (c), and added subdivision (5) to subsection (c).

The first 1951 amendment substituted "prior to May 1 following the effective date of such rates" for "within thirty days after the effective date of such date of such rates" near the end of subdivision (3) of

subsection (c). The second 1951 amendment made changes in subdivision (1) and subdivision (4) a of subsection (c).

The 1953 amendment made changes in subdivisions (1) and (2) of subsection (a) and rewrote subsections (b) and (c).

The 1955 amendment rewrote subsection (b), making extensive changes in the tables, and added the last paragraph of subsection (c), subdivision (4) b.

The 1957 amendment changed subdivision (2) of subsection (b) by inserting "credit" near the end of paragraph a, rewriting paragraph b and adding paragraph c; it also rewrote subdivision (3). The amendment changed subsection (c) by adding the former proviso to the first sentence of paragraph a of subdivision (2), and by making changes in paragraphs a and b of subdivision (4).

The 1959 amendment changed subsection (b) by rewriting the first sentence of paragraph f of subdivision (3). It also rewrote paragraph a of subdivision (2) of subsection (c).

Amendments Affecting Decisions.—In Wachovia Bank, etc., Co., 215 N. C. 491, considering the cases cited below, the many changes made by the amendatory acts should be borne in mind.

Contributions Constitute a Tax.—Contributions imposed on employers within the purview of this chapter are compulsory and therefore constitute a tax, and they are not rendered any less a tax by reason of the provision that they should be segregated in a special fund for distribution in furtherance of the purpose of the chapter. Prudential Ins. Co. v. Powell, 217 N. C. 495, 8 S. E. (2d) 619 (1940).

Payment of Contributions for Calendar Year 1936 Could Not Be Required.—Since chapter 1 of Public Laws 1936 was in effect a tax upon an act or acts, and since the statute was not ratified until December 16, 1936, and the determination of "employment" within the coverage of the act was to be determined from records for the calendar year 1936, and since no benefits therefrom could be obtained by employees for the calendar year 1936, in so far as the act attempted to require the payment of contributions for the calendar year 1936, it was retroactive and void as being in conflict with Art. 1 § 32, of the State Constitution. Unemployment Compensation Comm. v. Wachovia Bank, etc., Co., 215 N. C. 491, 2 S. E. (2d) 592 (1939).

State Bank Member of Federal Reserve System Not Exempt.—A bank organized under the laws of this State is not an instrumentality of the federal government so

as to exempt it from the tax imposed by this chapter, notwithstanding that the bank may be a member of the federal reserve system, since its existence and powers are derived from its State charter and its membership in the federal reserve system is voluntary and may be relinquished by it without destroying its corporate existence. Unemployment Compensation Comm. v. 2 S. E. (2d) 592 (1939).

A State bank which is a member of the federal reserve system is not exempt from taxation under this chapter because of its connection with the federal deposit insurance corporation nor may it claim such exemption because the tax would discriminate against it in favor of national member banks, since to relieve it from such taxation would discriminate in favor of it against nonmember State banks. Unemployment Compensation Comm. v. Wachovia Bank, etc., Co., 215 N. C. 491, 2 S. E. (2d) 592 (1939).

Contributions Are Required for Services of Insurance Soliciting Agents.—Since the services of soliciting agents and managers, in their capacity as soliciting agents, constitute "employment" within the meaning of this chapter, the insurance company for which the services are performed is liable for contributions for such employment. Unemployment Compensation Comm. v. Jefferson Standard Life Ins. Co., 215 N. C. 479, 2 S. E. (2d) 584 (1939). But see subdivision (6) g 9 of § 96-8.

Declaratory Judgment as to Inclusion of Certain Salaries Cannot Be Obtained.—An action to determine whether salaries paid certain employees should be included in computing the contributions to be paid by an employer under the Unemployment Compensation Act involves solely an issue of fact and does not involve any right, status or legal relation, and the employer may not maintain proceedings under the Declaratory Judgment Act to determine the question. Prudential Ins. Co. v. Powell 217 N. C. 495, 8 S. E. (2d) 619 (1940).

An action against the Unemployment Compensation Commission seeking judgment that salaries paid to certain plaintiff's employees should not be included in computing the amount of the contributions plaintiff should pay under the Unemployment Compensation Act is an action against a State agency and directly affects the State, since the amount of tax it is entitled to collect is involved, and the action is properly dismissed upon demurrer, since there is no statutory provision authorizing such action. Prudential Ins. Co. v. Powell, 217 N. C. 495, 8 S. E. (2d) 619 (1940).

Prior to the 1949 amendment, subsection (c) (4) of this section, by its own limitation, restricted the transfer of reserve accounts to those cases where the account was to be transferred in toto; and even then, such reserve account could be transferred only to such employing unit defined in § 96-8 (5) b, as might acquire the organization, trade, or business of another for whom a reserve account had been theretofore established and maintained. *State v. News Publishing Co.*, 228 N. C. 332, 45 S. E. (2d) 391 (1947).

An employer under the Employment Security Law was engaged in the business of printing and publishing a newspaper and also the business of operating a job printing business as separate businesses with separate books. Thereafter an independent corporation was organized which took over all the assets of the job printing business and retained all the employees of that department. It was held, under subsection (c) (4) of this section as it stood before

the 1949 amendment, that the new corporation was not entitled to a pro rata transfer to it of the reserve fund. *State v. News Publishing Co.*, 228 N. C. 332, 45 S. E. (2d) 391 (1947).

Transfer of Reserve Credited to Particular Employer through Misapprehension.

—Subdivision (4) of subsection (c) authorizes the Commission to transfer a reserve fund only upon the mutual consent of the parties. However, the law does not apply where such reserve was credited to a particular person, firm or corporation under a misapprehension of the facts or the status of the person, firm or corporation making the contribution. *State v. Nissen*, 227 N. C. 216, 41 S. E. (2d) 734 (1947).

Applied, as to subsections (a) and (b), in *State v. Skyland Crafts, Inc.*, 240 N. C. 727, 83 S. E. (2d) 893 (1954).

Cited in *State v. Hennis Freight Lines, Inc.*, 248 N. C. 496, 103 S. E. (2d) 829 (1958); *In re Tyson*, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-10. Collection of contributions.—(a) Interest on Past-Due Contributions.—Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate of one-half of one per centum per month from and after such date until payment plus accrued interest is received by the Commission. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Commission, which contributions were legally payable to this State, such contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if paid by the due date of such other state or the United States.

(b) Collection.—

- (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this chapter and cases arising under the Workmen's Compensation Law of this State; or, if any contribution imposed by this chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within thirty days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Commission, under the hand of its chairman, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Commission has reason to believe such delinquent has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgment, and from the date of such docketing

shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The clerk of superior courts shall charge a fee of one dollar (\$1.00) for indexing and docketing said certificates, which shall be in lieu of any other fee chargeable under the General Statutes of North Carolina or any Public, Local or Private Act. The Commission shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission, and when so forwarded and in the hands of such sheriff or agent of the Commission, shall have all the force and effect of an execution issued to such sheriff or agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Commission may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Commission for a period not exceeding one hundred and eighty days from the date upon which the original certificate is certified to the clerk of superior court. The Commission is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Commission, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Commission, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Commission shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Commission, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Commission for service the said agent of the Commission shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Commission to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000.00) approved by the Commission for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Commission who is charged with the duty of serving executions shall wilfully fail, refuse, or neglect to execute any order directed to him by the said Commission and within the time provided by law, the official bond of such sheriff or of such agent of the Commission shall be liable for the contributions, penalty, interest, and costs due by the employer.

- (2) When the Commission furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the Commission against any firm or individual has been satisfied and paid in full, and said statement

or certificate is signed by the chairman of the Commission and attested by its secretary, with the seal of the Commission affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket to the effect that said judgment has been paid and satisfied in full, and is in consequence cancelled of record. Such cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the Commission. It shall also be the duty of such clerk, when any such certificate is furnished him by the Commission showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the Commission. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50c) by the Commission.

(c) Priorities under Legal Dissolution or Distributions.—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of one thousand eight hundred and ninety-eight, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section sixty-four (a) of that act (U. S. C., Title 11, section 104 (a)), as amended.

(d) Collections of Contributions upon Transfer or Cessation of Business.—The contribution or tax imposed by § 96-9, and subsections thereunder, of this chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the Commission, to file with the Commission all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the Commission showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

(e) Refunds.—If not later than five years from the last day of the calendar year with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employer or employing unit who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund, and the Commission shall determine that such contributions or any portion thereof was erroneously collected, the Commission shall allow such employer or employing

unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such an adjustment cannot be made in the next succeeding calendar quarter after such application for such refund is received, or if said money which constitutes the overpayment has been in the possession of the Commission for six months or more, a cash refund may be made, without interest, from the fund: Provided, that any interest refunded under this subsection, which has been paid into the Special Employment Security Administration Fund established pursuant to § 96-5 (c), shall be paid out of such fund. For like cause and within the same period, adjustment or refund may be so made on the Commission's own initiative. Provided further, that nothing in this section or in any other section of this chapter shall be construed as permitting the refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. In any case where the Commission finds that any employing unit has erroneously paid to this State contributions or interest upon wages earned by individuals in employment in another state, refund or adjustment thereof shall be made, without interest, irrespective of any other provisions of this subsection, upon satisfactory proof to the Commission that the payment of such contributions or interest has been made to such other state.

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this chapter nor to restrain the sale of any property under writ of execution, judgment, decree or order of court for the nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes or contributions provided for in this chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm or corporation shall pay the tax or contribution so assessed to the Commission; but if at the time of such payment he shall notify the Commission in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the Commission; and if the same shall not be refunded within ninety days thereafter, he may sue the Commission for the amount so demanded; such suit against the Employment Security Commission of North Carolina must be brought in the superior court of Wake County, or in the county in which the taxpayer resides, or in the county where the taxpayer conducts his principal place of business; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive or contrary to the provisions of this chapter, the amount paid shall be refunded by the Commission accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this chapter. No suit, action or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action or proceeding is commenced within one year after the expiration of the ninety days mentioned in this subsection, or within one year from the date of the refusal of said Commission to make refund should such refusal be made before the expiration of said ninety days above mentioned. The one-year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this chapter.

(g) Any employer refusing to make reports required under this chapter, after ten days' written notice sent by the Commission to the employer's last known address by registered mail, may be enjoined from operating in violation of the provisions of this chapter upon the complaint of the Commission, in any court of competent jurisdiction, until such reports shall have been made. When an

execution has been returned to the Commission unsatisfied, and the employer, after ten days' written notice sent by the Commission to the employer's last known address by registered mail, refuses to pay contributions covered by the execution, such employer may be enjoined from operating in violation of the provisions of this chapter upon the complaint of the Commission, in any court of competent jurisdiction, until such contributions have been paid.

(h) When any uncertified check is tendered in payment of any contributions to the Commission and such check shall have been returned unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty shall be payable to the Commission, equal to ten per cent (10%) of the amount of said check, and in no case shall such penalty be less than one dollar (\$1.00) nor more than two hundred dollars (\$200.00).

(i) No suit or proceedings for the collection of unpaid contributions may be begun under this chapter after five years from the date on which such contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which such suit or proceeding is instituted; provided, that this subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this chapter: Provided, further, that a proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the chairman of the Commission directing a hearing to be held to determine liability or nonliability, and/or status under this chapter of an employing unit, or upon the date notice and demand for payment is mailed by registered mail to the last known address of the employing unit: Provided, further, that the order mentioned herein shall be deemed to have been issued on the date such order is mailed by registered mail to the last known address of the employing unit. (Ex. Sess. 1936, c. 1, s. 14; 1939, c. 27, ss. 9, 10; 1941, c. 108, ss. 14-16; 1943, c. 377, ss. 24-28; 1945, c. 221, s. 1; c. 288, s. 1; c. 522, ss. 17-20; 1947, c. 326, ss. 18-20; c. 598, s. 9; 1949, c. 424, ss. 14-16; 1951, c. 332, ss. 8, 20; 1953, c. 401, s. 15; 1959, c. 362, s. 9.)

Editor's Note.—The 1941 amendment inserted "one-half of" in subsection (a), inserted the second proviso in subsection (e) and added the last two sentences of subsection (f).

The 1943 amendment added the last sentence of subsection (a), rewrote subsection (b), and made changes in subsection (e). It reduced the limitation named in the last two sentences of subsection (f) from three years to one year, and added subsection (g).

The first 1945 amendment inserted the provision as to venue near the middle of subsection (f). The second 1945 amendment inserted in subsection (b) a provision as to fee for docketing and indexing certificates. The third 1945 amendment inserted the references to the United States in subsection (a), added subdivision (2) to subsection (b), made changes in subsection (e), and added subsections (h) and (i).

The 1947 amendments changed the amount of the bond in subdivision (1) of subsection (b) from two to three thousand dollars, added the proviso at the end of the first sentence of subsection (e), substituted "Commission" for "Commis-

sioner" in the next to the last sentence of subsection (f) and added the provisos at the end of subsection (i)

The 1949 amendment substituted in the second sentence of subsection (a) "Special Employment Security Administration Fund" for "Unemployment Compensation Fund," added the last sentence of subsection (e) and made changes in subsection (i).

The 1951 amendment made changes in subsection (b) by revising subdivision (1) and inserting the third sentence of subdivision (2).

The 1953 amendment substituted "five years" for "three years" and "calendar year" for "period" near the beginning of subsection (e). It also inserted "or employing unit" at two places in the first sentence of the subsection.

The 1959 amendment substituted "(a)" for "(b)" in the last line of subsection (c).

Amendments Affecting Decisions. — In considering the cases cited below, the changes made by the amendatory acts should be borne in mind.

This chapter provides remedies for an employer who claims a valid defense to the

enforcement of the tax or to the collection of the contributions assessed. In addition to right of appeal from the decision of the Commission, it is provided that he may pay the tax under protest and sue for its recovery. The remedy provided by this section must be pursued in the manner therein prescribed. *State v. Willis Barber, etc., Shop*, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

The remedies provided by this chapter are adequate and preclude an employer from maintaining suit in the superior court seeking judgment that salaries paid certain of its employees should not be included in computing the amount of contributions it should pay. *Prudential Ins. Co. v. Powell*, 217 N. C. 495, 8 S. E. (2d) 619 (1940).

Right to Raise Question of Constitutionality. — In an action by the Employment Security Commission to determine liability of defendant for contributions under the act, the defendant may not raise the question of the constitutionality of the statute under which the Commission levied the assessment in question, it being required in order to raise this defense that he pay the contributions under protest and sue for recovery. *State v. Kermon*, 232 N. C. 342, 60 S. E. (2d) 580 (1950).

Judgment That Certain Salaries Be Not Included Cannot Be Obtained. — A judgment that salaries paid to certain of plaintiff's employees should not be included in computing the amount of the contributions plaintiff should pay under this chapter would in effect enjoin the Commission from seeking further to collect the amount of contributions which it contends are justly due, and it being expressly provided that injunction shall not lie to restrain the collection of any tax or contribution levied under the chapter, the court is without jurisdiction of an action seeking such relief, since it may not do indirectly what it is prohibited from doing directly. *Prudential Ins. Co. v. Powell*, 217 N. C. 495, 8 S. E. (2d) 619 (1940).

§ 96-11. Period, election, and termination of employer's coverage. —(a) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year except as otherwise provided in § 96-8 (5) b; provided, however, that on and after July first, one thousand nine hundred thirty-nine, this section shall not be construed to apply to any part of the business of an employer as may come within the terms of section one (a) of the Federal Railroad Unemployment Insurance Act.

(b) Except as otherwise provided in subsections (a), (c) and (d) of this section, an employing unit shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, if it files with the Commission

Single Employing Unit.—Where the Commission contended that an employer and another concern controlled by the same interests jointly constituted a single employment unit liable for the payment of unemployment compensation contributions and it wished to have this liability judicially adjudged, it was required to follow the procedure prescribed by this section. In *re Mitchell*, 220 N. C. 65, 16 S. E. (2d) 476, 142 A. L. R. 931 (1941). See note to § 96-8.

Subsection (e) relating to refunds is procedural, and limitation it imposes is addressed to the power of the Commission to make a refund and the conditions upon which it may be made rather than to any limitation upon an action for the recovery of money. It is broad enough in its phraseology to cover refund of money paid through mistake, without raising technical distinctions between voluntary and involuntary payments. *B-C Remedy Co. v. Unemployment Compensation Comm.*, 226 N. C. 52, 36 S. E. (2d) 733, 163 A. L. R. 773 (1946).

Retroactive Extension of Time for Applying for Refunds.—While the limitation on the authority of the Commission to make refunds is fatal to a claim, so long as the limitation lasts, a change of law, enlarging time in which refunds may be applied for or made, does not involve any constitutional inhibitions such as apply to ordinary statutes of limitation, and the legislature has the power to apply the extended time retroactively. *B-C Remedy Co. v. Unemployment Compensation Comm.*, 226 N. C. 52, 36 S. E. (2d) 733, 163 A. L. R. 773 (1946), so holding as to the 1943 amendment of subsection (e).

Applied, as to subsection (c), in *National Surety Corp. v. Sharpe*, 236 N. C. 35, 72 S. E. (2d) 109 (1952).

Cited, as to subsection (d), in *Employment Security Comm. v. News Publishing Co.* 228 N. C. 332, 45 S. E. (2d) 391 (1947).

prior to the first day of March of such year a written application for termination of coverage and the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed eight or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); provided that effective January 1, 1957, except as otherwise provided in subsections (a), (c) and (d) of this section, an employing unit shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, if it files with the Commission prior to the first day of March of such year a written application for termination of coverage and the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). For the purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of § 96-8, subdivision (5), of this chapter shall be treated as a single employment unit: Provided, however, that any employer whose liability covers a period of more than two years when first discovered by the Commission, upon filing a written application for termination of coverage within ninety days after notification of his liability by the Commission, may be terminated as an employer effective January 1 of any calendar year before the year 1957, if the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed eight or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). With respect to the calendar year 1957, such employer may be terminated as an employer effective January 1, and for any subsequent year if the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final; provided further this provision shall not apply in any case of willful attempt in any manner to defeat or evade the payment of contributions becoming due under this chapter.

- (c) (1) An employing unit, not otherwise subject to this chapter, which files with the Commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, it has filed with the Commission a written notice to that effect.
- (2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the Commission a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the Commission such services shall be deemed to constitute employment subject to this chapter from

and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, such employing unit has filed with the Commission a written notice to that effect.

(d) An employer who has not had any individuals in employment for a period of two consecutive calendar years shall cease to be an employer subject to this chapter. An employer who has not had any individuals in employment under conditions which would make such employer eligible for exemption from filing contribution and wage reports required under this chapter, or an employer who has been exempted from filing such reports may be terminated from liability upon written application within ninety days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the Commission finds there were no twenty different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed four or more individuals in employment (eight or more prior to January 1, 1956) not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final. (Ex. Sess. 1936, c. 1, s. 8; 1939, c. 52, ss. 2, 3; 1941, c. 108, s. 9; 1945, c. 522, ss. 21-23; 1949, c. 424, ss. 17, 18; c. 522; 1951, c. 332, s. 9; c. 1147; 1953, c. 401, s. 16; 1955, c. 385, s. 10; 1959, c. 362, ss. 10, 11; 1961, c. 454, s. 16.)

Editor's Note. — The 1939 amendment added the proviso to subsection (a), and inserted the reference to subsection (a) near the beginning of subsection (b).

The 1941 amendment rewrote subsection (b).

The 1945 amendment substituted in subsection (b) "first day of March" for "thirty-first day of January." The amendment also substituted near the ends of subdivisions (1) and (2) of subsection (c) "prior to the first day of March following" for "at least thirty days prior to."

The 1949 amendments inserted the exception clause in subsection (a), inserted the reference to subsection (d) near the beginning of subsection (b) and added subsection (d).

The first 1951 amendment added a former sentence to subsection (d), and the second 1951 amendment added to subsection (b) the proviso at the end of the second sentence and the last sentence.

The 1953 amendment deleted from subsection (d) the former sentence added by the first 1951 amendment.

The 1955 amendment added the proviso appearing at the end of the first sentence of subsection (b).

The 1959 amendment rewrote the proviso at the end of the second sentence of subsection (b) and added the third sentence in such subsection. It also rewrote subsection (d).

The 1961 amendment, effective July 1, 1961, substituted "two" for "five" in the first sentence of subsection (d) and also inserted the words "an employer" near the end of the first sentence of such subsection.

Employer Remains Covered Until Coverage Is Terminated as Provided by This Section. — Where employment within the meaning of the Employment Security Law is once established and the employer becomes covered thereunder, he remains so until coverage is terminated as provided by this section. *State v. Coe*, 239 N. C. 84, 79 S. E. (2d) 177 (1953).

Cited, as to subsection (a), in *State v. Skyland Crafts, Inc.*, 240 N. C. 727, 83 S. E. (2d) 893 (1954).

§ 96-12. **Benefits.**—(a) Payment of Benefits.—Twenty-four months after the date when contributions first accrue under this chapter benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Commission may prescribe.

(b) (1) Each eligible individual whose benefit year begins on and after the first day of July, 1957, and prior to the first day of July, 1961, and who is totally unemployed during any week as defined by § 96-8 (10) a shall be paid benefits with respect to such week or weeks

at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment:

Column I Wages Paid During Base Period	Column II Weekly Benefit Amount
Less than \$500.00	Ineligible
\$ 500.00 to \$ 609.99	\$11.00
610.00 719.99	12.00
720.00 829.99	13.00
830.00 949.99	14.00
950.00 1,069.99	15.00
1,070.00 1,189.99	16.00
1,190.00 1,309.99	17.00
1,310.00 1,429.99	18.00
1,430.00 1,549.99	19.00
1,550.00 1,669.99	20.00
1,670.00 1,789.99	21.00
1,790.00 1,909.99	22.00
1,910.00 2,029.99	23.00
2,030.00 2,149.99	24.00
2,150.00 2,269.99	25.00
2,270.00 2,389.99	26.00
2,390.00 2,509.99	27.00
2,510.00 2,629.99	28.00
2,630.00 2,749.99	29.00
2,750.00 2,869.99	30.00
2,870.00 2,999.99	31.00
3,000.00 and over	32.00

(2) Each eligible individual whose benefit year begins on and after the first day of July, 1961, and who is totally unemployed as defined by § 96-8 (10) a shall be paid benefits with respect to such week or weeks at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment:

Column I Wages Paid During Base Period	Column II Weekly Benefit Amount
Less than \$550.00	Ineligible
\$ 550.00 to \$ 649.99	\$12.00
650.00 749.99	13.00
750.00 849.99	14.00
850.00 949.99	15.00
950.00 1,059.99	16.00
1,060.00 1,169.99	17.00
1,170.00 1,279.99	18.00
1,280.00 1,389.99	19.00
1,390.00 1,499.99	20.00
1,500.00 1,619.99	21.00
1,620.00 1,739.99	22.00
1,740.00 1,859.99	23.00
1,860.00 1,979.99	24.00
1,980.00 2,099.99	25.00
2,100.00 2,239.99	26.00
2,240.00 2,379.99	27.00
2,380.00 2,529.99	28.00
2,530.00 2,679.99	29.00
2,680.00 2,839.99	30.00
2,840.00 2,999.99	31.00
3,000.00 3,199.99	32.00
3,200.00 3,399.99	33.00
3,400.00 3,599.99	34.00
3,600.00 and over	35.00

(3) Qualifying Wages for Exhaustees.—An individual who has exhausted his maximum benefit entitlement in his last previous benefit year who files a claim for benefits on or after July 1, 1961, shall not be entitled to benefits unless he has been paid qualifying wages required in § 96-12 (b) (2) and since the beginning date of his last established previous benefit year and before the date upon which he files his new benefit claim has been paid wages equal to at least ten times the weekly benefit amount of the new benefit year claim. Such wages must have been earned with an employer subject to the provisions of this chapter or some other state employment security law or in federal service as defined in Title XV of the Social Security Act.

(c) Partial Weekly Benefit.—Each eligible individual who is either partially unemployed or part totally unemployed (as defined in § 96-8 (10) b and c) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount figured to the nearest multiple of one dollar (\$1.00) which is equal to the difference between his weekly benefit amount and that part of the remuneration payable to him with respect to such week which is in excess of a sum equal to one-half of his weekly benefit amount figured to the nearest multiple of one dollar (\$1.00).

(d) Duration of Benefits.—The maximum amount of benefits payable to any eligible individual, whose benefit year begins on and after March 22, 1951, shall be twenty-six (26) times his weekly benefit amount during any benefit year, except as such benefits may be further extended by § 96-12 (e) of this chapter. The Commission shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment, until such time as such wages would not be necessary for benefit purposes.

(e) Extension of Benefits.—

(1) Generally.—“Extended benefits” shall be paid under this chapter as hereinafter specified.

(2) Payment of Extended Benefits.—At any time when the “extended benefit ratio” for any three calendar weeks, in a consecutive four-calendar-week period, averages as much as nine per centum (9%), upon certification of such fact and recommendation of the Commission and authorization of the Governor of this State, “extended benefits” shall be paid under the provisions of this chapter.

Any “eligible exhaustee” shall be paid a “weekly benefit amount” pursuant to the provisions of this chapter for any week of total or partial unemployment beginning in the existing benefit year of such “eligible exhaustee” and which also begins within the “extended benefit period” subsequent to the “effective date of the extended benefit ratio.” “Extended benefits” to any “eligible exhaustee” shall be limited to an amount not to exceed eight times his “weekly benefit amount.” Such “eligible exhaustee” must have met the conditions of eligibility contained in § 96-13, General Statutes, and shall not be paid “extended benefits” during any period of disqualification imposed under § 96-14, General Statutes; provided, that such “eligible exhaustee” shall be subject to all the other provisions of chapter 96 of the General Statutes not inconsistent with the provisions of this chapter.

(3) Eligible Exhaustee.—“Eligible exhaustee” under this chapter means any individual who has an existing benefit year in progress as such is defined in General Statutes 96-8 (17) and who has exhausted all other benefit rights under the provisions of this chapter during an “extended benefit period” as defined in this chapter and who does not have any unemployment insurance benefit rights which may be exercised under the laws of any state or the federal government; provided, that any “eligible exhaustee” who has not received the maximum amount of “extended benefits” under this chapter in any specified “extended benefit period” within his existing benefit year shall, if otherwise eligible under these provisions, be paid such remaining “extended benefits” for weeks of unemployment beginning within his existing benefit year and which may begin during an ensuing “extended benefit period” after the “effective date of the extended benefit ratio” in such “extended benefit period.”

(4) Extended Benefit Period.—“Extended benefit period” means the month in which the “effective date of the extended benefit ratio” becomes effective together with the three-calendar-month period immediately preceding such effective date and the three-calendar-month period immediately following the month in which such “extended benefit ratio” became effective, being a period of seven-consecutive-calendar months. An “extended benefit period,” as herein provided, shall be established on each occasion upon which the “extended benefit ratio” becomes effective under the provisions of this chapter, notwithstanding that at such time an “extended benefit period” may be in progress.

- (5) **Extended Benefit Ratio.**—"Extended benefit ratio" is the quotient obtained by dividing the number of insured workers filing for unemployment insurance benefits by the number of all insured workers. It shall be computed by dividing the number of weeks claimed (for purposes of § 96-15 (a), General Statutes) in the current calendar week by the monthly average (as published in North Carolina Employment and Wages released by the Employment Security Commission of North Carolina) of individuals in insured employment under this chapter during the immediately preceding calendar year, if the ratio being computed is for a calendar week beginning between August 1 and December 31, inclusive; or if the ratio is being computed for a week beginning between January 1 and July 31, inclusive, the next to the last calendar year average monthly insured employment shall be used.
- (6) **Effective Date of Extended Benefit Ratio.**—"Effective date of extended benefit ratio" means the first day of the week immediately following any consecutive four-calendar-week period during which for any three calendar weeks therein, such ratio averages as much as nine per centum (9%).
- (7) **Extended Benefits.**—"Extended benefits" means the money payments payable to "eligible exhaustees" under the provisions of this chapter and are an extension of and not in lieu of benefits otherwise provided by this chapter and are benefits as defined in § 96-8 (1), General Statutes, for all the purposes of this chapter not inconsistent with the provisions of this chapter.
- (8) **Weekly Benefit Amount.**—The "weekly benefit amount" payable to an "eligible exhaustee" under this chapter shall be the same as his weekly benefit amount payable during his existing benefit year as provided in § 96-12, General Statutes.
- (9) **Seasonal Worker.** — A seasonal worker who has exhausted nonseasonal benefits and who has met all the other requirements of an "eligible exhaustee," except that he has future benefit rights not yet available which must be exercised by such worker during a future seasonal period under the provisions of § 96-16, General Statutes, shall be considered as having exhausted all benefit rights under the provisions of this chapter until such time as such future benefit rights become available to him; and any extended benefits so paid shall be treated as other benefit payments under this chapter, notwithstanding the provisions of § 96-16, General Statutes. (Ex. Sess. 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14; c. 141; 1941, c. 108, s. 1; c. 276; 1943, c. 377, ss. 1-4; 1945, c. 522, ss. 24-26; 1947, c. 326, s. 21; 1949, c. 424, ss. 19-21; 1951, c. 332, ss. 10-12; 1953, c. 401, ss. 17, 18; 1957, c. 1059, ss. 12, 13; c. 1339; 1959, c. 362, ss. 12-15; 1961, c. 454, ss. 17, 18.)

Editor's Note.—The 1937 amendment inserted at the end of the second sentence of subsection (d) "except where the Commission may find other forms of reports adequate," which were subsequently omitted.

The 1939 amendments inserted the former words "figured to the nearest multiple of fifty cents" in the second sentence of subsection (c) and made other changes.

The first 1941 amendment changed subsection (b). The second 1941 amendment added a former subsection relating to the

benefit rights of trainees in military service which was repealed by the 1947 amendment.

The 1943 amendment rewrote subsection (d) and made other changes.

The 1945 amendment made changes in subsections (b) and (c).

The 1949 amendment rewrote subsection (b), the second sentence of subsection (c), and subsection (d).

The 1951 amendment made changes in the amounts in subsection (b), added the

former proviso to subsection (c) and rewrote subsection (d).

The 1953 amendment changed subsection (b), substituted "one dollar" for "fifty cents" near the middle of subsection (c) and deleted the proviso added by the 1951 amendment. It also rewrote subsection (d).

The first 1957 amendment rewrote subsections (b) and (c). The second 1957 amendment rewrote the first amendment as to subsection (b).

The 1959 amendment deleted former subdivision (1) of subsection (b), which now consists of the provisions of former subdivision (2), rewrote subsection (c), added the exception clause to the first sentence of subsection (d), and added subsection (e).

The 1961 amendment, effective July 1, 1961, rewrote subsections (b) and (c).

Cited in re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-13. **Benefit eligibility conditions.**—An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that—

- (1) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe;
- (2) He has made a claim for benefits in accordance with the provisions of § 96-15 (a);
- (3) He is able to work, and is available for work: Provided that no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment, shall during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, that no individual separated from employment after July 1, 1961, shall be considered able and available for work who has been separated from employment due to pregnancy from the date of such separation until the birth of such individual's child, and no individual shall be considered able and available for work, regardless of the cause of such individual's separation from employment, for any week during the three-month period immediately before the expected birth of a child to such individual and for any week during the three-month period immediately following the birth of a child to such individual; however, no individual shall be denied benefits by reason of this proviso in the event of the death of such child, if such individual is otherwise eligible: Provided further, however, that effective January 1, 1949, no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which as much as sixty per cent of the full time working hours consist of a vacation period. For the purpose of this subsection, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. (Ex. Sess. 1936, c. 1, s. 4; 1939, c. 27, ss. 4, 5; c. 141; 1941, c. 108, s. 2; 1943, c. 377, s. 5; 1945, c. 522, ss. 27-28; 1947, c. 326, s. 22; 1949, c. 424, s. 22; 1951, c. 332, s. 13; 1961, c. 454, s. 19.)

Editor's Note. — The 1943 amendment rewrote subdivision (3).

The 1945, 1947 and 1949 amendments made changes in subdivision (3).

The 1951 amendment struck out a former subdivision requiring a waiting period of one week.

The 1961 amendment, effective July 1, 1961, rewrote the second proviso in subdivision (3).

For note on availability for suitable work, see 34 N. C. Law Rev. 591.

Construed with § 96-14.—This section and § 96-14 as cognate statutes provide the overall formula governing the right to unemployment compensation benefits. Being thus in pari materia, they are to be construed together. In re Miller, 243 N. C. 509, 91 S. E. (2d) 241 (1956).

The words "available for work" in this section mean "available for suitable work" in the same sense as the words "suitable work" are used in § 96-14. In re Miller, 243 N. C. 509, 91 S. E. (2d) 241 (1956).

A claimant refusing to consider employment during her Sabbath did not render herself unavailable for work within the meaning of this section. In re Miller, 243 N. C. 509, 91 S. E. (2d) 241 (1956).

Evidence Showing Failure Actively to Seek Work.—Evidence that during a period of six months claimant's efforts to obtain employment, in addition to reporting to the employment service office, were limited to two occasions at one mill and one occasion at each of three other mills, is sufficient to sustain the Commission's finding that he had failed to show that he had been actively seeking work within the purview of subdivision (3) of this section. State v. Roberts, 230 N. C. 262, 52 S. E. (2d) 890 (1949).

Vacation Periods.—The language of this section, when read and understood in the light of its history, demonstrates that the time for vacation was, if not fixed by agreement of the parties, to be determined by the employer. The employer and its employees may by contract fix the date or dates for the vacation. Vacation may be one two-week period or two one-week pe-

riods. The statute does not prescribe; it merely limits the total vacation period for which an employee is eligible for compensation to a total of two weeks. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

Plant Shut Down for an Additional Week of Vacation.—Where an employer, in addition to one week paid vacation provided for in the contract, shuts down its plant for an additional week of vacation during the Christmas period, its employees are not entitled to unemployment compensation for the additional week under this section. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

Unemployment Due to Vacation.—Where an employer, in addition to one week of paid vacation provided for in the contract, shuts down its plant for an additional week of vacation during the Christmas period, its employees are not entitled to unemployment compensation for the additional week under this section. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

The language of this section, when read and understood in the light of its history, demonstrates that the time for vacation was, if not fixed by agreement of the parties, to be determined by the employer. The employer and its employees may by contract fix the date or dates for the vacation. Vacation may be one two-week period or two one-week periods. The statute does not prescribe; it merely limits the total vacation period for which an employee is eligible for compensation to a total of two weeks. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

Stated in Textile Workers Union of America v. Cone Mills Corp., 268 F. (2d) 920 (1959).

Cited in Textile Workers Union of America v. Cone Mills Corp., 188 F. Supp. 728 (1960); In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-14. **Disqualification for benefits.**—An individual shall be disqualified for benefits:

- (1) For not less than four, nor more than twelve consecutive weeks of unemployment, which occur within a benefit year, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work voluntarily without good cause attributable to the employer, and the maximum benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of such consecutive weeks of unemployment by the weekly benefit amount.
- (2) For not less than five, nor more than twelve consecutive weeks of unem-

ployment, which occur within a benefit year, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work, and the maximum amount of benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of such consecutive weeks of unemployment by the weekly benefit amount.

- (3) For not less than four, nor more than twelve consecutive weeks of unemployment, which occur within a benefit year, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the Commission; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the Commission and the maximum amount of benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of such consecutive weeks of unemployment by the weekly benefit amount.

Provided, however, that in any case where any week or weeks of disqualification as provided in subdivisions (1), (2) and (3) of this section have not elapsed on account of the termination of an individual's benefit year, such remaining week or weeks of disqualification shall be applicable in the next benefit year at the then current benefit amount of such individual; provided such new benefit year is established by the individual within twelve months from the date of the ending of the preceding benefit year. When any individual who has been disqualified as provided in subdivisions (1), (2) and (3) of this section returns to employment before the disqualifying period has elapsed, the remaining week or weeks of disqualification shall be canceled and no deduction based on such weeks shall be made from the maximum amount of benefits of such individual; provided such individual shows the fact of employment to the satisfaction of the Commission.

In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

- (4) For any week with respect to which the Commission finds that his total

or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

- (5) For any week with respect to which he is receiving or has received remuneration in the form of remuneration in lieu of notice: Provided, that if such remuneration is less than the benefits which would otherwise be due under this chapter he shall be entitled to receive for such week, if otherwise eligible, the difference figured to the nearest multiple to one dollar (\$1.00) between the weekly benefit amount and such remuneration.
- (6) If the Commission finds he is customarily self-employed and can reasonably return to self-employment.
- (7) For any week after June thirtieth, one thousand nine hundred thirty-nine with respect to which he shall have and assert any right to unemployment benefits under an employment security law of either the federal or a state government, other than the State of North Carolina.
- (8) For any week with respect to which he has received any sum from the employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on a pro rata basis; provided further that if the amount so prorated to a particular week is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits as provided under § 96-12 of this chapter. (Ex. Sess. 1936, c. 1, s. 5; 1937, c. 448, ss. 2, 3; 1939, c. 52, s. 1; 1941, c. 108, ss. 3, 4; 1943, c. 377, ss. 7, 8; 1945, c. 522, s. 29; 1947, c. 598, s. 10; c. 881, ss. 1, 2; 1949, c. 424, ss. 23-25; 1951, c. 332, s. 14; 1955, c. 385, ss. 7, 8; 1961, c. 454, s. 20.)

Editor's Note.—The 1943 amendment rewrote subdivisions (1) and (2), and he first two paragraphs of subdivision (3). It omitted from subdivision (5) a provision relating to remuneration in the form of primary insurance payments with respect to old age benefits under the Social Security Act.

The 1945 amendment added the latter part of the first paragraph of subdivision (3) beginning with "and the maximum amount of benefits."

The 1947 amendment added provisions to subdivisions (1) and (2) which were

struck out by the 1949 amendment, and substituted "have and assert" for "have or assert" in subdivision (7). The 1949 amendment also rewrote the second paragraph of subdivision (3).

The 1951 amendment struck out the parenthetical phrase "(in addition to the waiting period)", formerly appearing preceding "it is determined by the Commission" in subdivisions (1), (2) and (3).

The 1955 amendment substituted at the end of subdivision (5) "the difference figured to the nearest multiple of one dollar (\$1.00) between the weekly benefit amount

and such remuneration" for "benefits reduced by the amount of such remuneration," and added subdivision (8).

The 1961 amendment, effective July 1, 1961, rewrote subdivision (4).

For note on the geographical scope of the labor dispute disqualification under subdivision (4), see 29 N. C. Law Rev. 472.

For note on availability for suitable work, see 34 N. C. Law Rev. 591.

Section Construed with § 96-13.—See note to § 96-13.

This section prevails over the provision of § 96-2 stating the general policy of the statute to provide for benefits to workers who are "unemployed through no fault of their own." In re Steelman, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941).

Subdivision (4) of this section is in plain and unambiguous language, and needs only a literal interpretation to ascertain the legislative intent as expressed therein. In re Stevenson, 237 N. C. 528, 75 S. E. (2d) 520 (1953).

In passing the 1961 amendment to subdivision (4) the General Assembly acted within its constitutional powers. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The effect of the 1961 amendment was to eliminate from subdivision (4) the means therein provided by which an employee might escape disqualification. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

New subdivision (4) extends the disqualification to workers at a factory, establishment, or other premise which supplies necessary materials or services to the plant where the claimants were last employed. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The disqualification contained in the 1961 amendment to subdivision (4) involves a question of degree and not of principle. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

Employees who participate in, finance or who are directly interested in a labor dispute which results in stoppage of work, or who are members of a grade or class of workers which has members employed at the premises at which the stoppage occurs, any of whom, immediately before the stoppage occurs, participate in, finance or are directly interested in such labor dispute, are not entitled to unemployment compensation benefits during the stoppage of work, and each employee-claimant is required to show to the satisfaction of the Commission that he is not disqualified under the terms of this section. In re Steel-

man, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941).

The evidence tended to show that employee-claimants not only did not work during the period of stoppage of work at the employer's plant caused by a labor dispute but also that they did not resume work after operations at the plant were resumed, and after notification by the employer that jobs were available. There was also evidence on behalf of claimants that they did not return to their jobs because of the labor dispute. The Commission ruled that claimants were not entitled to benefits during the stoppage of work. It was held that the employer is not prejudiced by the further order of the Commission that the eligibility of claimants to benefits subsequent to the resumption of operations at the plant should be determined, since it must be presumed the Commission will determine eligibility of each claimant for such benefits in accordance with objective standards or criteria set up in the chapter, but the existence and effect of a labor dispute may have an essential bearing upon the eligibility of claimants, the suitability of work offered, and the disqualifications for benefits. In re Steelman, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941).

Provisions of this chapter seeking to maintain neutrality on the part of the State in labor disputes will be given effect by the courts, since the matter of policy is in the exclusive province of the legislature and the courts will not interfere therewith unless the provisions relating thereto have no reasonable relation to the end sought to be accomplished. In re Steelman, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941).

Whether the unemployment is due to a labor dispute, or whether it is not, is a question to be determined in each case. The line of demarcation is not the end of the strike but the end of work stoppage due to the strike. That test is applied to all alike, and there is no discrimination. In re Stevenson, 237 N. C. 528, 75 S. E. (2d) 520 (1953).

When Stoppage of Work Caused by Labor Dispute Begins and Ends.—A stoppage of work commences at the plant of the employer when a definite check in production operations occurs, and a stoppage of work ceases when operations are resumed on a normal basis; but the stoppage of work caused by a labor dispute must not exceed the time which is reasonably necessary and required to physically resume normal operations in such plant

or establishment. In re Stevenson, 237 N. C. 528, 75 S. E. (2d) 520 (1953).

Where Labor Dispute Involves General Wage Increase.—Subdivision (4) of this section disqualifies for unemployment compensation benefits employees belonging to a grade or class of workers some of whom participated in and were directly interested in the strike which brought about a stoppage of work, notwithstanding the fact that the employee-claimants were not members of the union and did not participate in, or help finance, the strike, especially where the strike involved, in addition to a maintenance of membership clause in the contract of employment, a general increase in wages, from which the employee-claimants stood to benefit. Unemployment Compensation Comm. v. Lunceford, 229 N. C. 570, 50 S. E. (2d) 497 (1948).

Notice That Due to Labor Dispute Employees Might Seek Other Employment.—A finding that after a strike which closed the plant and after the employer's attempt to resume operations had proved futile, the employer posted a notice stating that all operations at the mill would cease for an indefinite period and that employees were free to seek employment elsewhere, was held insufficient to support a conclusion of law by the Commission that subsequent to the posting of the notice the unemployment of claimants was not due to stoppage of work because of a labor dispute, G. S. 96-14 (4), since the notice merely signified the willingness of the employer to terminate its employment relationship with any worker who elected to withdraw from the existing labor dispute and seek work elsewhere, but did not alter the status of any employee who refrained from exercising this option. State v. Jarrell, 231 N. C. 381, 57 S. E. (2d) 403 (1950).

Employees Disqualified under Subdivision (2).—Claimant was disqualified for a

period of nine weeks for payment of unemployment benefits where the Commission found that he was discharged for misconduct connected with his work. In re Stutts, 245 N. C. 405, 95 S. E. (2d) 919 (1957).

Employees Disqualified under Subdivision (4).—Employee-claimants who are not directly interested in the labor dispute which brings about the stoppage of work, and who do not participate in, help finance or benefit from the dispute, are nevertheless disqualified from unemployment compensation benefits if they belong to a grade or class of workers employed at the premises immediately before the commencement of the stoppage, some of whom, immediately before the stoppage occurs, participate in, finance or are directly interested in such labor dispute. State v. Martin, 228 N. C. 227, 45 S. E. (2d) 385 (1947).

Work which requires one to violate his moral standards is not ordinarily "suitable work" within the meaning of this section. In re Miller, 243 N. C. 509, 91 S. E. (2d) 241 (1956).

Burden of Proof.—Each claimant is required to show to the satisfaction of the Commission that he is not disqualified for benefits under this section. In re Steelman, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941); State v. Jarrell, 231 N. C. 381, 57 S. E. (2d) 403 (1950).

Same—Work Stoppage Resulting from Labor Dispute.—Where the employer resists recovery of unemployment compensation on the ground that claimants' unemployment was due to a work stoppage resulting from a labor dispute, each claimant is required to show to the satisfaction of the Commission that he is not disqualified for benefits under subdivision (4) of this section. State v. Jarrell, 231 N. C. 381, 57 S. E. (2d) 403 (1950).

Quoted in In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-15. **Claims for benefits.**—(a) **Filing.**—Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this chapter as the Commission may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the Commission may direct. Such printed statements and other materials shall be supplied by the Commission to each employing unit without cost to the employing unit.

(b) (1) **Initial Determination.**—A representative designated by the Commission shall promptly examine the claim and shall determine whether or not the claim is valid, and if valid, the week with respect to when

benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such initial or monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claimant is ineligible due to lack of earnings in his base period, the determination shall so designate. The most recent and the base period employers shall be notified upon the filing of a claim which establishes a benefit year or an ineligible amount.

At any time within one year from the date of the making of an initial determination, the Commission on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

- (2) Hearings before Deputy. — When a question or issue is presented or raised as to the eligibility of a claimant for benefits under § 96-13 herein, or whether any disqualification shall be imposed by virtue of § 96-14 of this chapter, or benefits denied, or his account adjusted pursuant to § 96-18 of this chapter, the claim shall be referred to a deputy who, after due notice to the parties and affording them reasonable opportunity for a fair hearing, shall find facts and make his decision based thereon; provided the deputy shall not be required to issue notice of, or to hold a formal hearing in cases involving interstate claims filed by a claimant in another state against this State, or in cases involving the failure of a claimant to meet any procedural requirement pertaining to the filing of claims, or the denial of benefits or the adjustment of the account of a claimant under § 96-18 of this chapter. The Commission may remove to itself or transfer to another deputy or to an appeal tribunal the proceedings on any claim pending before a deputy. The deputy shall promptly notify the claimant and any other interested party of his decision and the reason therefor. Unless the claimant or any such interested party, within five calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith, and for the purpose of this subsection, the Commission shall be deemed an interested party: Provided, however, that on claims filed outside of this State, the claimant, or such interested party, shall have ten calendar days from the date of mailing such notification to his last known address in which to file notice of appeal. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the Commission shall be paid only after such determination: Provided further, however, that if an appeal tribunal affirms a decision of a deputy, or the Commission affirms a decision of an appeal tribunal allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals.—Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten

days after the date of notification or mailing of such decision further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal Tribunals.—To hear and decide disputed claims, the Commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the Commission and be paid a fee of not more than five dollars per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Commission Review.—The Commission may on its own motion affirm, modify, or set aside any decision of an appeals tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Commission may deem expedient. Provided, however, that upon denial by the Commission of an application for appeal from the decision of an appeals tribunal, the decision of the appeals tribunal shall be deemed to be the decision of the Commission within the meaning of this subsection for purposes of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to a decision of the Commission, except that the time for initiating such review shall run from the date of mailing or delivery of the notice of the order of the Commission denying the application for appeal. The Commission shall permit such further appeal by any of the parties interested in the decision of an appeals tribunal which is not unanimous. The Commission may remove to itself or transfer to another appeals tribunal, the proceedings on any claim pending before an appeals tribunal. Any proceedings so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The Commission shall promptly notify the interested parties of its findings and decision.

(f) Procedure.—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the Commission for determining the rights of the parties, whether or not such rules conform to common-law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing before an appeals tribunal upon a disputed claim shall be recorded unless the recording is waived by all interested parties, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees.—Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter.

(h) Appeal to Courts.—Any decision of the Commission, in the absence of an appeal therefrom as herein provided, shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has filed notice of appeal with the Commission within such ten-day period and exhausted his remedies before the Commission as provided by this chapter. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may

be represented in any such judicial action by any qualified attorney who has been designated by it for that purpose.

(i) Appeal Proceedings.—The decision of the Commission shall be final, subject to appeal as herein provided. Within ten days after the decision of the Commission has become final, any party aggrieved thereby who has filed notice of appeal within the ten-day period as provided by § 96-15 (h) may appeal to the superior court of the county of his residence. In case of such appeal, the court shall have power to make party-defendant any other party which it may deem necessary or proper to a just and fair determination of the case. In every case in which appeal is demanded, the appealing party shall file a statement with the Commission within the time allowed for appeal, in which shall be plainly stated the grounds upon which a review is sought and the particulars in which it is claimed the Commission is in error with respect to its decision. The Commission shall make a return to the notice of appeal, which shall consist of all documents and papers necessary to an understanding of the appeal, and a transcript of all testimony taken in the matter, together with its findings of fact and decision thereon, which shall be certified and filed with the superior court to which appeal is taken within thirty days of said notice of appeal. The Commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section the findings of the Commission as to the facts, if there is evidence to support it, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner, and shall be given precedence over all civil cases, except cases arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the superior court, as provided in civil cases. The Commission shall have the right of appeal to the Supreme Court from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required upon such appeal. Upon the final determination of the case or proceeding the Commission shall enter an order in accordance with such determination. Such an appeal shall not act as a super-seedeas or stay of any judgment, order, or decision of the court below, or of the Commission unless the Commission or the court shall so order as to the decision rendered by it. (Ex. Sess. 1936, c. 1, s. 6; 1937, c. 150; c. 448, s. 4; 1941, c. 108, s. 5; 1943, c. 377, ss. 9, 10; 1945, c. 522, ss. 30-32; 1947, c. 326, s. 23; 1951, c. 332, s. 15; 1953, c. 401, s. 19; 1959, c. 362, ss. 16, 17; 1961, c. 454, s. 21.)

Editor's Note. — The first 1937 amendment omitted the requirement that attorneys representing the Commission as mentioned in subsection (h) be regular employees of the Commission. The second 1937 amendment inserted the clause beginning "or may provide" at the end of the first sentence of subsection (e).

The 1941 amendment rewrote subsection (b).

The 1943 amendment made changes in subsection (b), and deleted "and by the deputy whose decision has been overruled or modified by an appeal tribunal" formerly appearing at the end of the second sentence of subsection (e).

The 1945 amendment rewrote subsection (a), inserted in subsection (e) the proviso following the first sentence, and inserted in the last sentence of subsection (f) "before an appeals tribunal." The 1947 amend-

ment inserted in the last sentence of subsection (f) "unless the recording is waived by all interested parties."

The 1951 amendment rewrote subsection (b).

The 1953 amendment deleted "reserve", immediately preceding "account" near the end of subdivision (2) of subsection (b) and deleted "and such payments shall be charged to the pooled account" formerly appearing at the end of the paragraph.

The 1959 amendment inserted in the first sentence of subsection (h) "filed notice of appeal with the Commission within such ten-day period and." The amendment also inserted "who has filed notice of appeal within the ten-day period as provided by § 96-15 (h)" in the second sentence of subsection (i).

The 1961 amendment, effective July 1,

1961, inserted the fourth sentence from the end of subsection (i).

The requirements of this section are mandatory and not directory. They are conditions precedent to obtaining a review by the courts and must be observed. Non-compliance therewith requires dismissal. In re Employment Security Comm., 234 N. C. 651, 68 S. E. (2d) 311 (1951).

Appeal to Superior Court.—Under subsection (a) of § 96-4 the chairman of the Employment Security Commission is vested with all authority of the Commission, and where it appears that a claim was heard on appeal by the chairman, and that claimant appealed therefrom “to the full Commission or to the superior court,” the hearing of the appeal by the superior court was in accordance with the statute. *State v. Roberts*, 230 N. C. 262, 52 S. E. (2d) 890 (1949).

Appeal by Commission.—Under this section the exact status of the Commission as a party to an action is not defined and the part it is to play as such is left somewhat in the realm of speculation, and there is nothing in the provision which constitutes the Commission guardian or trustee for a claimant or which would warrant the conclusion that it is authorized to prosecute an appeal from a judgment against a claimant when the claimant is content. Nor may it do so for the purpose of adjudicating issues which are merely incidental to the claimant's cause of action. In re *Mitchell*, 220 N. C. 65, 16 S. E. (2d) 476, 142 A. L. R. 931 (1941).

The statement of the grounds of the appeal required by subsection (i) must be filed within the time allowed for appeal. Its purpose is to give notice to the Commission and adverse parties of the alleged errors committed by the Commission and limit the scope of the hearing in the superior court to the specific questions of law raised by the errors assigned. It was intended, and must be construed, as a condition precedent to the right of appeal. Non-compliance therewith is fatal. In re *Employment Security Comm.*, 234 N. C. 651, 68 S. E. (2d) 311 (1951).

Conclusiveness of Findings of Fact on Appeal.—Upon appeal to the superior court from any final decision of the Commission, the findings of the Commission as to the facts, if supported by evidence, and in the absence of fraud, are conclusive, the juris-

diction of the superior court on appeal being limited to questions of law. In re *Steelman*, 219 N. C. 306, 13 S. E. (2d) 544, 135 A. L. R. 929 (1941).

The findings of fact of the Employment Security Commission are conclusive when supported by evidence, and therefore review is limited to determining whether there was evidence before the Commission to support its findings and whether the facts found sustain its conclusions of law. *State v. Jarrell*, 231 N. C. 381, 57 S. E. (2d) 403 (1950).

Findings, supported by competent evidence, are conclusive on appeal. In re *Abernathy*, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The legislature in its discretion has made the findings of fact by the Commission conclusive when supported by any evidence. The validity of this section has been consistently recognized and effect given thereto. In re *Southern*, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

The finding of the Commission that employee-claimants belong to the same grade or class of workers as other employees, some of whom, immediately before the stoppage occurred, participated in and were directly interested in the labor dispute causing the stoppage, was supported by ample evidence and was therefore conclusive, there being no allegation or evidence of fraud. *State v. Martin*, 228 N. C. 277, 45 S. E. (2d) 385 (1947).

As the findings of fact made by the Commission, when supported by competent evidence, are conclusive and binding on the reviewing courts, which are to hear the appeal on questions of law only, the dismissal of the appeal in the court below for failure to file a statement of grounds as required by subsection (i) deprived the claimants of no substantial right to which, otherwise, they might have been entitled. In re *Employment Security Comm.*, 234 N. C. 651, 68 S. E. (2d) 311 (1951).

Applied in In re *Stevenson*, 237 N. C. 523, 75 S. E. (2d) 520 (1953).

Cited in Unemployment Compensation Comm. v. *National Life Ins. Co.*, 219 N. C. 576, 14 S. E. (2d) 689, 139 A. L. R. 895 (1941); *Employment Security Comm. v. Smith*, 235 N. C. 104, 69 S. E. (2d) 32 (1952).

§ 96-16. Seasonal pursuits.—(a) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of thirty-six weeks in

a calendar year. No pursuit shall be deemed seasonal unless and until so found by the Commission: Provided, however, that from March 27, 1953, any successor under § 96-8 (5) b to a seasonal pursuit shall be deemed seasonal unless such successor shall within one hundred and twenty (120) days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.

(b) Upon application therefor by a pursuit, the Commission shall determine or redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods thereof. The Commission may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the Commission and must be made at least twenty days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Whenever the Commission has determined or redetermined a pursuit to be seasonal, such pursuit shall be notified immediately, and such notice shall contain the beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. Such notices shall be furnished by the Commission.

(d) A seasonal determination shall become effective unless an interested party files an application for review within ten days after the beginning date of the first period of production operations to which it applies. Such an application for review shall be deemed to be an application for a determination of status, as provided in § 96-4, subsections (m) through (q), of this chapter, and shall be heard and determined in accordance with the provisions thereof.

(e) All wages paid to a seasonal worker during his base period shall be used in determining his weekly benefit amount.

(f) (1) A seasonal worker shall be eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs within the active period or periods of the seasonal pursuit or pursuits in which he earned base period wages.

(2) A seasonal worker shall be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period or periods of the seasonal pursuit in which he has earned base period wages provided he has exhausted benefits based on seasonal wages. Such worker shall also be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.

(3) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on seasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in § 96-12 (d) of this chapter, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(4) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in § 96-12 (d) of this chapter, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(5) In no case shall a seasonal worker be eligible to receive a total amount

of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in § 96-12 (d) of this chapter.

(g) (1) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in § 96-9 (c) (2) of this chapter, against the account of his base period employer or employers who paid him such seasonal wages, and for the purpose of this paragraph such seasonal wages shall be deemed to constitute all of his base period wages.

(2) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in § 96-9 (c) (2) of this chapter, against the account of his base period employer or employers who paid him such nonseasonal wages, and for the purpose of this paragraph such nonseasonal wages shall be deemed to constitute all of his base period wages.

(h) The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period.

(i) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance herewith to appeal from such determination as provided in § 96-15 of this chapter.

(j) As used in this section:

(1) "Pursuit" means an employer or branch of an employer.

(2) "Branch of an employer" means a part of an employer's activities which is carried on or is capable of being carried on as a separate enterprise.

(3) "Production operations" mean all the activities of a pursuit which are primarily related to the production of its characteristic goods or services.

(4) "Active period or periods" of a seasonal pursuit means the longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.

(5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its active period or periods. The Commission may prescribe by regulation the manner in which seasonal wages shall be reported.

(6) "Seasonal worker" means a worker at least twenty-five per cent of whose base period wages are seasonal wages.

(7) "Interested party" means any individual affected by a seasonal determination.

(8) "Inactive period or periods" of a seasonal pursuit means that part of a calendar year which is not included in the active period or periods of such pursuit.

(9) "Nonseasonal wages" mean the wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.

(10) "Wages" mean remuneration for employment. (1939, c. 28; 1941, c. 108, s. 7; 1943, c. 377, s. 14½; 1945, c. 522, s. 33; 1953, c. 401, ss. 20, 21; 1957, c. 1059, s. 14; 1959, c. 362, s. 18.)

Editor's Note.—The 1945 amendment rewrote this section as changed by the 1941 and 1943 amendments.

The 1953 amendment added the provisos at the end of subsection (a). It also changed the amount in subdivisions (3) and (4) of subsection (f) from "fifty cents" to "one dollar."

The 1957 amendment rewrote subdivision (2) of subsection (f).

The 1959 amendment struck out "reserve" before "account" in subdivisions (1) and (2) of subsection (g).

Cited in *In re Employment Security Comm.*, 234 N. C. 651, 68 S. E. (2d) 311 (1951).

§ 96-17. Protection of rights and benefits.—(a) Waiver of Rights Void.—Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

(b) Limitation of Fees.—No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the Commission or its representative or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel; but no such counsel shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than six months, or both.

(c) No Assignment of Benefits; Exemptions.—Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. (Ex. Sess. 1936, c. 1, s. 15; 1937, c. 150.)

Editor's Note.—Prior to the 1937 amendment (b) could be represented by a duly authorized agent as well as by counsel.

§ 96-18. Penalties.—(a) Any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit under this chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person, shall be punished by a fine of not less than twenty dollars (\$20.00), nor more than fifty dollars (\$50.00), or by imprisonment for not longer than thirty days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of such records.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this chapter, or who willfully fails

or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars (\$20.00) or more than fifty dollars (\$50.00) or by imprisonment for not longer than thirty days; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provisions of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars (\$20.00) or more than fifty dollars (\$50.00) or by imprisonment for not longer than thirty days, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this chapter, or shall be liable to repay to the Commission for the Unemployment Insurance Fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in § 96-10 (b) for the collection of past-due contributions; provided "this chapter" and "Unemployment Insurance Fund" shall also be deemed to mean the employment security law and the unemployment insurance fund of any other state or the federal government, or a foreign government for purposes of this subsection, when an interstate claim is involved.

(e) An individual shall not be entitled to receive benefits for one year beginning with the first day of any benefit week with respect to which he, or another in his behalf with his knowledge, has been found to have knowingly made a false statement or misrepresentation or who has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this chapter.

(f) Any individual who makes a voluntary confession of guilt or is convicted in a court of competent jurisdiction of larceny or embezzlement in connection with his employment shall not be entitled to receive any benefits based on the wages earned by such individual prior to and including the quarter in which such act occurred; provided, the provisions of this subsection shall not be effective as to any benefits accrued or paid under any claim filed by such individual prior to the date this act occurred.

(g) Any individual who has received any sum as benefits to which he was not entitled, such sum having been paid to him as the result of error on the part of any representative of the Commission, shall be liable to have such sum deducted from any future benefits payable to him under this chapter, or shall be liable to repay to the Commission for the Unemployment Insurance Fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in § 96-10 (b) for the collection of past due contributions; provided, this "chapter" and "Unemployment Insurance Fund" shall also be deemed to mean the Employment Security Law and the Unemployment Insurance Fund of any other state or the federal government, or a foreign government for the purposes of this subsection, when an interstate claim is involved. (Ex. Sess. 1936, c. 1, s. 16; 1943, c. 319; c. 377, ss. 29, 30; 1945, c. 552, s. 34; 1949, c. 424, s. 26; 1951, c. 332, s. 16; 1953, c. 401, ss. 1, 22; 1955, c. 385, s. 9; 1959, c. 362, ss. 19, 20.)

Editor's Note.—The first 1943 amendment struck out "to make any contributions or other payments or" formerly appearing after "refuses" near the middle of

subsection (b). The second 1943 amendment added subsections (e) and (f), and omitted "or by both such fine and imprisonment" formerly appearing after "days" near the end of the first paragraph of subsection (a).

The 1945 amendment made changes in subsections (b) and (c), and the 1949 amendment made changes in subsection (f).

The 1951 amendment rewrote subsections (a) and (e) and added the proviso at the end of subsection (d).

The 1953 amendment substituted "unemployment insurance fund" for "unemployment compensation fund" in subsection (d) and made changes in subsection (f).

The 1955 amendment inserted "one year beginning with the first day of any benefit week with respect to" in lieu of "the remainder of any benefit year during," formerly appearing near the beginning of subsection (e).

The 1959 amendment rewrote subsection (f) and added subsection (g).

§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts.—It is the purpose of this chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, as to credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this chapter, shall, nevertheless, be disbursed and expended, as far as may be possible, under the terms of this chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the State Employment Security Commission shall be reduced as rapidly as possible.

The funds remaining available for use by the North Carolina Employment Security Commission shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the State employment service, created by chapter one hundred six, Public Laws of one thousand nine hundred thirty-five, and transferred by chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session, and made a part of the Employment Security Commission of North Carolina, shall in such event return to and have the same status as it had prior to enactment of chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session, and under authority of chapter one hundred six, Public Laws of one thousand nine hundred thirty-five, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the Employment Security Commission of North Carolina, the said State employment service shall render such service in connection there-

with as shall be demanded or required under the provisions of this chapter or the provisions of chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session. (1937, c. 363; 1939, c. 52, s. 8; 1947, c. 598, s. 1.)

Editor's Note.—The 1939 amendment added the last sentence to the first paragraph.

The 1947 amendment substituted "Employment Security Commission" for "Unemployment Compensation Commission."

ARTICLE 3.

Employment Service Division.

§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director; employees.—The Employment Service Division of the Employment Security Commission shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter, and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system and for other purposes," approved June 6th, 1933, (48 Stat., 113; U. S. C., Title 29, § 49 (c), as amended). The said Division shall be administered by a full time salaried director. The Employment Security Commission shall be charged with the duty to co-operate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this State, in conformity with § 4 of said act, and this State will observe and comply with the requirements thereof. The Employment Security Commission is hereby designated and constituted the agency of this State for the purpose of said act. The Commission is directed to appoint the director, other officers, and employees of the Employment Service Division. (Ex. Sess. 1936, c. 1, s. 12; 1941, c. 108, s. 11; 1947, c. 326, s. 24.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 96-21. Co-operation with Federal Board for Vocational Education.—The Employment Service Division shall co-operate with the Federal Board for Vocational Education, division for rehabilitation of crippled soldiers and sailors, in endeavoring to secure suitable employment and fair treatment of the veterans of the World War. (1921, c. 131, s. 3; C. S., s. 7312(c); Ex. Sess. 1936, c. 1, s. 12.)

§ 96-22. Employment of minors; farm employment; promotion of Americanism.—The Employment Service Division shall have jurisdiction over all matters contemplated in this article pertaining to securing employment for all minors who avail themselves of the free employment service. The Employment Service Division shall have power to so conduct its affairs that at all times it shall be in harmony with laws relating to child labor and compulsory education; to aid in inducing minors over sixteen, who cannot or do not for various reasons attend day school, to undertake promising skilled employment; to aid in influencing minors who do not come within the purview of compulsory education laws, and who do not attend day school, to avail themselves of continuation or special courses in existing night schools, vocational schools, part-time schools, trade schools, business schools, library schools, university extension courses, etc., so as to become more skilled in such occupation or vocation to which they are respectively inclined or particularly adapted; to aid in securing vocational employment on farms for town and city boys who are interested in agricultural work,

and particularly town and city high school boys who include agriculture as an elective study; to co-operate with various social agencies, schools, etc., in group organization of employed minors, particularly those of foreign parentage, in order to promote the development of real, practical Americanism through a broader knowledge of the duties of citizenship; to investigate methods of vocational rehabilitation of boys and girls who are maimed or crippled and ways and means for minimizing such handicap. (1921, c. 131, s. 4; C. S., s. 7312(d); Ex. Sess. 1936, c. 1, s. 12.)

Editor's Note.—See 1 N. C. Law Rev. 308.

§ 96-23. Job placement; information; research and reports.—The Employment Service Division shall make public, through the newspapers and other media, information as to situations it may have applicants to fill, and establish relations with employers for the purpose of supplying demands for labor. The Division shall collect, collate, and publish statistical and other information relating to the work under its jurisdiction; investigate economic developments, and the extent and causes of unemployment and remedies therefor within and without the State, with the view of preparing for the information of the General Assembly such facts as in its opinion may make further legislation desirable. All information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons, or groups of persons in the course of administering the State public employment service program shall be absolute privileged communications and shall not be disclosed directly or indirectly except as by regulations prescribed by the Commission. (1921, c. 131, s. 5; C. S., s. 7312(e); Ex. Sess. 1936, c. 1, s. 12; 1947, c. 326, s. 25.)

Editor's Note.—The 1947 amendment added the last sentence of this section.

§ 96-24. Local offices; co-operation with United States service; financial aid from United States.—The Employment Service Division is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the State for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in co-operation with the United States Employment Service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses. (1921, c. 131, s. 6; C. S., s. 7312(f); 1931, c. 312, s. 3; 1935, c. 106, s. 4; Ex. Sess. 1936, c. 1, s. 12.)

Editor's Note.—Prior to the 1935 amendment, this section applied to vocational guidance of minors. The section was extended by the amendment.

§ 96-25. Acceptance and use of donations.—It shall be lawful for the Employment Service Division to receive, accept, and use, in the name of the people of the State, or any community or municipal corporation, as the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose of extending the benefits of this article and for the purpose of giving assistance to deserving maimed or crippled boys and girls through vocational rehabilitation. (1921, c. 131, s. 7; C. S., s. 7312(g); 1931, c. 312, s. 3; Ex. Sess. 1936, c. 1, s. 12.)

§ 96-26. Co-operation of towns, townships, and counties with Division.—It shall be lawful for the governing authorities of any municipality, county, township, or school corporation in the State to enter into co-operative agreement with the Employment Service Division and to appropriate and expend the necessary money upon such conditions as may be approved by the Employ-

ment Service Division and to permit the use of public property for the joint establishment and maintenance of such offices as may be mutually agreed upon, and which will further the purpose of this article. (1921, c. 131, s. 8; C. S., s. 7312-(h); 1931, c. 312, s. 3; 1935, c. 106, s. 5; Ex. Sess. 1936, c. 1, s. 12.)

§ 96-27. **Method of handling employment service funds.**—All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title 29, U. S. C., § 49) as amended, and all State funds appropriated or made available to the Employment Service Division shall be paid into the Employment Security Administration Fund, and said moneys are hereby made available to the State employment service to be expended as provided in this article and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, said Division is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the Commission may accept moneys, services, or quarters as a contribution to the Employment Security Administration Fund. (1935, c. 106, s. 7; Ex. Sess. 1936, c. 1, s. 12; 1941, c. 108, s. 11; 1947, c. 598, s. 1.)

Editor's Note.—The 1941 amendment struck out "the special employment service account in" formerly preceding "the Employment Security Administration Fund" the first time they appear in this section.

The 1947 amendment substituted "Employment Security Administration Fund" for "Unemployment Compensation Administration Fund."

§ 96-28: Repealed by Session Laws 1951, c. 332, s. 17.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

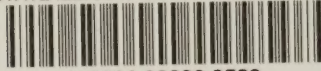
Raleigh, North Carolina

January 15, 1965

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing recompileation of 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.

THOMAS WADE BRUTON
Attorney General of North Carolina

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