North Carolina State Library
Raleigh

THE GENERAL STATUTES OF NORTH CAROLINA

1975 SUPPLEMENT

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

UNDER THE DIRECTION OF

W. M. WILLSON, J. H. VAUGHAN AND SYLVIA FAULKNER

Volume 3A

Place in Pocket of Corresponding Volume of Main Set.

Z1
1:1975
suppl.
v.3A
c.2

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1975

COPYRIGHT 1975
BY
THE MICHIE COMPANY

Preface

This Supplement to Replacement Volume 3A contains the general laws of a permanent nature enacted at the 1975 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

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

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1975 Cumulative Supplements thereto.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

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

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1975 Session of the General Assembly affecting Chapters 106 through 116A of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 285 (p. 598)-288 (p. 121).
North Carolina Court of Appeals Reports volumes 22 (p. 509)-26 (p. 535).
Federal Reporter 2nd Series volumes 498 (p. 913)-518 (p. 32).
Federal Supplement volumes 377 (p. 193)-396 (p. 256).
Federal Rules Decisions volumes 63 (p. 230)-67 (p. 193).
United States Reports volumes 415 (p. 605)-419 (p. 984).
Supreme Court Reporter volume 95 (p. 2683).
Opinions of the Attorney General.

The General Statutes of North Carolina
1975 Supplement

VOLUME 3A

Chapter 106.

Agriculture.

Article 1.

Department of Agriculture.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

Sec.
106-24. Collection and publication of information relating to agriculture; cooperation.
106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential.
106-26.2. Alternative method for acquiring data for State farm census by sampling.
106-26.3 to 106-26.6. [Reserved.]

Article 2.

North Carolina Fertilizer Law of 1947.

106-50.5. Labeling.
106-50.10. Minimum plant food content.

Article 4C.

Structural Pest Control Act.

106-65.37. Financial responsibility.
106-65.38 to 106-65.41. [Reserved.]

Article 4D.

North Carolina Biological Organism Act.

106-65.50 to 106-65.54. [Reserved.]

Article 4E.

Pest Control Compact.

106-65.55. Adoption of Compact.
106-65.56. Cooperation of State agencies with insurance fund.

Sec.
106-65.57. Filing of bylaws and amendments.
106-65.58. Compact administrator.
106-65.59. Request for assistance from insurance fund.
106-65.60. Credit for expenditures.
106-65.61. "Executive head" means Governor.
106-65.62 to 106-65.66. [Reserved.]

Article 4F.

Uniform Boll Weevil Eradication Act.

106-65.67. Short title.
106-65.68. Declaration of policy.
106-65.69. Definitions.
106-65.70. Cooperative programs authorized.
106-65.71. Entry of premises; eradication activities; inspections.
106-65.72. Reports.
106-65.73. Quarantine.
106-65.74. Authority to designate elimination zones; authority to prohibit planting of cotton and to require participation in eradication program.
106-65.75. Authority for destruction or treatment of cotton in elimination zones; when compensation payable.
106-65.76. Authority to regulate pasturage, entry, and honeybee colonies in elimination zones and other areas.
106-65.77. Rules and regulations.
106-65.78. Penalties.

Article 8.

Sale, etc., of Agricultural Liming Material, etc.

106-91. Regulations and standards.

Article 11.

Stock and Poultry Tonics.

106-112 to 106-119. [Repealed.]

Article 12.

Food, Drugs and Cosmetics.

Sec.
106-121. Definitions and general consideration.
106-122. Certain acts prohibited.
106-124. Violations made misdemeanor.
106-125. Detention of product or article suspected of being adulterated or misbranded.
106-126. Prosecutions of violations.
106-128. Establishment of reasonable standards of quality by Board of Agriculture.
106-129. Foods deemed to be adulterated.
106-130. Foods deemed misbranded.
106-132. Additives, etc., deemed unsafe.
106-133. Drugs deemed to be adulterated.
106-134. Drugs deemed misbranded.
106-134.1. Prescriptions required; label requirements; removal of certain drugs from requirements of this section.
106-135. Regulations for sale of new drugs.
106-136. Cosmetics deemed adulterated.
106-137. Cosmetics deemed misbranded.
106-139. Regulations by Board of Agriculture.
106-139.1. Declaration of net quantity of contents.
106-140. Further powers of Commissioner of Agriculture for enforcement of Article; report by inspector to owner of establishment.
106-141. Examinations and investigations.
106-143. Article construed supplementary.
106-144. Exemptions.

Article 16.

Bottling Plants for Soft Drinks.

106-174 to 106-184.1. [Repealed.]

Article 21.

Artificially Bleached Flour.

106-210 to 106-219. [Repealed.]

Article 21A.

Enrichment of Flour, Bread, Corn-meal and Grits.

106-219.1 to 106-219.9. [Repealed.]

Article 22.

Inspection of Bakeries.

106-220 to 106-232. [Repealed.]

Article 23.

Oleomargarine.

Sec.
106-233. [Repealed.]
106-236 to 106-238. [Repealed.]

Article 24.

Excise Tax on Certain Oleomargarines.

106-239. [Repealed.]

Article 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office.
106-266.19. Sale below cost to injure or destroy competition prohibited.

Article 31C.

North Carolina Commercial Feed Law of 1973.

106-284.33. Definitions of words and terms.
106-284.40. Inspection fees and reports.
106-284.41. Rules and regulations.

Article 34.

Animal Diseases.

Part 7. Rabies.

106-386. [Repealed.]

Article 35A.

North Carolina Livestock Prompt Pay Law.

106-418.3. Definitions.

Article 35B.

Livestock Dealer Licensing Act.

106-418.11. Licenses.

Article 43.

Combines and Power Threshers.

106-495.1, 106-495.2. [Repealed.]

Article 50.

Promotion of Use and Sale of Agricultural Products.

Sec.
106-564. Collection of assessments; custody and use of funds.
106-564.1. Alternate method for collection of assessments.
106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.

Article 50A.

Promotion of Agricultural Research and Dissemination of Findings.

106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.

Article 50C.

Promotion of Sale and Use of Tobacco.

106-568.35. Alternate provision for referendum voting by mail.

Article 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

106-569 to 106-579. [Repealed.]

Article 51A.

North Carolina Antifreeze Law of 1975.

Sec.
106-579.1. Short title.
106-579.2. Purpose.
106-579.3. Definitions.
106-579.4. Registrations.
106-579.5. Adulteration.
106-579.6. Misbranding.
106-579.7. Rules and regulations.
106-579.8. Inspection, sampling and analysis.
106-579.9. Prohibited acts.
106-579.10. Enforcement.
106-579.11. Submission of formula.
106-579.12. Violation.
106-579.13. Publications.
106-579.14. Exclusive jurisdiction.

Article 53.

Grain Dealers.

106-616 to 106-620. [Reserved.]

Article 54.

Adulteration of Grains.

106-621. Definitions.
106-622. Prohibited acts.
106-623. Penalty.
106-624. Sign furnished by Commissioner.
106-625. Posting of sign.
106-626. Nonposting not a defense.
106-627. Determination of adulteration.
106-628. Applicability of Article.

ARTICLE 1.

Department of Agriculture.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; cooperation. — The Department of Agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The said Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of G.S. 106-24 to 106-26.2. (1921, c. 201, s. 1; C. S., s. 4689(a); 1941, c. 343; 1975, c. 611, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "106-26.2" for "106-26."

§ 106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential. — The said Department shall annually provide and submit report books or forms to the person appointed by the board of county commissioners of the several counties of the State to collect and compile the statistical information required by G.S. 106-24 to 106-26. The board of county commissioners may appoint any person to collect such information. The person so appointed shall serve at the will of the county commissioners and shall be paid such compensation for such services as may be deemed proper. Such report books or forms shall be furnished the person so appointed before he enters upon his duties. It shall be the duty of each person so appointed to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, he shall return and deliver the said books or forms to the board of county commissioners of his county, within 10 days after the time prescribed by law for securing the tax lists of his county. The person so appointed shall carefully check said books or forms for the purpose of determining whether or not at least ninety percent (90%) of the tracts of land of such county are acceptably reported on in such report books or forms. Upon the receipt of the report books or forms properly filled out in accordance with G.S. 106-24 to 106-26, the board of county commissioners of each county in the State shall, within 10 days after receipt thereof, inspect and transmit or deliver such report books or forms to the Department of Agriculture. The information required in G.S. 106-24 to 106-26 shall be held confidential by all persons having any connections therewith and by the Department of Agriculture. No information shall be required hereunder on land tracts consisting of less than 10 acres. (1921, c. 201, s. 2; C. S., s. 4689(b); 1941, c. 343; 1947, c. 540; 1949, c. 1273, s. 1; 1951, c. 1014, s. 1; 1975, c. 611, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "10 acres" for "three acres" in the last sentence.

§ 106-26.2. Alternative method for acquiring data for State farm census by sampling. — In order to encourage maximum efficiency in the collection, summarization and publication of statistical information related to land use and agriculture in the various counties, the Department of Agriculture may designate certain counties in which sampling can be used for acquiring data for the State farm census rather than making a complete canvass of all tracts of land in the county. For counties designated to be sampled, the board of county commissioners shall provide and transmit annually, to the Department, by December 1, records of the names, addresses and acres in each tract for each landowner in the county having 10 or more acres of land. The board of commissioners may appoint any person to compile and provide these records. Upon receipt of these records, the said Department shall pay to the county commissioners of the designated counties, from appropriations made to the Department of Agriculture, the sum of three cents (3¢) for each record received, provided, the record contains the name, address and tract acreage. The said Department shall be responsible for developing survey procedures for conducting the census and for all activities related to data collection, editing, summarization, and publication of statistical information related to each

county's land use and agriculture. The information required and obtained shall be held confidential by all persons having any connection therewith and by the Department of Agriculture. (1975, c. 611, s. 3.)

Editor's Note. — Session Laws 1975, c. 611, s. 4, makes the act effective July 1, 1975.

§§ 106-26.3 to 106-26.6: Reserved for future codification purposes.

ARTICLE 2.

North Carolina Fertilizer Law of 1947.

§ 106-50.5. Labeling.

(d) All fertilizer labels and registrations shall carry identical guarantees for each product. (1947, c. 1086, s. 5; 1949, c. 637, s. 2; 1955, c. 354, s. 2; 1975, c. 127.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, added subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 106-50.10. Minimum plant food content. — No superphosphate containing less than eighteen percent (18%) available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble or available potash totals less than twenty percent (20%) may be offered for sale, sold, or distributed in this State; provided, however, the minimum plant food requirement contained herein shall not apply to containers of 16 fluid ounces or less when in liquid form nor to containers of 16 ounces or less avoirdupois when in a dry form, but such packages are not exempt from any other requirements of this Article. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7; 1973, c. 611, s. 6; 1975, c. 126.)

Editor's Note. —
The 1975 amendment added the proviso at the end of the section.

ARTICLE 4C.

Structural Pest Control Act.

§ 106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, ss. 1, 2, effective July 1, 1976, will rewrite this section to read as follows:

"§ 106-65.23. Structural pest control program of Department of Agriculture maintained; Structural Pest Control Committee maintained; appointment; terms;

quorum. — The Commissioner of Agriculture shall maintain a structural pest control program within the Department of Agriculture. The Commissioner is authorized to appoint personnel and request funds in addition to any fees authorized in this Article to implement the rules and regulations promulgated by the Structural Pest Control Committee consistent with the State Government Reorganization Act, G.S. 143A-6. A structural pest control employee of the Department of Agriculture shall act as secretary to the Structural Pest Control Committee herein created.

"There is hereby created a Structural Pest Control Committee to be composed of five members. The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice from the entomology faculty of said University to serve on said Committee at the pleasure of the dean. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

"It shall be the duty of the Structural Pest Control Committee, in addition to conducting hearings relating to the suspension and revocation of licenses issued under this Article, and in addition to making rules and regulations pursuant to G.S. 106-65.29, to report annually to the Board of Agriculture the results of all hearings conducted by the Committee and to report the financial status of this Division of the Department of Agriculture.

"The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

"Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

"Three members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without three votes in accord. The chairman shall be entitled to vote at all times.

"The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that three members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

"All members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

"At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

§ 106-65.24. Definitions.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, ss. 3, 4, effective July 1, 1976, will repeal subdivision (8), add new subdivision (1a), and amend subdivision (2). Subdivisions (1a) and (2) will read as follows:

"(1a) 'Applicant for a certified applicator's identification card' means any person making application to use restricted use pesticides in any phase of structural pest control.

(2) 'Applicant for a license' means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in

structural pest control, control of structural pest or household pests, or fumigation operations, or any person qualified under the terms of this Article."

§ 106-65.25. Phases of structural pest control; license required; exceptions.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 5, effective July 1, 1976, will rewrite subsection (b) and add new subsection (b1) to read as follows:

"(b) This Article shall not apply to any person doing work on his own property or to any regular employee of any person, firm or corporation doing work on the property of such person, firm or corporation, under the direct supervision of the person who owns or is in charge of the property on which work is being done unless a restricted use pesticide is being used. Any person, including agents or agencies of the federal, State or local governments, using a restricted use pesticide, whether it be on his own property or on the property of another in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses and grain elevators and any other structures and adjacent areas, public or private, or for the protection of stored, processed, or manufactured products in any phase of structural pest control, must (i) qualify as a certified applicator for that phase of structural pest control, or (ii) be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structure pest control.

"(b1) Persons who (i) demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration and/or (ii) conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must possess a valid certified applicator's identification card. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes local, State, federal, commercial and other persons conducting field research on or utilizing restricted use pesticides.

"The above standards do not apply to the following persons for purposes of these regulations:

(1) Persons conducting laboratory type research involving restricted use pesticides; and

(2) Doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice."

§ 106-65.26. Qualifications of applicants for license.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 6, effective July 1, 1976, will rewrite the section to read as follows:

"**§ 106-65.26. Qualifications for certified applicator and licensee; applicants for certified applicator's identification card and license.** — (a) An applicant for a certified applicator's identification card or license must present satisfactory evidence to the Committee concerning his qualifications for such card or license.

"(b) Certified Applicator. — Each applicant for a certified applicator's identification card must demonstrate that he possesses a practical knowledge of the pest problems and pest control practices associated with the phase or phases of structural pest control for which he is seeking certification.

"(c) Licensee. — The basic qualifications for a license shall be:

(1) Qualify as a certified applicator for the phase or phases of structural pest control for which he is making application; and

(2) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied; or

(3) One or more years' training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination; or

(4) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination.

"(d) All applicants for license must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms or fumigation. No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime involving moral turpitude, or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this Article."

§ 106-65.27. Examinations of applicants; fee; license not transferable.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 7, effective July 1, 1976, will rewrite the section to read as follows:

"§ 106-65.27. Examinations of applicants; fee; license not transferable. — (a) Certified Applicator. — All applicants for a certified applicator's identification card shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Competency shall be determined on the basis of written examinations to be provided and administered by the Committee and, as appropriate, performance testing. Testing shall be based upon examples of problems and situations appropriate to the particular phase or phases of structural pest control for which application is made and include where relevant the following areas of competency:

(1) Label and labeling comprehension.
(2) Safety factors associated with pesticides — toxicity, precautions, first aid, proper handling, etc.
(3) Influence of and on the environment.
(4) Pests — identification, biology, and habits.
(5) Pesticides — types, formulations, compatibility, hazards, etc.
(6) Equipment — types and uses.
(7) Application techniques.
(8) Laws and regulations.

"An applicant for a certified applicator's identification card shall submit with his application for examination an examination fee of ten dollars ($10.00) for each of the phases of structural pest control in which he chooses to be examined. An examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee. Frequency of such examinations shall be in the discretion of the Committee, consideration being given to the number of applications received, provided that a minimum of two examinations shall be given annually. The examination will cover the phase or phases of structural pest control for which application is being made. The ten dollar ($10.00) fee shall not apply to agents or agencies of the federal, State, or local governments.

"(b) License. — Each applicant for an original license must demonstrate upon written examination, to be provided and administered by the Committee, his competency as a structural pest control operator for the phase or phases in which he is applying for a license. Frequency of such examinations shall be in the discretion of the Committee, consideration being given to the number of applications received, provided that a minimum of two examinations shall be given annually. The examination will cover the phase or phases of structural pest control for which application is being made.

"An applicant shall submit with his application for examination an examination fee of twenty-five dollars ($25.00) for each of the phases of structural pest control in which he chooses to be examined. An examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee. Agents or agencies of the federal, State or local governments are not exempt from this fee.

"(c) A license shall not be transferable. When there is a transfer of ownership, management of operation of a business of a license hereunder, the new owner, manager or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, shall have 90 days from such sale or transfer, or until the next meeting of the Committee following the expiration of said 90-day period, to have a qualified licensee to operate said business. During this 90-day period the use of any restricted use pesticide by any person representing said business agent or agency shall be by or under the direct supervision of a person

possessing a valid certified applicator's identification card.

"(d) The Committee shall by regulation provide for:

(1) Establishing categories of certified applicators, along with such appropriate subcategories as are necessary, to meet the requirements of this Article;

(2) All licensees licensed prior to October 21, 1976, to become qualified as certified applicators; and

(3) Requalifying certified applicators thereafter as required by the federal government at intervals no more frequent than that specified by federal law and federal regulations."

§ 106-65.28. Revocation or suspension of license.

Editor's Note. —

The 1975 amendment corrected an error in this section as it appeared in the 1974 Cumulative Supplement by substituting "or" for "of" between "methods" and "materials" near the end of subdivision (a)(1). The error had already been corrected in the section as set out in the Replacement Volume.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, ss. 8-13, will amend the section to read as follows:

"§ 106-65.28. Revocation or suspension of license or identification card. — (a) Any license or certified applicator's identification card may be revoked or suspended by a majority vote of the Committee, after notice and hearing, as provided in G.S. 106-65.32, for any one or more of the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.

(2) Failure of the licensee or certified applicator to give the Committee, the Commissioner, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.

(3) Failure of the license holder [or] certified applicator to make registrations herein required or failure to pay the registration fees.

(4) Any misrepresentation in the application for a license or certified applicator's identification card.

(5) Wilful violation of any rule or regulation adopted pursuant to this Article.

(6) Aiding or abetting a licensed or unlicensed person or a certified applicator or a noncertified person to evade the provisions of this Article, combining or conspiring with such a licensed or unlicensed person or a certified applicator or noncertified person to evade the provisions of this Article, or allowing one's license or certified applicator's identification card to be used by an unlicensed or noncertified person.

(7) Impersonating any State, county or city inspector or official.

(8) Storing or disposing of containers or pesticides by means other than those prescribed on the label or adopted regulations.

(9) Using any registered pesticide in a manner inconsistent with its labeling.

(10) Payment, or the offer to pay, by any licensee to any party to a real estate transaction of any commission, bonus, rebate, or other thing of value as compensation or inducement for the referral to such licensee of structural pest control work arising out of such transaction.

"(b) Suspension of any license or certified applicator's identification card under the provisions of this Article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

"If a license or certified applicator's identification card is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Commissioner or his authorized representative.

"Any licensee whose license or certified applicator whose identification card is revoked under the provisions of this Article shall not be eligible to apply for a new license or certified applicator's identification card hereunder until two years have elapsed from the date of the order revoking said license or certified applicator's identification card, or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation.

"The lapsing of a State structural pest control license or certified applicator's identification card by operation of law or the voluntary surrender of a license by a licensee or a certified applicator's identification card by a certified applicator shall not deprive the Committee of

jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee or certified applicator, or to render a decision suspending or revoking such license or certified applicator's identification card."

§ 106-65.29. Rules and regulations.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 14, effective July 1, 1976, will add "and certified applicators" at the end of the section.

§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 15, effective July 1, 1976, will rewrite the section to read as follows:

"§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent. — For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner shall enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

"Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder."

§ 106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 16, effective July 1, 1976, will rewrite the section to read as follows:

"§ 106-65.31. Annual certified applicator card and license fee; registration of servicemen, salesmen, solicitors, and estimators; identification cards. — (a) Certified Applicator's Card. — The fee for issuance or renewal of a certified applicator's identification card for any one phase or more of structural pest control, as the same is defined in G.S. 106-65.25, shall be thirty dollars ($30.00). Certified applicator's identification cards shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their certified applicator's identification card issued under the provisions of this Article on or before June 30 of each year in which they hold a valid certified applicator's identification card but make application before October 1 of that year shall be renewed without the applicant having to be reexamined unless under the provisions of this Article the applicant is scheduled for periodic reexamination (G.S. 106-65.27(e)(2) [106-65.27(d)(3)]). All applicants submitting applications for the renewal of their certified applicator's identification cards after June 30 and before October 1 of that year shall (i) not use or supervise the use of any restricted use pesticides after June 30 of that year until he has been issued a valid certified applicator's identification card and (ii) pay, in addition to the annual certification fee, the sum of five dollars ($5.00) for each phase of structural pest control in which he is applying for certification before his certified applicator's identification card is renewed.

"Any certified applicator whose identification card is lost or destroyed may secure a duplicate identification card for a fee of five dollars ($5.00).

"The fees for a certified applicator's identification shall not apply to agents or agencies of the federal, State, or local governments.

North Carolina State Library
Raleigh

"(b) License. — The fee for the issuance of a license for any phase of structural pest control, as the same is defined in G.S. 106-65.25, shall be one hundred dollars ($100.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for an additional fee of fifty dollars ($50.00) per license phase. Licenses shall expire on June 30 of each year and shall be renewed annually. Any licensee who fails or neglects to renew any license issued under the provisions of this Article on or before August 1 of each year shall pay, in addition to the annual fee, the sum of ten dollars ($10.00) for each phase before his license is renewed.

"Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of five dollars ($5.00).

"A license holder shall register with the North Carolina Department of Agriculture within 75 days of employment the names of all certified applicators, estimators, salesmen, servicemen and solicitors (not common laborers) and shall pay a registration fee of twenty dollars ($20.00) for each name registered, which fee shall accompany the registration. This registration fee shall not apply to a certified applicator. All registrations expire when a license expires. Each employee of a licensee for whom registration is made and registration fee paid shall be issued an identification card which shall be carried on the person of the employee at all times when performing any phase of structural pest control work. An identification card shall be renewed annually by payment of a renewal fee of twenty dollars ($20.00). An identification card shall be displayed upon demand to the Commissioner, or his authorized representative, or to the person for whom any phase of structural pest control work is being performed. When an identification card is lost or destroyed, the licensee shall secure a duplicate identification card for which he shall pay a fee of one dollar ($1.00). This one dollar ($1.00) fee shall not apply to a certified applicator's identification card. The licensee shall be responsible for registering and securing identification cards for all employees who are estimators, salesmen, servicemen, and solicitors.

"It shall be unlawful for an estimator, serviceman, salesman or solicitor to engage in the performance of any work covered by this Article without having first secured and having in his possession an identification card. It shall be unlawful for a licensee to direct or procure any salesman, serviceman or estimator to engage in the performance of any work covered by this Article without having first applied for an identification card for such employee or agent; provided, however, that the licensee shall have 75 days after employing a serviceman, salesman or estimator within which to apply for an identification card.

"All registrations and applications for licenses and identification cards shall be filed with the North Carolina Department of Agriculture.

"No person shall act as an estimator, serviceman, salesman, solicitor, or agent for any licensee under this Article nor shall any such person be issued an identification card by the Structural Pest Control Committee who has within three years of the date of application for an identification card been convicted of, pled guilty or nolo contendere, or forfeited bond in any court, State or federal, to a crime involving moral turpitude or to any violation of the North Carolina Structural Pest Control Act or to any regulation promulgated by the Structural Pest Control Committee. This provision shall not apply to any person whose citizenship has been restored as provided by law.

"No person or business shall advertise as a contractor for structural pest control services nor actually contract for such services unless that person or business advertises or contracts in the name of the company shown on the license certificate of the licensee or identification card of the certified applicator who will perform the services."

§ 106-65.32. Proceedings and hearings under Article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 570, s. 17, effective July 1, 1976, will amend this section to read as follows:

"**§ 106-65.32. Proceedings and hearings under Article; record of hearings and judgments; certified copy of revocation of license or identification card sent to clerk of superior court.** — Proceedings under this Article shall be taken by the Structural Pest Control Committee for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Committee, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Committee shall serve notice upon the accused at least 20 days before the date of the hearing notice by registered mail, or personally, of the time, place of hearing, and a copy of the charges. The

Committee for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license or certified applicator's identification card of the accused. Both the Committee and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Committee under the seal of the Committee and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Committee shall be under oath or affirmation.

"The record of all hearings and judgments shall be kept by the secretary of the Committee and in the event of suspension or revocation of license, the Committee shall, within 10 days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county.

"Any licensee or certified applicator may appeal to the Superior Court of Wake County the revocation or suspension of a license or certified applicator's identification card issued under the provisions of this Article and such appeal shall be made pursuant to the provisions of Chapter 150[A] of the General Statutes."

Pursuant to Session Laws 1973, c. 1331, s. 3, effective Feb. 1, 1976, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 near the end of the last paragraph.

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 106-65.37. Financial responsibility. — (a) The Committee may require by regulation from a licensee or certified applicator or an applicant for a license or certified applicator's identification card under this Article evidence of his financial ability to properly indemnify persons suffering from the use or application of pesticides in the form of liability insurance or other means acceptable to the Committee. The amount of this insurance or financial ability shall be determined by the Committee.

(b) Any regulation adopted by the Committee pursuant to G.S. 106-65.29 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Committee deems necessary including but not limited to notice or reduction or cancellation of coverage and deductible provisions. Such regulations may classify financial responsibility requirements according to the separate license classifications and subclassifications as may be prescribed by the Committee. (1975, c. 570, s. 18.)

Editor's Note. — Session Laws 1975, c. 570, s. 19, makes the act effective July 1, 1976.

§§ 106-65.38 to 106-65.41: Reserved for future codification purposes.

Article 4D.

North Carolina Biological Organism Act.

§§ 106-65.50 to 106-65.54: Reserved for future codification purposes.

Article 4E.

Pest Control Compact.

§ 106-65.55. Adoption of Compact. — The Pest Control Compact is hereby

enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT.

Article I. Findings.

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately ten billion dollars ($10,-000,000,000) from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

Article II. Definitions.

As used in this Compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

(e) "Insurance fund" means the Pest Control Insurance Fund established pursuant to this Compact.

(f) "Governing board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact.

(g) "Executive committee" means the committee established pursuant to Article V(e) of this Compact.

Article III. The Insurance Fund.

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article IV. The Insurance Fund, Internal Operations and Management.

(a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this Compact shall be deemed the actions of the insurance fund.

(b) The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes on the governing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.

(c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.

(d) The governing board shall elect annually, from among its members, a chairman, a vice-chairman, a secretary and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the insurance fund.

(f) The insurance fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the governing board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article V. Compact and Insurance Fund Administration.

(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

(1) Assist in the coordination of activities pursuant to the Compact in his state; and

(2) Represent his state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or on the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

Article VI. Assistance and Reimbursement.

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

(1) The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.

(2) The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

(1) A detailed statement of the circumstances which occasion the request for the invoking of the Compact.

(2) Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

(3) A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

(4) Proof that the expenditures being made or budgeted as detailed in item (3) do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item (3) constitutes a normal level of pest-control activity.

(5) A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

(6) Such other information as the governing board may require consistent with the provisions of this Compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall

be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board of the executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall, upon notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this Compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on acccount of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states and any other entities concerned.

Article VII. Advisory and Technical Committees.

The governing board may establish advisory and technical committees composed of State, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same: Provided that any participant in a meeting of the governing board or executive committee held pursuant to Article VI(d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

Article VIII. Relations with Nonparty Jurisdictions.

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to Article VI(d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

Article IX. Finance.

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget requests on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(g) of this Compact, provided that the governing board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under Article IV(g) hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

Article X. Entry into Force and Withdrawal.

(a) This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1975, c. 810, s. 1.)

Editor's Note. — Session Laws 1975, c. 810, s. 8, makes the act effective July 1, 1975.

§ 106-65.56. Cooperation of State agencies with insurance fund. — Consistent with law and within available appropriations, the departments, agencies and officers of this State may cooperate with the insurance fund established by the Pest Control Compact. (1975, c. 810, s. 2.)

§ 106-65.57. Filing of bylaws and amendments. — Pursuant to Article IV(h) of the Compact, copies of bylaws and amendments thereto shall be filed with the Department of Agriculture. (1975, c. 810, s. 3.)

§ 106-65.58. Compact administrator. — The Compact administrator for this State shall be the Commissioner of Agriculture or his designated representative. The duties of the Compact administrator shall be deemed a regular part of the duties of his office. (1975, c. 810, s. 4.)

§ 106-65.59. Request for assistance from insurance fund. — Within the meaning of Article VI(b) or Article VIII(a), a request or application for assistance from the insurance fund may be made by the Commissioner of Agriculture or his designee whenever in his judgment the conditions qualifying this State for such assistance exist and it would be in the best interest of this State to make such request. (1975, c. 810, s. 5.)

§ 106-65.60. Credit for expenditures. — The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his account in the State treasury the amount or amounts of any payments made to this State to defray the cost of such program, or any part thereof, or as reimbursement thereof. (1975, c. 810, s. 6.)

§ 106-65.61. "Executive head" means Governor. — As used in the Compact, with reference to this State, the term "executive head" shall mean the Governor. (1975, c. 810, s. 7.)

§§ 106-65.62 to 106-65.66: Reserved for future codification purposes.

Article 4F.

Uniform Boll Weevil Eradication Act.

§ 106-65.67. Short title. — This Article may be cited as the Uniform Boll Weevil Eradication Act. (1975, c. 958, s. 1.)

Editor's Note. — Session Laws 1975, c. 958, s. 15, makes the act effective July 1, 1975.

Session Laws 1975, c. 958, s. 13, provides: "There is hereby appropriated out of the General Fund of the State, to the Department of Agriculture, in addition to all other appropriated funds, the sum of fifty-five thousand dollars ($55,000) for the 1975-1976 fiscal year in order to carry out the provisions of this act; provided, however, that such funds shall be held in contingency until the Commissioner determines that the federal government and the cotton producers of this State, as determined by referendum, will cooperate and provide an equitable share of the cost of carrying out the provisions of this act. Such cotton producer referendum must receive the favorable vote of two thirds of the producers casting votes. All producers of commercial cotton in North Carolina shall be eligible to vote." The results of the referendum were not available at the time of preparation of this Supplement.

Session Laws 1975, c. 958, s. 14, contains a severability clause.

§ 106-65.68. Declaration of policy. — The Anthonomus grandis Boheman, known as the boll weevil, is hereby declared to be a public nuisance, a pest, and a menace to the cotton industry. The purpose of this Article is to secure the eradication of the boll weevil. (1975, c. 958, s. 2.)

§ 106-65.69. Definitions. — As used in this Article, the following words shall have the meaning stated below, unless the context requires otherwise:

(1) Boll Weevil. — Anthonomus grandis Boheman, the boll weevil, in any stage of development.

(2) Certificate. — A document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with boll weevils.

(3) Commissioner. — The Commissioner of the Department of Agriculture of this State or any officer or employee of said Department or designated cooperator to whom authority to act in his stead has been or hereafter may be delegated.

(4) Cotton. — Any cotton plant or cotton plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.

(5) Host. — Any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.

(6) Infested. — Actually infested with a boll weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.

(7) Permit. — A document issued or authorized by the Commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

(8) Person. — Any individual, corporation, company, society, or association, or other business entity.

(9) Regulated Article. — Any article of any character carrying or capable of carrying the boll weevil, including, but not limited to cotton plants, seed cotton, other hosts, gin trash, and mechanical cotton pickers, as designated by regulations of the Commissioner. (1975, c. 958, s. 3.)

§ 106-65.70. Cooperative programs authorized. — The Commissioner is hereby authorized and directed to carry out programs to destroy and eliminate boll weevils in this State. The Commissioner is authorized to cooperate with any agency of the federal government or any state contiguous to this State, any other agency in this State, or any person engaged in growing, processing, marketing, or handling cotton, or any group of such persons, in this State, in programs to effectuate the purposes of this Article, and may enter into written agreements to effectuate such purposes. Such agreements may provide for cost sharing, and for division of duties and responsibilities under this Article and may include other provisions generally to effectuate the purposes of this Article. (1975, c. 958, s. 4.)

§ 106-65.71. Entry of premises; eradication activities; inspections. — The Commissioner, or his authorized representative, shall have authority, as provided in this section, to enter cotton fields and other premises in order to carry out such activities, including but not limited to treatment with pesticides, monitoring, and destruction of growing cotton and/or other host plants, as may be necessary to carry out the provisions of this Article. The Commissioner, or his authorized representative, shall have authority to make inspection of any fields or premises in this State and any property located therein or thereon for the purpose of determining whether such property is infested with the boll weevil. Such inspection and other activities may be conducted at any hour with the permission of the owner or person in charge. If permission is denied the Commissioner or his authorized representative, such inspection and other

activities may be conducted without a warrant with respect to any outdoor premises, if conducted in a reasonable manner between the hours of sunrise and sunset. Such inspections and other activities may be conducted in a reasonable manner, with a warrant, with respect to any premises. Any judge of this State may, within his territorial jurisdiction, and upon proper cause to believe that any cotton or other regulated article is in or upon any premises in this State, issue warrants for the purpose of conducting administrative inspections and other activities authorized by this Article. (1975, c. 958, s. 5.)

§ 106-65.72. Reports. — Every person growing cotton in this State shall furnish to the Commissioner, or his authorized representative, on forms supplied by the Commissioner, such information as the Commissioner may require, concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes. (1975, c. 958, s. 6.)

§ 106-65.73. Quarantine. — The Commissioner is authorized to promulgate regulations, quarantining this State, or any portion thereof, and governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas, when he shall determine that such action is necessary, or reasonably appears necessary, to prevent or retard the spread of the boll weevil. Before quarantining any area, the Commissioner shall hold a public hearing under such rules as he shall determine, at which hearing any interested party may appear and be heard either in person or by attorney: Provided, however, the Commissioner may promulgate regulations, imposing a temporary quarantine for a period not to exceed 60 days, during which time a public hearing, as herein provided, shall be held if it appears that a quarantine for more than 60 days will be necessary to prevent or retard the spread of the boll weevil. It shall be unlawful for any person to store or handle any regulated article in a quarantined area, or to move into or from a quarantined area any regulated article, except under such conditions as may be prescribed by the regulations promulgated by the Commissioner. (1975, c. 958, s. 7.)

§ 106-65.74. Authority to designate elimination zones; authority to prohibit planting of cotton and to require participation in eradication program. — The Commissioner, subject to the provisions of section 13 of this act [Session Laws 1975, chapter 958, section 13] is authorized to designate by regulation one or more areas of this State as "elimination zones" where boll weevil eradication programs will be undertaken. The Commissioner is authorized to issue regulations prohibiting the planting of noncommercial cotton in such elimination zones, and requiring that all growers of commercial cotton in the elimination zones participate in a program of boll weevil eradication including cost sharing as prescribed in the regulations. Notice of such prohibition and requirement shall be given by publication for one day each week for three successive weeks in a newspaper having general circulation in the affected area. (1975, c. 958, s. 8.)

Cross Reference. — For Session Laws 1975, c. 958, s. 13, see the Editor's note under § 106-65.67.

§ 106-65.75. Authority for destruction or treatment of cotton in elimination zones; when compensation payable. — The Commissioner or his authorized representative shall have authority to destroy, or in his discretion, to treat with pesticides, volunteer or other noncommercial cotton in elimination zones when the Commissioner deems such action necessary to effectuate the purposes of this Article. No payment shall be made by the Commissioner to the owner or lessee for the destruction or injury of any cotton which was planted in an elimination zone after publication of notice as provided in G.S. 106-65.74, or which was otherwise handled in violation of this Article. However, the Commissioner shall pay for losses resulting from the destruction of cotton which was planted in such zones prior to promulgation of such notice. (1975, c. 958, s. 9.)

§ 106-65.76. Authority to regulate pasturage, entry, and honeybee colonies in elimination zones and other areas. — The Commissioner is authorized to promulgate regulations restricting the pasturage of livestock, entry by persons, and location of honeybee colonies in any premises in an elimination zone which have been or are to be treated with pesticides or otherwise treated to cause the eradication of the boll weevil, or in any other area that may be affected by such treatments. (1975, c. 958, s. 10.)

§ 106-65.77. Rules and regulations. — The Commissioner shall have authority to adopt such other rules and regulations as he deems necessary to further effectuate the purposes of this Article. All rules and regulations issued under this Article shall be adopted and published in accordance with any additional requirements prescribed in this Article. (1975, c. 958, s. 11.)

§ 106-65.78. Penalties. — (a) Any person who shall violate any of the provisions of this Article or the regulations promulgated hereunder, or who shall alter, forge or counterfeit, or use without authority, any certificate or permit or other document provided for in this Article or in the regulations promulgated hereunder, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000) or by imprisonment not exceeding one year, or both, in the discretion of the court.

(b) Any person who shall, except in compliance with the regulations of the Commissioner, move any regulated article into this State from any other state which the Commissioner found in such regulations is infested by the boll weevil, shall be guilty of a misdemeanor and shall be subject to the penalties provided in subsection (a) hereof. (1975, c. 958, s. 12.)

ARTICLE 8.

Sale, etc., of Agricultural Liming Material, etc.

§ 106-91. Regulations and standards. — The Commissioner of Agriculture, under the authority of the Board of Agriculture, is further empowered to prescribe and enforce such reasonable rules and regulations relating to the sale of the materials covered in this Article as are consistent with the purpose of the Article and are deemed necessary to carry into effect its full intent and meaning; and, conjointly with the State Board of Agriculture and the director of the North Carolina experiment station, to formulate and prescribe such definitions and standards including minimum screening standards for agricultural liming materials derived from both ground limestone and marl deposits as may be required for said purpose. (1941, c. 275, s. 11; 1975, c. 645.)

Editor's Note. — The 1975 amendment inserted "including minimum screening standards for agricultural liming materials derived from both ground limestone and marl deposits" near the end of the section.

ARTICLE 11.

Stock and Poultry Tonics.

§§ 106-112 to 106-119: Repealed by Session Laws 1975, c. 39.

ARTICLE 12.

Food, Drugs and Cosmetics.

§ 106-121. Definitions and general consideration. — For the purpose of this Article:

(1a) The term "color" includes black, white, and intermediate grays.

(1b) The term "color additive" means a material which:

a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Provided, that such term does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(2a) The term "consumer commodity" except as otherwise specifically provided by this subdivision means any food, drug, device, or cosmetic as those terms are defined by this Article. Such term does not include:

a. Any tobacco or tobacco product; or

b. Any commodity subject to packaging or labeling requirements imposed under the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157) commonly known as the Virus-Serum Toxin Act; or

c. Any drug subject to the provisions of G.S. 106-134(13) or 106-134.1 of this Article or section 503(b)(1) or 506 of the federal act; or

d. Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

e. Any commodity subject to the provisions of the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes of North Carolina.

(4a) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or

distributed by, such other drug manufacturer, processor, packer or distributor.

(8a) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

a. A pesticide chemical in or on a raw agricultural commodity; or

b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

c. A color additive; or

d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(12) The term "new drug" means

a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(13a) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

a. Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

b. Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(14a) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), and which is used in the production, storage, or transportation of raw agricultural commodities.

(14b) The term "practitioner" means a physician, dentist, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.

(14c) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(14d) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. (1975, c. 614, ss. 1, 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "and effectiveness" and "and effective" in paragraph (12)a, inserted "and effectiveness" in paragraph (12)b and added subdivisions (1a), (1b), (2a), (4a), (8a), (13a) and (14a) through (14d).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

Session Laws 1975, c. 614, which amended various sections in this Article and repealed Articles 16, 21, 21A, 22, 23 and 24 of Chapter 106, provides, in s. 42(b): "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

As the rest of the section was not changed by the amendment, only the introductory language, subdivision (12) and the new subdivisions are set out.

§ 106-122. Certain acts prohibited. — The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by G.S. 106-140.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded or adulterated.

(12) The sale at retail of any food for which a definition and standard of identity for enrichment with vitamins, minerals or other nutrients has been promulgated by the Board, unless such food conforms to such definition and standard, or has been specifically exempted from same by the Board.

(13) The distribution in commerce of a consumer commodity, as defined in this Article, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Article and regulations promulgated under authority of this Article; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

a. Are engaged in the packaging or labeling of such commodities; or

b. Prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(14) The using by any person to his own advantage, or revealing, other than to the Commissioner or authorized officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Article, any information acquired under authority of this

Article concerning any method or process which as a trade secret is entitled to protection.

(15) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug within the normal course of professional practice, who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Article.

(16) a. Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or

b. Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (a) of this section; or

c. Making, selling, or disposing of; causing to be made, sold or disposed of; keeping in possession, control or custody; or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(17) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing of a counterfeit drug.

(18) Dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission of the person ordering or prescribing.

(19) The acquiring or obtaining or attempting to acquire or obtain any drug subject to the provisions of G.S. 106-134.1(a)(3) or (4) by fraud, deceit, misrepresentation, or subterfuge, or by forgery or alteration of a prescription, or by the use of a false name, or the giving of a false address. (1939, c. 320, s. 3; 1975, c. 614, ss. 3-5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "refusal" preceding "to permit the taking" and inserted "or to permit access to or copying of any record" in subdivision (6), added "or adulterated" at the end of subdivision (9), and added subdivisions (12) through (19).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (6), (9) and (12) through (19) are set out.

§ 106-124. Violations made misdemeanor. — (a) Any person, firm or corporation violating any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(1975, c. 614, s. 6.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote subsection (a).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 106-125. Detention of product or article suspected of being adulterated or misbranded. — (a) Whenever a duly authorized agent of the Department of Agriculture finds or has probable cause to believe, that any food, drug, device, cosmetic or consumer commodity is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this Article or is in violation of G.S. 106-131 or 106-135 of this Article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded or to be in violation of G.S. 106-131 or 106-135 of this Article, he shall petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(1975, c. 614, ss. 7-9.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "device, cosmetic or consumer commodity" for "device or cosmetic" near the beginning of the first sentence in subsection (a), inserted "or is in violation of G.S. 106-131 or 106-135 of this Article" in that sentence and inserted "or to be in violation of G.S. 106-131 or 106-135 of this Article" in the first sentence of subsection (b).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsections (a) and (b) are set out.

§ 106-126. Prosecutions of violations. — It shall be the duty of the solicitors and district attorneys of this State to promptly prosecute all violations of this Article. (1939, c. 320, s. 7; 1973, c. 47, s. 2; c. 108, s. 54; 1975, c. 614, s. 10.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, rewrote this section.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-128. Establishment of reasonable standards of quality by Board of Agriculture. — Whenever in the judgment of the Board of Agriculture such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Commissioner of the Federal Food and Drug Administration under authority conferred by section 401 of the federal act.

Temporary permits now or hereafter granted for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this State under the conditions provided in such permits. In addition, the Board of Agriculture may cause to be issued additional permits where they are necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded. Such permits are subject to the terms and conditions the Board of Agriculture may prescribe by regulation. (1939, c. 320, s. 9; 1975, c. 614, ss. 11, 12.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commissioner of the Federal Food and Drug Administration" for "Secretary of the United States Department of Agriculture" in the last sentence of the first paragraph and added the second paragraph.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-129. Foods deemed to be adulterated. — A food shall be deemed to be adulterated:

(1) a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

b. 1. If it bears or contains any added poisonous or added deleterious substance, other than one which is

I. A pesticide chemical in or on a raw agricultural commodity;

II. A food additive; or

III. A color additive, which is unsafe within the meaning of G.S. 106-132; or

2. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of G.S. 106-132; or

3. If it is or it bears or contains any food additive which is unsafe within the meaning of G.S. 106-132;

provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under G.S. 106-132 of this Article, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of G.S. 106-132 and clause 3 of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed

to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

c. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or

d. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

e. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to G.S. 106-132 of this Article.

(2) a. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

b. If any substance has been substituted wholly or in part therefor; or

c. If damage or inferiority has been concealed in any manner; or

d. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery, and:

a. Has partially or completely imbedded therein any nonnutritive object: Provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the Board of Agriculture as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; or

b. Bears or contains any alcohol other than alcohol not in excess of one half of one per centum (0.5%) by volume derived solely from the use of flavoring extracts; or

c. Bears or contains any nonnutritive substance: Provided, that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Article; and provided further, that the Board may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances.

(4) If it is or bears or contains any color additive which is unsafe within the meaning of G.S. 106-132. (1939, c. 320, s. 10; 1975, c. 614, ss. 13-16.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote paragraph b of subdivision (1), added paragraph g of that subdivision, rewrote subdivision (3) and substituted present subdivision (4) for a provision which read "If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture."

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-130. Foods deemed misbranded. — A food shall be deemed to be misbranded:

(1) a. If its labeling is false or misleading in any particular, or
b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.

(5) If in package form, unless it bears a label containing
a. The name and place of business of the manufacturer, packer, or distributor; and
b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label:

Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that to the extent that compliance with the requirements of this subdivision are impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture. The provisions of this subdivision and subdivisions (7) and (9) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this subdivision with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the product of the soil.

(12) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical: Provided, however, that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

(13) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(14) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of G.S. 106-132 of this Article. (1939, c. 320, s. 11; 1975, c. 614, ss. 17-20.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added paragraph b of subdivision (1), added "which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label" at the end of paragraph b of subdivision (5), rewrote subdivision (11) and added subdivisions (12) through (14).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1), (5) and (11) through (14) are set out.

§ 106-132. Additives, etc., deemed unsafe. — Any added poisonous or added deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of G.S. 106-129(1), paragraphs b and g and 106-129(4) with respect to any food, 106-133(1) with respect to any drug or device, or 106-136(1) and (5) with respect to any cosmetic, unless there is in effect a regulation pursuant to G.S. 106-139 of this Article limiting the quantity of substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a food, drug, or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations be considered adulterated within the meaning of G.S. 106-129(1)a, 106-133(1) and 106-136(1). (1939, c. 320, s. 13; 1975, c. 614, s. 21.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-133. Drugs deemed to be adulterated. — A drug or device shall be deemed to be adulterated:

(1) a. If it consists in whole or in part of any filthy, putrid or decomposed substance; or

b. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

c. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

d. If

1. It is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of G.S. 106-132, or

2. If it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of G.S. 106-132;

e. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Article as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

(2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a

homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.
(1975, c. 614, ss. 22-24.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote paragraph d of subdivision (1), added paragraph e of that subdivision and substituted "under authority of the federal act" for "by the United States Department of Agriculture" at the end of the second sentence of subdivision (2).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (2) are set out.

§ 106-134. Drugs deemed misbranded. — A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of G.S. 106-139 or 106-139.1 of this Article.

(2) If in package form unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, except as exempted with respect to this clause by G.S. 106-121(2a)c of this Article; provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(5) a. If it is a drug, unless:

1. Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula),

I. The established name (as defined in paragraph b of this subdivision) of the drug, if such there be, and

II. In case it is fabricated from two or more ingredients the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs; and

2. For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of 1 II or 2 of this

subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the Board.

b. As used in this subdivision (5), the term "established name," with respect to a drug or ingredient thereof, means:

1. The applicable official name designated pursuant to section 508 of the federal act, or
2. If there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof, in such compendium, or
3. If neither 1 nor 2 of this paragraph applies, then the common or usual name, if any, of such drug or of such ingredient:

Provided further, that where 2 of this sub-subdivision applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

(11), (12) Repealed by Session Laws 1975, c. 614, s. 28, effective July 1, 1975.

(13) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act, and

b. Such certificate or release is in effect with respect to such drug.

(14) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless

a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act, and

b. Such certificate or release is in effect with respect to such drug:

Provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(15) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of G.S. 106-132 of this Article.

(16) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of

a. The established name, as defined in G.S. 106-134(5)b of this Article, printed prominently and in type at least half as large as that used for any trade or brand name thereof,

b. The formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act, and

c. Such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.

(17) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(18) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970. (1939, c. 320, s. 15; 1949, c. 370; 1973, c. 831, s. 1; 1975, c. 614, ss. 25-28, 30.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, added "or if its labeling or packaging fails to conform with the requirements of G.S. 106-139 or 106-139.1 of this Article" at the end of subdivision (1), inserted the language beginning "which statement shall" and ending "of this Article" in paragraph b of subdivision (2), rewrote subdivision (5), repealed subdivisions (11) and (12) and added subdivisions (13) through (18).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1), (2), (5) and (11) through (18) are set out.

§ 106-134.1. Prescriptions required; label requirements; removal of certain drugs from requirements of this section. — (a) A drug intended for use by man which:

(1) Is a habit-forming drug to which G.S. 106-134(4) applies; or

(2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug in the course of his normal practice; or

(3) Is limited by an approved application under section 505 of the federal act to use under the professional supervision of a practitioner licensed by law to administer such drug; or

(4) Is a drug the label of which bears the statement "Caution: Federal law prohibits dispensing without a prescription," shall be dispensed only

a. Upon a written prescription of a practitioner licensed by law to administer such drug, or

b. Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or

c. By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. If any prescription for such drug does not indicate the times it may be refilled, if any, such prescription may not be refilled unless the pharmacist is subsequently authorized to do so by the practitioner.

The act of dispensing a drug contrary to the provisions of this subdivision shall be deemed to be an act which results in a drug being misbranded while held for sale.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of G.S. 106-134, except subsections (1), (9)b and c, (13) and (14), and the packaging requirements of subsections (7) and (8), if the drug bears an affixed label containing the name of the patient, the name and address of the pharmacy, the phrase "Filled by . . . ." or "Dispensed by . . . .," with the name of the practitioner who dispenses the prescription appearing in the blank, the serial number and date of the prescription or of its filling, the name of the prescriber, the directions for use, and unless otherwise

directed by the prescriber of such drug, the name and strength of such drug. This exemption shall not apply to any drugs dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection (a) of this section.

(c) The Board may, by regulation, remove drugs subject to G.S. 106-134(4) and G.S. 106-135 from the requirements of subsection (a) of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder shall also, by regulations issued by the Board, be removed from the requirement of subsection (a).

(d) A drug which is subject to subsection (a) of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription." A drug to which subsection (a) of this section does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

(e) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classification of "controlled substances" as this term is defined in applicable federal and State controlled substance acts. (1975, c. 614, s. 29.)

Editor's Note. — Session Laws 1975, c. 614, s. 43, makes the act effective July 1, 1975.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-135. Regulations for sale of new drugs. — (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) An application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act, or

(2) When not subject to the federal act, by virtue of not being a drug in interstate commerce, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner an application setting forth

a. Full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

b. A full list of the articles used as components of such drug;

c. A full statement of the composition of such drug;

d. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

e. Such samples of such drug and of the articles used as components thereof as the Commissioner may require; and

f. Specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subdivision (a)(2) of this section shall become effective on the one hundred eightieth day after the filing thereof, except that if the Commissioner finds, after due notice to the applicant and giving him an opportunity for hearing,

(1) That the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof; or

(2) The methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug is inadequate to preserve its identity, strength, quality, and purity; or

(3) Based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner.

(d) The Commissioner shall promulgate regulations for exempting from the operation of the foregoing subsections and subdivisions of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, within the discretion of the Commissioner among other conditions relating to the protection of the public health, provide for conditioning such exemption upon

(1) The submission to the Commissioner, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing;

(2) The manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and

(3) The establishment and maintenance of such records, and the making of such reports to the Commissioner, by the manufacturer or the sponsor of the investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drug, as the Commissioner finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application pursuant to subsection (b).

Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible, or, in their professional judgment, contrary to the best interests of such human beings. Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Commissioner reports on the investigational use of drugs; provided, that regulations adopted under section 505(i) of the federal act may be adopted by the Commissioner as the regulations in this State.

(e) (1) In the case of any drug for which an approval of an application filed pursuant to this section is in effect, the applicant shall establish and maintain such records, and make such reports to the Commissioner, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug, as the Commissioner may by general regulation, or by order with respect to such application, prescribe: Provided, however, that regulations and orders issued under this subsection and under subsection (d) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Commissioner deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations

or orders are applicable, of similar information received or otherwise obtained by the Commissioner.

(2) Every person required under this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Commissioner, permit such officer or employee at all reasonable times to have access to and copy and certify such records.

(f) The Commissioner may, after affording an opportunity for public hearing, revoke an application approved pursuant to this section if he finds that the drug, based on evidence acquired after such approval, may not be safe or effective for its intended use, or that the facilities or controls used in the manufacture, processing, or labeling of such drug may present a hazard to the public health.

(g) This section shall not apply:

(1) To a drug sold in this State or introduced into interstate commerce at any time prior to the enactment of the federal act, if its labeling contained the same representations concerning the conditions of its use; or

(2) To any drug which is licensed under the Public Health Service Act of July 1, 1944 (58 Stat. 682, as amended; 42 U.S.C. 201 et seq.) or under the Animal Virus-Serum-Toxin Act of March 4, 1913 (13 Stat. 832; 21 U.S.C. 151 et seq.); or

(3) To any drug which is subject to G.S. 106-134 (14) of this Article. (1939, c. 320, s. 16; 1975, c. 614, s. 31.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-136. Cosmetics deemed adulterated. — A cosmetic shall be deemed to be adulterated:

(5) If it is not a hair dye and it is, or it bears or contains a color additive which is unsafe within the meaning of G.S. 106-132. (1939, c. 320, s. 17; 1975, c. 614, s. 32.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted present subdivision (5) for a provision which read: "If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture."

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5) are set out.

§ 106-137. Cosmetics deemed misbranded. — A cosmetic shall be deemed to be misbranded:

(1) a. If its labeling is false or misleading in any particular; or
b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.

(2) If in package form unless it bears a label containing
a. The name and place of business of the manufacturer, packer, or distributor; and
b. An accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label: Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and

exemptions as to small packages shall be established by regulations prescribed by the Board of Agriculture.

(5) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of G.S. 106-132 of this Article. This subdivision shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of G.S. 106-136(1)). (1939, c. 320, s. 18; 1975, c. 614, ss. 33-35.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, designated the existing provisions of subdivision (1) as paragraph a and added paragraph b, inserted "which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label" in paragraph b of subdivision (2) and added subdivision (5).

Session Laws 1975, c. 614, s. 41, contains a severability clause.

As subdivisions (3) and (4) were not changed by the amendment, they are not set out.

§ 106-139. Regulations by Board of Agriculture. — (a) The authority to promulgate regulations for the efficient enforcement of this Article is hereby vested in the Board of Agriculture, except the Commissioner of Agriculture is hereby authorized to promulgate regulations under G.S. 106-131 and 106-135. The Board and Commissioner are hereby authorized to make the regulations promulgated under this Article conform, insofar as practicable, with those promulgated for foods, drugs, devices, cosmetics and consumer commodities under the federal act, including but not limited to pesticide chemical residues on or in foods, food additives, color additives, special dietary foods, labeling of margarine for retail sale or distribution, nutritional labeling of foods, the fair packaging and labeling of consumer commodities and new drug clearance. Notwithstanding the provisions of subsection (e) of this section, a federal regulation adopted by the Board or Commissioner pursuant to this Article shall take effect in this State on the date it becomes effective as a federal regulation.

(b) The Board may promulgate regulations exempting from any affirmative labeling requirement of this Article consumer commodities which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such consumer commodities are not adulterated or misbranded under the provisions of this Article upon removal from such processing, labeling or repacking establishment. The Board may additionally promulgate regulations exempting from any labeling requirement of this Article foods packaged or dispensed at the direction of the retail purchaser at the time of sale, whether or not for immediate consumption by the purchaser on the premises of the seller.

(c) Whenever the Board determines that regulations containing prohibitions or requirements other than those prescribed by G.S. 106-139.1(a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the Board shall promulgate with respect to that commodity regulations effective to:

(1) Establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation of the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) Regulate the placement upon any package containing any commodity or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered

for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) Require that the label on each package of a consumer commodity bear
a. The common or usual name of such consumer commodity, if any, and
b. In case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) Prevent the nonfunctional slack-fill of packages containing consumer commodities.

For the purposes of subdivision (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than
a. Protection of the contents of such package, or
b. The requirements of machines used for enclosing the contents in such package;

provided, the Board may adopt any regulations promulgated pursuant to the Federal Fair Packaging and Labeling Act which shall have the force and effect of law in this State.

(d) Hearings authorized or required by G.S. 106-131 or 106-135 of this Article shall be conducted by the Commissioner of Agriculture or such officer, agent, or employee as the Commissioner may designate for the purpose.

(e) Before promulgation of any regulation, the Commissioner of Agriculture shall give 30 days' notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the Board of Agriculture, or Commissioner, as the case may be, which date shall not be prior to 90 days after its promulgation (except such regulations as may be promulgated under G.S. 106-131, which regulations shall become effective on the date of promulgation, and federal regulations adopted as regulations in this State as provided by subsection (a) of this section). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the Board or Commissioner, to such extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date. (1939, c. 320, s. 20; 1973, c. 476, s. 128; 1975, c. 614, s. 36.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, rewrote this section.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-139.1. Declaration of net quantity of contents. — (a) All labels of consumer commodities, as defined by this Article, shall conform with the requirements for the declaration of net quantity of contents of section 4 of the Federal Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.) and the regulations promulgated pursuant thereto: Provided, that consumer commodities exempted from such requirements of section 4 of the Federal Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(c) No person shall distribute or cause to be distributed in commerce any package consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: Provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package. (1975, c. 614, s. 37.)

Editor's Note. — Session Laws 1975, c. 614, s. 43, makes the act effective July 1, 1975. Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-140. Further powers of Commissioner of Agriculture for enforcement of Article; report by inspector to owner of establishment. — (a) For purposes of enforcement of this Article, the Commissioner or any of his authorized agents, are authorized upon presenting appropriate credentials and a written notice to the owner, operator or agent in charge,

(1) To enter at reasonable times any factory, warehouse or establishment in which food, drugs, devices or cosmetics are manufactured, processed, or packed or held for introduction into commerce or after such introduction or to enter any vehicle being used to transport or hold such food, drugs, devices or cosmetics in commerce; and

(2) To inspect at reasonable times and in a reasonable manner such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein, and to obtain samples necessary to the endorsement of this Article. In the case of any factory, warehouse, establishment, or consulting laboratory in which any food, drug, device or cosmetic is manufactured, processed, analyzed, packed or held, the inspection shall extend to all things therein (including records, files, papers, processes, controls and facilities) bearing on whether any food, drug, device or cosmetic which is adulterated or misbranded within the meaning of this Article or which may not be manufactured, introduced into commerce or sold or offered for sale by reason of any provision of this Article, has been or is being manufactured, processed, packed, transported or held in any such place or otherwise bearing on violation of this Article. No inspection authorized by the preceding sentence shall extend to
   a. Financial data,
   b. Sales data other than shipment data,
   c. Personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Article),
   d. Pricing data, and
   e. Research data (other than data relating to new drugs and antibiotic drugs, subject to reporting and inspection under lawful regulations issued pursuant to section 505(i) or (j) or section 507 (d) or (g) of the federal act, and data, relating to other drugs, which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j) of the federal act).

   Such inspection shall be commenced and completed with reasonable promptness. The provisions of the second sentence of this subsection shall not apply to such classes of persons as the Board may by regulation exempt from the application of this section upon a finding

that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

(3) To have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof: Provided, that evidence obtained under this subsection shall not be used in a criminal prosecution of the person from whom obtained; and provided further, that carriers shall not be subject to the other provisions of this Article by reason of their receipt, carriage, holding, or delivery of food, drugs, devices or cosmetics in the usual course of business as carriers.

(b) Upon completion of any such inspection of a factory, warehouse, consulting laboratory or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent-in-charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food, drug, device or cosmetic in such establishment:

(1) Consists in whole or in part of any filthy, putrid, or decomposed substance; or

(2) Has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

(c) If the authorized agent making any such inspection of a factory, warehouse or other establishment has obtained any salable product samples in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall offer reasonable payment for any such product samples.

(d) It shall be the duty of the Commissioner of Agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this Article is being violated. (1939, c. 320, s. 21; 1975, c. 614, s. 38.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-141. Examinations and investigations. — (a) Repealed by Session Laws 1975, c. 614, s. 39, effective July 1, 1975.

(1975, c. 614, s. 39.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, repealed subsection (a), which related to the appointment of drug inspectors.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

§ 106-143. Article construed supplementary. — Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Health Services or the Department of Human Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, finfish, or other foods, or food products, or the production, handling, or processing thereof; but this Article shall be construed to be in addition thereto. (1939, c. 320, s. 24½; 1973, c. 476, s. 128; 1975, c. 19, s. 31.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 amendatory act by substituting "or" for "for" following "food products."

§ 106-144. Exemptions. — Meats and meat products subject to the Federal Meat Inspection Act of March 4, 1907, (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.), and poultry and poultry products subject to the Federal Poultry Products Inspection Act (21 U.S.C. 451 et seq.) are exempted from the provisions of this Article so long as such meat, meat products, poultry, and poultry products remain in the possession of the processor. (1939, c. 320, s. $24^2/_3$; 1975, c. 614, s. 40.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section so as to include references to 21 U.S.C. 71 et seq. and to poultry and poultry products.

Session Laws 1975, c. 614, s. 41, contains a severability clause.

ARTICLE 16.

Bottling Plants for Soft Drinks.

§§ 106-174 to 106-184.1: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

ARTICLE 21.

Artificially Bleached Flour.

§§ 106-210 to 106-219: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

ARTICLE 21A.

Enrichment of Flour, Bread, Cornmeal and Grits.

§§ 106-219.1 to 106-219.9: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

ARTICLE 22.

Inspection of Bakeries.

§§ 106-220 to 106-232: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

ARTICLE 23.

Oleomargarine.

§ 106-233: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

§§ 106-236 to 106-238: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

ARTICLE 24.

Excise Tax on Certain Oleomargarines.

§ 106-239: Repealed by Session Laws 1975, c. 614, s. 42, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 614, s. 42(b), provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sanitation, safety, inspection, analysis, composition, manufacture, packing, transportation, holding or offering for sale of any food, drug, device or cosmetic of the State of North Carolina Department of Agriculture, not inconsistent with the provisions of this Article shall continue in full force until repealed, amended or modified."

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ 106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office. — (a) There is hereby continued a Milk Commission of the

Department of Commerce, consisting of 10 members, three of whom shall be appointed by the Governor, two of whom shall be appointed by the Lieutenant Governor, two of whom shall be appointed by the Speaker of the House, and three of whom shall be appointed by the Commissioner of Agriculture.

The three members appointed by the Governor shall be two public members and a person who operates a store or other establishment for the sale of fluid milk at retail for consumption off the premises. The two members appointed by the Lieutenant Governor shall be a Grade A producer, who primarily markets with a cooperative plant and whose primary interest is operating a dairy farm, and a public member. The two members appointed by the Speaker of the House shall be a dairy processor-distributor or an employee of a dairy processor-distributor, who primarily operates a proprietary plant, and a public member. The three members appointed by the Commissioner of Agriculture shall be a dairy processor-distributor or an employee of a dairy processor-distributor who primarily operates a cooperative plant and a Grade A producer who primarily markets with a proprietary plant and whose primary interest is operating a dairy farm, and a public member.

The public members appointed pursuant to this subsection shall have no financial interest in, or be directly or indirectly involved in, the production, processing or distribution of milk or products derived therefrom.

Of the Commission members appointed following March 27, 1975, the Commissioner of Agriculture shall appoint three for a term ending June 30, 1976, the Governor shall appoint three for a term ending June 30, 1977, the Speaker of the House shall appoint one for a term ending June 30, 1978 and one for a term ending June 30, 1979, and the Lieutenant Governor shall appoint one for a term ending June 30, 1978 and one for a term ending June 30, 1979. Thereafter appointments of Commission members shall be made by the same appointing authorities for terms of four years, ending on June 30 of the appropriate year: Provided, however, that all members appointed pursuant to this subsection shall serve until either they are reappointed and requalified or their successors are appointed and qualified. Any member of the Milk Commission may be removed for physical or mental incapacity, or for misfeasance or nonfeasance. In cases of removal from the Commission, the removal must be initiated by the person holding the office that originally made the appointment of such member, and subsequent appointments to fill such vacancies will be made in the normally prescribed manner for the remainder of the unexpired term by the person holding the office that originally made the appointment. If the office that originally made the appointment is vacant, the successor to such office shall fill such vacancy. In case of death, resignation, disqualification, or other physical or mental incapacity which prevents a Commission member from performing his official duties prior to the expiration of his term of office, his successor shall be appointed as provided in this subsection to fill out the unexpired term.

(b) At the first meeting of the Commission held after the effective date of this act, the Commission shall elect one of its members as its chairman to serve through June 30 of the next following year. Thereafter, at its first meeting held on or after July 1 of each year, the Commission shall elect one of its members to serve as chairman through June 30 of the next following year.

(g) Six members of the Commission shall constitute a quorum.
(1975, c. 78, ss. 1, 1.5, 2.)

Editor's Note. — The 1975 amendment rewrote subsection (a) so as to increase the number of members of the Milk Commission from seven to 10, deleted "public" preceding "members" in two places in subsection (b) and substituted "Six" for "Four" in subsection (g).

Session Laws 1975, c. 78, ss. 3 and 4, provide: "Sec. 3. The reorganization of the Commission brought about by this amendment shall in no way affect the validity or continuity of any rule, regulation, order or action of the North Carolina Milk Commission which is in effect at the time this amendment becomes effective. All valid rules, regulations, orders or actions taken or adopted by the Commission at any time prior to the effective date of this amendment shall continue in full force and effect (without the necessity for readoption or reaffirmation of same) until such time as the same are rescinded or revised by the Commission.

"Sec. 4. The terms of office of present members of the North Carolina Milk Commission shall expire on the date this act becomes effective."

The act was ratified March 27, 1975, and made effective 30 days after ratification.

As the rest of the section was not changed by the amendment, only subsections (a), (b) and (g) are set out.

§ 106-266.8. Powers of Commission.

Editor's Note. —
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 106-266.15. Appeals.

Editor's Note. —
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 106-266.19. Sale below cost to injure or destroy competition prohibited. — The sale of milk by any distributor or producer-distributor or retailer below cost for the purpose of injuring, harassing or destroying competition is hereby prohibited; and the offering for sale of milk by a retailer at below-cost prices to induce the public to patronize his store, or what is commonly known in the trade as using milk as a "loss leader" is also hereby prohibited. However, milk may be sold below cost to meet competition if notice has been sent to the Commission by registered or certified mail identifying the competitor or competitors. At any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or subdistributor or retailer below cost shall constitute prima facie evidence of the violation or violations alleged, and the burden of rebutting the prima facie case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, or that it was sold below cost to meet competition after notice has been sent to the Commission by registered or certified mail identifying the competitor or competitors, or that it was not used as a "loss leader" or to induce the public to patronize his store, shall be upon the person charged with a violation of this section. As used herein the term "cost" for a distributor or producer-distributor shall be construed to mean the price paid for Grade A or Class I milk in the area where such sale is made plus a reasonable allocation of processing and marketing expenses. For a retailer the term "cost" shall be construed to mean the wholesale invoice price paid for Grade A or Class I milk in the area where such sale is made, provided, however, in determining whether any sale has been made in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any other matters which may have the effect of either directly or indirectly reducing the price paid by the retailer involved. The prima facie case of a violation of this section, made by proof of sale below cost, may be rebutted by proof of any of the following facts:

(1) The merchandise was damaged, or
(2) The milk was sold upon the final liquidation of a business, or
(3) The milk was sold to an organized charity or to a relief agency, or

(4) The milk was sold by an officer acting under the direction of any court. (1955, c. 406, s. 1; 1959, c. 1021; 1965, c. 936, s. 2; 1971, c. 779, s. 1; 1975, c. 815.)

Editor's Note. — The 1975 amendment added the second sentence, inserted the language beginning "or that it was sold" and ending "competitor or competitors" in the third sentence, inserted "for a distributor or producer-distributor" near the end of that sentence, added "For a retailer the term 'cost' shall be construed to mean the wholesale invoice price paid for Grade A or Class I milk in the area where such sale is made, provided, however" at the beginning of the fourth sentence and substituted "paid by the retailer" for "received by the distributor or producer-distributor or retailer" near the end of that sentence.

Offering for Sale of Milk by a Retailer at Below-Cost Prices, as a Loss Leader, Must Be for the Purpose of Inducing the Public to Patronize His Store in Order to Be Violative of the Statute. — See opinion of Attorney General to Mr. Grady Cooper, Jr., N.C. Milk Commission, 44 N.C.A.G. 169 (1974).

ARTICLE 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.33. Definitions of words and terms. — When used in this Article:

(4a) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract between that person and a manufacturer of commercial feeds whereby such commercial feed is supplied, furnished, or otherwise provided to such person by the said manufacturer and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product produced by the independent contractor.

(1975, c. 900, s. 1; c. 961, s. 1.)

Editor's Note. — The first and second 1975 amendments, effective July 1, 1975, added subdivision (4a). The two 1975 acts were identical.

As the rest of the section was not changed by the amendments, only the introductory language and subdivision (4a) are set out.

§ 106-284.40. Inspection fees and reports.

(b) An inspection fee at the rate of twelve cents (12¢) per ton shall be paid on commercial feeds distributed in the State by the person whose name appears on the label of the commercial feed as the manufacturer, distributor or guarantor of the commercial feed, subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients or a base for the manufacture of commercial feeds which are registered, if the fee has already been paid. If the inspection fee has already been paid on such commercial feed, the amount paid shall be deducted from the gross amount due on the total feed produced.

(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of twenty-five dollars ($25.00) shall be paid in lieu of the inspection fee specified above.

(5) The minumum inspection fee shall be ten dollars ($10.00) per quarter unless no feed was sold in the State during the quarter.

(6) Manufacturers of commercial feeds may appear before the Board, and after finding there exists a contract feeder relationship between a manufacturer of commercial feeds and an independent contractor, the Board may issue annual numbered permits exempting that manufacturer of commercial feed from paying the inspection fee assessed by the provisions of this law for that feed delivered to the contract feeder. The manufacturer of ingredients who sells such ingredients to manufacturers of commercial feeds under this subdivision shall have in his possession the exemption number of the permit referred to in G.S. 106-284.34(b) and/or the permit issued by the Board under this subdivision before the supplier may be relieved of the responsibility for payment of the inspection fee.

The holder of said permit may voluntarily return said permit to the Commissioner for cancellation at which time said holder may not apply for or receive another exemption permit under this subdivision for a period of 12 months. The exemption permits under this subdivision shall be renewable automatically every year by the Board without additional findings of fact unless it is brought to the Board's attention by the Commissioner or his duly designated officer or employee that there no longer exists the relationship of a contract feeder between the manufacturer of commercial feeds and an independent contractor. In the event the Commissioner or his duly designated officer or employee notifies the Board when the permit is to be automatically renewed or anytime the permit is in effect, that there no longer exists a contract feeder relationship for the permit holder, the Board shall determine the veracity of the notification and revoke said permit if the facts are found to be true by the Board.

Commercial feeds exempt from inspection fees under this subdivision shall not be subject to sampling and analysis other than as may be necessary to determine compliance with good manufacturing practice regulations pertaining to medicated animal feed and medicated feed premixes established under G.S. 106-284.38(4) of this law.

(1975, c. 900, s. 2; c. 961, s. 2.)

Editor's Note. — The first and second 1975 amendments, effective July 1, 1975, added subdivision (6) of subsection (b). The two 1975 acts were identical.

As the other subsections were not changed by the amendments, they are not set out.

§ 106-284.41. Rules and regulations. — (a) The Board is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article. In the interest of uniformity the Board shall by regulation adopt, unless it determines that they are inconsistent with the provisions of this Article or are not appropriate to conditions which exist in this State, the following:

(1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, and

(2) Any regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act (21 U.S.C. section 301 et seq.).

(1975, c. 19, s. 32.)

Editor's Note. — The 1975 amendment corrected an omission in the 1973 act by inserting "21" preceding "U.S.C." in subdivision (2) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 106-284.44. Penalties; enforcement of Article; judicial review; confidentiality of information.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 34.

Animal Diseases.

Part 7. Rabies.

§ 106-381. Confinement or leashing of vicious animals.

Cited in Sams v. Sargent, 25 N.C. App. 219, 212 S.E.2d 559 (1975).

§ 106-386: Repealed by Session Laws 1975, c. 664, s. 2.

ARTICLE 35.

Public Livestock Markets.

§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 35A.

North Carolina Livestock Prompt Pay Law.

§ 106-418.3. Definitions. — As used in this Article, unless the context clearly requires otherwise:

(5) "Public livestock market" means livestock sales at a market duly licensed under G.S. 106-406. (1973, c. 38, s. 3; 1975, c. 19, s. 33.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "G.S. 106-406" for "G.S. 104-406" at the end of subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5) are set out.

Article 35B.

Livestock Dealer Licensing Act.

§ 106-418.11. Licenses. — (a) Any person desiring to be licensed as a livestock dealer shall make application to the Commissioner. Such application shall contain the address, both business and personal, of the applicant. No financial information shall be required from the applicant.

Whenever an applicant has complied with this Article, the Commissioner shall issue to such applicant a license which shall entitle the licensee to engage in the business of livestock dealer for a period of one year, unless such license is sooner suspended, or revoked in accordance with the provisions of this Article.

The license may be renewed annually by written request to the Commissioner on a form prepared by the Department of Agriculture, which form shall require only the name and current address of the licensee. No renewal fee shall be charged.

(1975, c. 19, s. 34.)

Editor's Note. —
Session Laws 1975, c. 19, s. 34, corrected an error in Session Laws 1973, c. 196, by substituting "licensee" for "license" at the end of the first sentence of the third paragraph of subsection (a).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Article 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-432.1. When employer-employee relationship deemed to exist; when person deemed employee, agent or officer of State, Board, superintendent or system.

Local manager of the farmer's grain elevator privately owned but leased to the State as a public warehouse was not the employee or agent of the State, or of the State warehouse system, since no part of his compensation was paid by either. Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

§ 106-433. Employment of officers and assistants; licensing private facilities as components of warehouse system; licensing employees of private facilities.

Local manager of the farmer's grain elevator privately owned but leased to the State as a public warehouse was not the employee or agent of the State, or of the State warehouse system, since no part of his compensation was paid by either. Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

§ 106-435. Fund for support of system; collection and investment.

Liability of Fund Is Secondary. —
Local manager of the farmer's grain elevator violated his duty under the Warehouse Act by issuing warehouse receipts for which he knew no grain had been delivered to the elevator, and for the resulting loss, he and the surety on his bond are clearly liable, theirs being the primary liability, that of the State Indemnity and Guaranty Fund being secondary. Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

Where receipt states upon its face, "The State of North Carolina guarantees the integrity of this receipt," the extent of that guaranty is the right of recourse to the State Indemnity and Guaranty Fund. Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of records.

Quoted in Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

§ 106-443. Issuance of false receipt a felony; punishment.

Liability of Fund Is Secondary. — Local manager of the farmer's grain elevator violated his duty under the Warehouse Act by issuing warehouse receipts for which he knew no grain had been delivered to the elevator, and for the resulting loss, he and the surety on his bond are clearly liable, theirs being the primary liability, that of the State Indemnity and Guaranty Fund being secondary. Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

§ 106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.

Where receipt states upon its face, "The State of North Carolina guarantees the integrity of this receipt," the extent of that guaranty is the right of recourse to the State Indemnity and Guaranty Fund. Branch Banking & Trust Co. v. Gill, 286 N.C. 342, 211 S.E.2d 327, petition to rehear allowed, 286 N.C. 726, S.E.2d (1975).

ARTICLE 43.

Combines and Power Threshers.

§§ 106-495.1, 106-495.2: Repealed by Session Laws 1975, c. 24.

ARTICLE 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.21. Stamping container or covering; regulation of container.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 49D.

Poultry Products Inspection Act.

§ 106-549.55. Labeling standards; false and misleading labels.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 106-549.64. Refusal of inspection services; hearing; appeal.

Editor's Note. —
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Article 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-564. Collection of assessments; custody and use of funds. — In the event two thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually or at regular intervals during the year established by the rules and regulations of the duly certified commission, council, board or other agency for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from State or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3; 1965, c. 1046, s. 1; 1975, c. 708, s. 1.)

Editor's Note. — The 1975 amendment inserted "or at regular intervals during the year established by the rules and regulations of the duly certified commission, council, board or other agency" near the beginning of the first sentence.

§ 106-564.1. Alternate method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the first day of June of each year following such deduction or at regular intervals during the year following such deductions, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents.

Any packer, processor or other purchaser who originally purchases from the grower, apples grown in North Carolina, shall collect from the grower thereof any marketing assessment due under the provisions of Article 50 of Chapter 106 and shall remit the same to the North Carolina Department of Agriculture. Upon failure of said packer, processor or other purchaser to collect and remit said assessment then the amount of the assessment shall become the obligation of the packer, processor or other purchaser who originally purchased the apples from the grower and he shall become liable therefor to the North Carolina Department of Agriculture. Failure of the packer, processor or other purchaser to comply with the provisions of this section shall constitute a bar to engaging in said business in this State upon proper notice from the Board of Agriculture. The Board of Agriculture shall have authority to promulgate such rules and regulations as shall be necessary to carry out the purpose and intent of this section. (1953, c. 917; 1969, c. 605, s. 3; 1975, c. 708, s. 2.)

Editor's Note. — The 1975 amendment inserted "or at regular intervals during the year following such deductions" in the second sentence.

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund. — In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such assessments shall have been levied and collected under the provisions of this Article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such assessment so collected from such farmer or producer, provided such demand for refund is made in writing within 30 days from the date on which said assessment is collected or due to be collected, whichever is earlier from such farmer or producer under the rules and regulations of the duly certified commission, council, board or other agency. Provided, however, that as to growers or producers of potatoes, apples or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Provided further, that any farmer or producer of potatoes, apples or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within 30 days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. Provided further that on and after July 1, 1972, as to growers or producers of apples there shall be no right of refund of assessments levied pursuant to the referendum provided for by Article 50, Chapter 106 of the General Statutes of North Carolina. (1947, c. 1018, s. 18; 1959, c. 311; 1969, c. 605, ss. 1, 2; 1975, c. 708, ss. 3, 4.)

Editor's Note. — The 1975 amendment deleted "annual" preceding "assessment" and preceding "assessments" near the middle of the first sentence and substituted "collected or due to be collected, whichever is earlier from such farmer or producer under rules and regulations of the duly certified commission, council, board or other agency" for "collected from such farmer or producer" at the end of that sentence.

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit. — In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture as provided for in G.S. 106-284.40(c). (1951, c. 827, s. 8; 1967, c. 631, s. 1; 1975, c. 646.)

Editor's Note. —
The 1975 amendment added the last paragraph.

ARTICLE 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.35. Alternate provision for referendum voting by mail. — (a) At any time when it may be found that it is not desirable or reasonably possible to conduct a referendum by written ballots to be cast at polling places (as provided in G.S. 106-568.23 and 106-568.24 of this Article), the board of directors of Tobacco Associates, Incorporated, by an affirmative vote of not less than two thirds of its members (which vote shall include the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations), may prescribe and provide for a vote by mail by written or printed ballot.

(b) In the event that the board of directors shall decide to conduct the referendum by mail vote, the board shall prescribe the rules and regulations under which such mail referendum shall be conducted; shall provide the necessary ballots and cause them to be mailed to the farmers of North Carolina who produce flue-cured tobacco; shall provide envelopes for the return of such ballots by individual voters; shall cause to be published through the medium of the public press in the State of North Carolina notice of the holding of such referendum at least 30 days before the mailing out of the ballots; shall give direct written notice of such proposed mail referendum to all statewide farm organizations within the State of North Carolina and to each county agent in each county in which flue-cured tobacco is grown; shall provide a closing date for the return of the ballots; shall provide for the receipt and safeguarding of such ballots; and, within 30 days of the date set as the latest date for the return of such ballots, shall canvass the ballots and publish and declare the results of such referendum. (1975, c. 125.)

ARTICLE 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§§ 106-569 to 106-579: Repealed by Session Laws 1975, c. 719, s. 16, effective July 1, 1975.

Cross Reference. — For North Carolina Antifreeze Law of 1975, see § 106-579.1 et seq.

ARTICLE 51A.

North Carolina Antifreeze Law of 1975.

§ 106-579.1. Short title. — This Article shall be known as the "North Carolina Antifreeze Law of 1975." (1975, c. 719, s. 1.)

Editor's Note. — Session Laws 1975, c. 719, effective July 1, 1975, repealed Article 51 and enacted this Article. No attempt has been made to point out the changes, but, where appropriate, the historical citations to the sections of the repealed Article have been added to corresponding sections of the new Article.

Session Laws 1975, c. 719, s. 14, contains a severability clause.

Session Laws 1975, c. 719, s. 16, provides: "Notwithstanding any other provisions of law, all existing rules and regulations concerning the sale and inspection of antifreeze substances and preparations of the State of North Carolina Department of Agriculture and any other agency of the State of North Carolina not inconsistent with the provisions of this Article shall continue in full force and effect until repealed, modified or amended."

§ 106-579.2. Purpose. — It is desirable that there should be uniformity between the requirements of the several states. Therefore, the Board and Commission are directed, consistent with the purposes of this Article, to so enforce this Article as to strive for achievement of such uniformity and are also authorized and empowered to cooperate with and enter into agreements with any other agency of this State, or any other state regulating antifreeze, for the purpose of carrying out the provisions of this Article and securing uniformity of regulations in conformity to the primary standards established by this Article. (1975, c. 719, s. 2.)

§ 106-579.3. Definitions. — As used in this Article, the following words and phrases have the following meanings:

(1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of antifreeze products.

(2) "Antifreeze" means any substance or preparation sold, distributed or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point.

(3) "Antifreeze-coolant" or "antifreeze and summer coolant" or "summer coolant" means any substance as defined in (2) above which also is sold, distributed or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."

(4) "Board" means the North Carolina State Board of Agriculture, as defined by G.S. 106-2.

(5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(6) "Distribute" means to hold with intent to sell, offer for sale, to sell, barter or otherwise supply to the consumer.

(7) "Home consumer-sized package" as used in G.S. 106-579.9(12) shall refer to packages of one fluid U.S. gallon or less.

(8) "Label" means any display of written, printed, or graphic matter on, or attached to, a package, or to the outside individual container or wrapper of the package.

(9) "Labeling" means (i) the labels and (ii) any other written, printed or graphic matter accompanying a package.

(10) "Package" means (i) a sealed tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or (ii) a container from which the antifreeze may be installed directly by the seller into the cooling system, but does not include shipping containers containing properly labeled inner containers.

(11) "Person," as used in this Article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165; 1975, c. 719, s. 3.)

§ 106-579.4. Registrations. — On or before the first day of July of each year, and before any antifreeze may be distributed for the permit year beginning July 1, the manufacturer, packager, or person whose name appears on the label shall make application to the Commissioner on forms provided by the latter for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes to be distributed, when requested by the Commissioner; a license and inspection fee of two hundred fifty dollars ($250.00) for each brand of antifreeze and a properly labeled sample of the antifreeze shall also be submitted at this time. The Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the Board, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner shall thereafter issue a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails

to meet standards promulgated by the Board, or is in violation of this Article or regulations thereunder, the Commissioner shall refuse to register the antifreeze, and he shall return the application to the applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall, at a later date, find that a properly registered antifreeze product has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations, definitions or standards duly promulgated by the Board, he shall notify the applicant that the license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to modify his application in order to comply with the requirements of this Article and regulations, definitions, and standards promulgated by the Board. All fees received by the Commissioner shall be placed in the Department of Agriculture fund for the purpose of supporting the antifreeze enforcement and testing program. (1949, c. 1165; 1975, c. 719, s. 4.)

§ 106-579.5. Adulteration. — Antifreeze shall be deemed to be adulterated:

(1) If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system in which it is installed, or if, when used in such cooling system, it would make the operation of the engine dangerous to the user.

(2) If its strength, quality, or purity falls below the standard of strength, quality, or purity established by the Board for the particular type or composition of antifreeze product. (1949, c. 1165; 1975, c. 719, s. 5.)

§ 106-579.6. Misbranding. — Antifreeze shall be deemed to be misbranded:

(1) If it does not bear a label which (i) specifies the identity of the product, (ii) states the name and place of business of the registrant, (iii) states the correct net quantity of contents (in terms of liquid measure) separately and accurately in a uniform location upon the principal display panel, and (iv) contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze, as provided by applicable federal and State product safety laws.

(2) If the label on a container of less than five gallons, or the labeling for a container of five gallons or more, does not contain a statement or chart showing the appropriate amount, percentage, proportion or concentration of the antifreeze to be used to provide (i) claimed protection from freezing at a specified degree or degrees of temperature, (ii) claimed protection from corrosion, or (iii) claimed increase of boiling point or protection from overheating.

(3) If its labeling contains any claim that it has been approved or recommended by the Commissioner or the State of North Carolina.

(4) If its labeling is false, deceptive, or misleading. (1949, c. 1165; 1975, c. 719, s. 6.)

§ 106-579.7. Rules and regulations. — (a) The Board is authorized to promulgate such reasonable rules, regulations and standards for antifreezes as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article and the protection of the public. The Board is authorized to promulgate regulations banning the distribution in North Carolina of any type of product not suitable for antifreeze usage in modern internal combustion engines or motor vehicles, whether by reason of potential damage to the cooling system, improper heat transfer from the engine, absence of a convenient and suitable test method for measuring freeze protection, or other reason bearing upon the

ultimate effect of the product when used in such automotive cooling systems. Before the issuance, amendment, or repeal of any rule, regulation or standard authorized by this Article, the Board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the Board shall take appropriate action as dictated by the material weight of objective information presented to the Board.

(b) The Commissioner shall administer this Article by inspections, chemical analyses and other appropriate methods. The Commissioner shall also execute all orders, rules and regulations established by the Board. All authority vested in the Commissioner by virtue of the provisions of this Article may, with like force and effect, be executed by such agents of the Commissioner as he shall designate for such purpose; provided, however, that confidential formula information referred to in G.S. 106-579.11 must be confined to the files of the administrative chemist specifically designated by the Commissioner to handle such information. (1949, c. 1165; 1975, c. 719, s. 7.)

§ 106-579.8. Inspection, sampling and analysis. — The Commissioner, or his authorized agent, shall have free access at reasonable hours to all places and property in this State where antifreeze is manufactured, stored, transported, or distributed, or offered or intended to be offered, for sale, including the right to inspect and examine all antifreeze there found, and to take reasonable samples of such antifreeze for analysis together with specimens of labeling. All samples so taken shall be properly sealed and sent to the Department of Agriculture laboratories for examination together with all labeling appertaining thereto. It shall be the duty of the Commissioner to examine promptly all samples received in connection with the administration and enforcement of this Article and to report the results of such examination to the owner and registrant of the antifreeze. (1949, c. 1165; 1975, c. 719, s. 8.)

§ 106-579.9. Prohibited acts. — It shall be unlawful to:

(1) Distribute any antifreeze which is adulterated or misbranded.

(2) Distribute any antifreeze which has been banned by the Board.

(3) Distribute any antifreeze which has not been registered in accordance with G.S. 106-579.4 or whose labeling is different from that accepted for registration; provided, that any antifreeze declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued; provided further, that any antifreeze in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Commissioner, unless the antifreeze is acceptable for registration and is continued to be registered by the manufacturer or the person offering the antifreeze for wholesale or retail sale.

(4) Refuse to permit entry or inspection or to permit the acquisition of a sample of antifreeze as authorized by G.S. 106-579.8.

(5) Dispose of any antifreeze that is under "stop sale" or "withdrawal from distribution" order in accordance with G.S. 106-579.10.

(6) Distribute any antifreeze unless it is in the registrant's or manufacturer's unbroken package or is installed by the seller into the cooling system of the purchaser's vehicle directly from the registrant's or manufacturer's package, and the label on such package if less than five gallons, or the labeling of such package if five gallons or more, does not bear the information required by G.S. 106-579.6 (1), (2), (3), and (4).

(7) Use the term "ethylene glycol" in connection with the name of a product which contains other glycols unless it is qualified by the word "base," "type," or similar word, and unless the product meets the following requirements:
  a. It consists essentially of ethylene glycol;
  b. If it contains suitable glycols other than ethylene glycol, that no more than a maximum of fifteen percent (15%) of such other glycols be present;
  c. It contains a minimum total glycol content of ninety-three percent (93%) by weight;
  d. The specific gravity is corrected to give reliable freezing-point readings on a commercial ethylene glycol type hydrometer; and
  e. The freezing point of a fifty percent (50%) by volume aqueous mixture of the antifreeze shall not be above -34° F.

(8) Refuse, when requested, to permit a purchaser to see the container from which antifreeze is drawn for installation into the purchaser's vehicle.

(9) Refill any container bearing a registered label, unless by the registrant or his duly designated jobber, under regulations established by the Board.

(10) Distribute any antifreeze for which a practical, rapid means for measuring the freeze protection by the user is not readily available, whether by hydrometer or other means.

(11) Distribute antifreeze which is in violation of the Federal Poison Prevention Packaging Act and regulations and related federal and State product safety laws and regulations.

(12) Distribute antifreeze in home consumer-sized packages which are constructed of either transparent or translucent packaging materials.

(13) Disseminate any false or misleading advertisement relating to an antifreeze product. (1975, c. 719, s. 9.)

§ 106-579.10. Enforcement. — (a) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted under this Article by the Board, he may issue and enforce a written or printed "stop sale" or "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the Commissioner or the court. Copies of such orders shall also be sent by certified mail to the registrant and to the person whose name and address appears on the labeling of the antifreeze. The Commissioner shall release for distribution the lot of antifreeze so withdrawn when said provisions of this Article and applicable rules and regulations have been complied with. If compliance is not obtained within 30 days of the date of notification to the registrant and the person whose name and address appears on the label, the Commissioner may begin proceedings for condemnation.

(b) Notwithstanding the provisions of subsection (a) of this section, any lot of antifreeze not in compliance with said provisions and regulations shall be subject to seizure upon complaint of the Commissioner to the district court in the county in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this Article and its duly adopted regulations, it may then order the condemnation of said antifreeze and the same shall be disposed of in any manner consistent with the rules and regulations of the Board and the laws of the State at the expense of the claimants thereof, under the supervision of the Commissioner; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, however, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving 30 days' notice, by certified mail at his last known address, to the owner of same, if he is known

to the Commissioner, and to the registrant, if the antifreeze is registered, at the address shown on the label or on the registration certificate, so that such persons may apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this Article. When the violation can be corrected by proper labeling, processing of the product, or other action, the court, after all costs, fees and expenses incurred by the Commissioner have been paid and a good and sufficient bond, conditioned that such article shall be so corrected, has been executed, may by order direct that such article be delivered to the claimant thereof for such action as necessary to bring it into compliance with this Article and regulations under the supervision of the Commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner that the antifreeze is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(c) A copy of the analysis made by any chemist of the Department of Agriculture of any antifreeze certified to by him shall be administered as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this Article.

(d) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted by the Board, he may request, and the person whose name and address appears on the labeling or the person who is primarily responsible for the product must promptly supply to him, the distribution data for such product in this State, so as to assure that violative products are not further distributed herein and that an orderly withdrawal from distribution may be attained where necessary to protect the public interest. (1949, c. 1165; 1975, c. 719, s. 10.)

§ 106-579.11. Submission of formula. — When application for a license or permit to sell antifreeze in this State is made to the Commissioner, he may require the applicant to furnish a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Commissioner; provided, however, that the statement of formula or contents may state the content of inhibitor ingredients in generic terms if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the Commissioner with satisfactory evidence, other than by disclosure of the actual chemical names and percentages of the inhibitor ingredients, that the said antifreeze is in conformity with this Article and any rules and regulations promulgated and adopted by the Board. All statements of content, formulas or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the Commissioner. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the applicant furnishing such statements to the Commissioner; provided, however, that in emergency situations information may be revealed to physicians or to other qualified persons for use in preparation of antidotes. The disclosure of any such information, except as provided in this section, shall be a misdemeanor. (1949, c. 1165; 1975, c. 719, s. 11.)

§ 106-579.12. Violation. — (a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed as requiring the Commissioner to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a "stop sale" or "withdrawal from distribution" order, as a result of minor violations of the Article, or when he believes the public interest will best be served by suitable notice of warning in writing to the registrant or the person whose name and address appears on the labeling.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rules or regulation promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Article 33 of Chapter 143 of the General Statutes. (1949, c. 1165; 1973, c. 47, s. 2; 1975, c. 719, s. 12.)

Editor's Note. — Pursuant to Session Laws 1973, c. 47, s. 2, "district attorney" has been substituted for "solicitor" in subsection (c) of the section as enacted by Session Laws 1975, c. 719, s. 12.

§ 106-579.13. Publications. — (a) The Commission [Commissioner] may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the State Chemist during the fiscal year which have been found to be in accord with this Article and for which a license or permit for sale has been issued.

(b) The Commissioner may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Article including the nature of the charge and the disposition thereof.

(c) The Commissioner may also cause to be disseminated such information regarding antifreezes as he deems necessary in the interest of protection of the public. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigations of the Department. (1975, c. 719, s. 13.)

§ 106-579.14. Exclusive jurisdiction. — Jurisdiction in all matters pertaining to the distribution, sale and transportation of antifreeze by this Article are vested exclusively in the Board and Commissioner. (1975, c. 719, s. 15.)

ARTICLE 53.

Grain Dealers.

§ 106-611. Procedure for refusal, suspension or revocation of license.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§§ 106-616 to 106-620: Reserved for future codification purposes.

ARTICLE 54.

Adulteration of Grains.

§ 106-621. Definitions. — For purposes of this Article, the following words or terms shall mean as follows:

(1) Adulterated grain: Grain which contains any substance, such as, but not limited to, Captan, carbon tetrachloride, Malathion, Parathion, DDT, Dieldrin, Thiram, Endrin, Heptachlor, Maneb, Methoxychlor, 2, 6-dichloro, 4-nitroaniline, pentachloronitrobenzene, hexachlorobenzene, Demeton, Phorate, Carbophenothion, in excess of the tolerance for human or animal consumption established for such substance by the laws of the State or the regulations of the North Carolina Department of Agriculture, or both the State and the Department.

(2) Commissioner: North Carolina Commissioner of Agriculture.

(3) Grain: Corn, soybeans, milo, barley, oats, rye, and mixtures of them.

(4) Grain dealer: Any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor-trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange or transfers grain after obtaining title to the grain of a North Carolina producer. The term "grain dealer" shall exclude producers, groups of producers, or contract feeders buying grain for consumption in their operations.

(5) Person: Any individual, partnership, corporation, association, syndicate or other legal entity. (1975, c. 659, s. 1.)

Editor's Note. — Session Laws 1975, c. 659, s. 9, provides: "This act shall become effective on July 1, 1975; provided, however, there shall be no prosecution under the provisions hereof for any act occurring prior to September 1, 1975."

§ 106-622. Prohibited acts. — It shall be unlawful for any person to commit a prohibited act under G.S. 106-122 with adulterated grain as defined in this Article and as the particular grain qualifies as adulterated food under G.S. 106-129. (1975, c. 659, s. 2.)

§ 106-623. Penalty. — Any person violating the provisions of this Article shall be subject to the provisions of G.S. 106-123, 106-124 and 106-125. (1975, c. 659, s. 3.)

§ 106-624. Sign furnished by Commissioner. — It shall be the duty of the Commissioner to cause to be prepared and furnished for a fee of five dollars ($5.00) each to all grain dealers, as defined in this Article, in the State a sign not less than 11 x 15 inches, which sign shall contain information that it is a

violation of law for any person to sell, offer for sale or deliver adulterated grain. Said sign shall also set out the penalties for violation of this Article. Duplicate signs, and replacement for signs lost, stolen, worn or otherwise unusable, shall be purchased from the Department of Agriculture for a fee of five dollars ($5.00) per sign. (1975, c. 659, s. 4.)

§ 106-625. Posting of sign. — It shall be the duty of the owner, manager, or person in charge of the elevator, mill, warehouse or other similar structure to post in a conspicuous place, in view of the public, a sign or signs furnished to the grain dealer by the Commissioner pursuant to this Article. (1975, c. 659, s. 5.)

§ 106-626. Nonposting not a defense. — It shall not be a defense to a prosecution under this Article that the sign required to be posted by G.S. 106-625 hereof was not posted on the date of the alleged violation. (1975, c. 659, s. 6.)

§ 106-627. Determination of adulteration. — For purposes of evidence under this Article, the grain dealer or his agent, upon receipt or pending receipt of suspected adulterated grain, may, at his discretion, call any law-enforcement officer to verify the sampling technique, [and] origin of sampled grain and subsequently send or request the law-enforcement officer to send the sample of grain in a sealed package to the Department of Agriculture for inspection and analysis in order to protect only the chain of evidence.

Upon [a] finding by the Department of Agriculture that said sample is adulterated grain, the Department shall notify the grain dealer of the results and return the sample to the original sender in a sealed package. (1975, c. 659, s. 7.)

§ 106-628. Applicability of Article. — The terms of this Article shall not apply to grain sold, offered for sale or delivered for purposes of planting. (1975, c. 659, s. 8.)

Chapter 108.

Social Services.

Article 2.

Programs of Public Assistance.

Sec.
108-23. Creation of programs.

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

108-54. (Effective July 1, 1974, through June 30, 1977.) Determination of State and county financial participation.
108-54.1. (Effective July 1, 1974, through June 30, 1977.) State Public Assistance Contingency Fund.
108-55. [Repealed.]
108-56. (Effective July 1, 1974, through June 30, 1977.) Counties to levy taxes.
108-57. (Effective July 1, 1974, through June 30, 1977.) Appropriations not to revert.

Part 5. Medical Assistance.

108-60. Payments from fund.

Part 6. State-County Special Assistance for Adults.

108-64. State funds to counties.
108-65. Participation permissive.

Article 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

108-67 to 108-75. [Repealed.]

Part 1A. Licensing of Public Solicitation.

108-75.1. Short title.
108-75.2. Purpose.
108-75.3. Definitions.
108-75.4. Authority to license.
108-75.5. Committee on Charitable Organizations; creation; members; terms; selection; powers and duties; hearings; removal; compensation.
108-75.6. Application for licensing.
108-75.7. Exemptions from licensing.
108-75.8. Licensing of professional fund-raising counsel and professional solicitors.
108-75.9. Information filed to become public records.
108-75.10. Written contracts.
108-75.11. Limitation on amount of payments for solicitation activities.
108-75.12. Records to be kept by charitable organizations.
108-75.13. Publication of warning concerning certain charitable organizations.

Sec.
108-75.14. Computation of fund-raising expenses.
108-75.15. Reciprocal agreements.
108-75.16. Out-of-state enforcement proceedings.
108-75.17. Designation of Secretary of State as agent for service of process by nonresident charitable organizations, professional fund-raising counsel and professional solicitors; notice of such service by Secretary of State.
108-75.18. Denial, suspension or revocation of license.
108-75.19. Secretary to inform of decision to deny, suspend or revoke license; applicant's or licensee's right to hearing and judicial review.
108-75.20. Prohibited acts.
108-75.21. Refiling of denied or revoked license.
108-75.22. Enforcement and penalties.
108-75.23. Fees.
108-75.24. Conflicting laws.
108-75.25. Applicability to certain foundations and trusts.

Part 2. Licensing of Private Institutions.

108-77. Licensing of homes for the aged and infirm.

Article 4.

Protection of the Abused or Neglected Elderly Act.

108-91 to 108-101. [Recodified.]

Article 4A.

Protection of the Abused, Neglected, or Exploited Disabled Adult Act.

108-102. Short title.
108-103. Legislative intent and purpose.
108-104. Definitions.
108-105. Duty to report; content of report; immunity.
108-106. Duty of director upon receiving report.
108-106.1. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.
108-106.2. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.
108-106.3. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court

Sec.
authorized entry of premises; immunity of petitioner.
108-106.4. Motion in the cause.
108-106.5. Payment for essential services.
Sec.
108-106.6. Reporting abuse.
108-106.7. Funding of protective services.
108-106.8. Adoption of standards.

Article 2.

Programs of Public Assistance.

§ 108-23. Creation of programs. — The following programs of public assistance are hereby established, and shall be administered by the county departments of social services under rules and regulations adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

(3) State-county special assistance for adults;

(1975, c. 92, s. 4.)

Editor's Note. —
The 1975 amendment substituted "State-county special assistance for adults" for "General assistance" in subdivision (3).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (3) are set out.

Part 1. Aid to the Aged and Disabled.

§§ 108-29 to 108-37.1: Repealed by Session Laws 1973, c. 204, s. 1.

Editor's Note. —
Session Laws 1975, c. 48, s. 1, amends Session Laws 1973, c. 204, s. 2, to read as follows: "Sec. 2. All claims and liens created pursuant to G.S. 108-29 prior to the effective date of this act are hereby declared null and void, excepting those liens which have actually been collected by the county attorney prior to the effective date of this act." The 1973 act was ratified April 16, 1973, and the 1975 act was ratified March 13, 1975. Both acts were made effective on ratification.

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-54. (Effective July 1, 1974, through June 30, 1977.) Determination of State and county financial participation. — Before March 15 of each year the director of social services for every county shall compile and submit to the county board of social services an estimated budget of total county funds required to finance each program of public assistance, including all administrative expenses, within the county in the next fiscal year on forms furnished by the Department of Human Resources. The county board of social services shall review, modify, and approve such estimated budget and transmit it before April 1 to the board of county commissioners, which shall review, modify and approve it before April 15 for transmittal to the Department of Human Resources. The Director of the Division of Social Services, as agent for the Department of Human Resources, shall review the estimated budget submitted by each county and shall notify the board of county commissioners by June 1 of the approval or disapproval of the county's estimated budget of total county funds necessary to support and administer adequate programs of public assistance.

If the Director of the Division of Social Services approves the estimated budget submitted by the county, the county fiscal obligation for all programs of public assistance in the next fiscal year shall not exceed the approved budget estimate. Should additional funds be required for the reason that expenditures in the county public assistance programs exceed the approved estimate, the

additional county share required would be provided from the "State Public Assistance Contingency Fund" established in G.S. 108-54.1.

If the Director of the Division of Social Services disapproves the estimated budget of the county, he shall recommend an appropriate budget of total county funds necessary to sustain and administer adequate programs of public assistance whose acceptance by the board of county commissioners shall be a condition precedent to receiving any moneys from the "State Public Assistance Contingency Fund" established in G.S. 108-54.1; provided that, if the board of county commissioners disputes the budget recommended by the Director of the Division of Social Services as appropriate to sustain and administer adequate programs of public assistance within that county, the Secretary of Human Resources shall make a final determination that shall be binding upon the county.

Upon final determination of the county budget for all programs of public assistance within that county for the next fiscal year, the board of county commissioners shall levy taxes sufficient to provide for the payment of the county's share of such budget. (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1418, s. 1.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, through June 30, 1977, rewrote this section.

Effective Date and Expiration of Second 1973 Amendment. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provides: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977."

§ 108-54.1. (Effective July 1, 1974, through June 30, 1977.) State Public Assistance Contingency Fund. — (a) To allow for an efficient and equitable means of providing the funds by which a county exceeds its budget for programs of public assistance within that county during the fiscal year, the Department of Human Resources is authorized and empowered to establish from appropriations made by the General Assembly and from grants of the federal government (when such grants are made available to the State) a fund to be known as the "State Public Assistance Contingency Fund." This fund shall be used exclusively to provide additional funds for counties whose expenditures for programs of public assistance, including administration of said programs, have exceeded the accepted budget estimate.

(b) Allotments shall be made to the counties at any time during the fiscal year by the Secretary of Human Resources when satisfied of the county's need for such allotment under this Part.

(c) The allotments provided by this section shall be used by the counties entitled to them solely to supplement the funds appropriated by the county to support the budget determined pursuant to G.S. 108-54 to be necessary to sustain and administer adequate programs of public assistance within the county and only when such budget is exceeded during the fiscal year. (1973, c. 1418, s. 2.)

Effective Date and Expiration of Section. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provides: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977."

§ 108-55: Repealed by Session Laws 1973, c. 1418, s. 3, effective July 1, 1974, through June 30, 1977.

Effective Date and Expiration of Repeal. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provides: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977."

§ 108-56. (Effective July 1, 1974, through June 30, 1977.) Counties to levy taxes. — (a) Whenever the Secretary of Human Resources or his representative assigns a portion of the nonfederal share of public assistance expenses to the counties under the rules and regulations of the Social Services Commission, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(b) The board of county commissioners may combine any or all of the separate special taxes for each program of public assistance and for the administrative expenses of such programs in place of levying separate special taxes for each item. This consolidated tax shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of county income and revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance programs, and the administrative costs of each program. The appropriations and expenditures for each of the several programs and for administrative expenses shall be separately stated and accounted for. (1937, c. 288, ss. 9, 39; 1969, c. 546, s. 1; 1971, c. 780, s. 35; 1973, c. 476, s. 138; c. 1418, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, through June 30, 1977, inserted "or his representative" in subsection (a) and rewrote subsection (b).

Effective Date and Expiration of Second 1973 Amendment. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provides: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977."

§ 108-57. (Effective July 1, 1974, through June 30, 1977.) Appropriations not to revert. — County appropriations for public assistance expenses or administrative expenses shall not lapse or revert, and the unexpended balances may be considered in making further public assistance or administrative appropriations. At any time during the fiscal year, any county may transfer county funds from one public assistance program to another and between programs of public assistance and administration if such action appears to be both necessary and feasible, provided the county secures the approval of the Secretary of Human Resources or his representative. (1953, c. 891; 1967, c. 554; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1418, s. 5.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, through June 30, 1977, substituted "administrative expenses" for "administration" in the first sentence and inserted "and between programs of public assistance and administration" near the middle of the second sentence and added "or his representative" at the end of the second sentence.

Effective Date and Expiration of Second 1973 Amendment. — Session Laws 1973, c. 1418, s. 6, as amended by Session Laws 1975, c. 894, s. 1, provides: "This act shall become effective on July 1, 1974, and shall remain effective through June 30, 1977."

Part 5. Medical Assistance.

§ 108-60. Payments from fund. — From the fund established in G.S. 108-59, the Social Services Commission may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments from the fund shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Social Services Commission. Payments may also be made from the fund to such fiscal intermediaries and to such prepaid health service contractors as may be authorized by the Social Services Commission. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1971, c. 435; 1973, c. 476, s. 138; c. 644; 1975, c. 123, ss. 1, 2.)

Editor's Note. —
The 1975 amendment inserted "health-related" preceding "services" near the end of the second sentence and added the third sentence.
Session Laws 1975, c. 123, ss. 3 and 4, provide:
"Sec. 3. All contracts entered into under the provisions of this act shall be subject to the approval of the Advisory Budget Commission.
"Sec. 4. This act shall become effective upon ratification, and shall expire on July 1, 1977."
The act was ratified April 10, 1975.

Part 6. State-County Special Assistance for Adults.

§ 108-64. State funds to counties. — (a) A fund, to be known as the "State-County Special Assistance for Adults Fund," shall be created from appropriations made by the General Assembly and from grants of the federal government (when such grants are made available to the State). This fund shall be used exclusively for assistance to needy persons eligible under this Part. (1975, c. 92, s. 2.)

Editor's Note. —
The 1975 amendment substituted "State-County Special Assistance for Adults Fund" for "State General Assistance Fund" in the first sentence of subsection (a).
As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 108-65. Participation permissive. — The State-county special assistance for adults program established by this Part shall be administered as required by the rules and regulations of the Social Services Commission, except that no county shall be granted any allotment from the State-County Special Assistance for Adults Fund nor be subject to the provisions of this Part unless its consent be given in the manner prescribed by the rules and regulations of the Social Services Commission. (1949, c. 1038, s. 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 6; 1975, c. 92, s. 3.)

Editor's Note. —
The 1975 amendment substituted "State-county special assistance for adults program" for "general assistance program" and "State-County Special Assistance for Adults Fund" for "State General Assistance Fund."

ARTICLE 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

§§ 108-67 to 108-75: Repealed by Session Laws 1975, c. 747, effective October 1, 1975.

Cross Reference. — As to present provisions on licensing of public solicitation, see § 108-75.1 et seq.

Part 1A. Licensing of Public Solicitation.

§ 108-75.1. Short title. — This Part shall be known and may be cited as the "Solicitation of Charitable Funds Act." (1975, c. 747, s. 1.)

Editor's Note. — Session Laws 1975, c. 747, effective Oct. 1, 1975, repealed Part 1 of this Article and enacted this Part 1A. No attempt has been made to point out the changes made by the act, but, where appropriate, the historical citations to the sections of the repealed Part have been added to corresponding sections of the new Part.

Session Laws 1975, c. 747, s. 3, contains a severability clause.

§ 108-75.2. Purpose. — It is the purpose of this Part to protect the general public and public charity in the State of North Carolina; to require full public disclosure of facts relating to persons and organizations who solicit funds from the public for charitable purposes, the purposes for which such funds are solicited, and their actual uses; and to prevent deceptive and dishonest statements and conduct in the solicitations of funds for or in the name of charity. (1975, c. 747, s. 1.)

§ 108-75.3. Definitions. — Unless a different meaning is required by the context, the following terms as used in this Part shall have the meanings hereinafter respectively ascribed to them:

(1) "Charitable organization" shall mean any person which is or holds itself out to be organized or operated for any charitable purpose or any person which solicits or obtains contributions solicited from the public for charitable purposes after October 1, 1975. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the State for a charitable organization which has its principal place of business outside the State shall be a charitable organization for the purposes of this Part.

(2) "Charitable purpose" shall mean any charitable, benevolent, religious, philanthropic, environmental, public or social advocacy or eleemosynary purpose for religion, health, education, social welfare, art and humanities, civic and public interest.

(3) "Commission" shall mean the North Carolina Social Services Commission.

(4) "Committee" shall mean the Committee on Charitable Organizations.

(5) "Compensation" shall mean salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(6) "Contribution" shall mean any promise, gift, bequest, devise or other grant for consideration or otherwise, of any money or property of any kind or value, including the promise to pay, which contribution is wholly or partly induced by a solicitation. The term "contribution" shall not include payments by members of an organization for membership fees, dues, fines or assessments, or for services rendered to individual

members, if membership in such organization confers a bona fide right, privilege, professional standing, honor or other direct benefit, other than the right to vote, elect officers, or hold offices; nor any money, credit, financial assistance or property received from any governmental authority; nor any donation of blood or any gift made pursuant to the Uniform Anatomical Gift Act. Reference to dollar amounts of "contributions" or "solicitations" in this Part means, in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights, and not merely that portion of the purchase price to be applied to a charitable purpose.

(7) The words "corporation," "association" and "institution" shall mean any aggregation of individuals, whether two or more, working for a common purpose in their community or their State in the interest of religious societies, fraternal organizations, local councils of boy and girl organizations, and clubs, hospitals, Community Chest, Red Cross and all other charitable enterprises.

(8) "Department" shall mean the North Carolina Department of Human Resources.

(9) "Direct gift" shall mean and include an outright contribution of food, clothing, money, credit, property, financial assistance or other thing of value to be used for a charitable or religious purpose and for which the donor receives no consideration or thing of value in return.

(10) "Federated fund-raising organization" shall mean a federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund, United Way or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(11) "Fund-raising expenses" shall mean the expenses of all activities that constitute or are an integral and inseparable part of a solicitation.

(12) "Membership" shall mean a status applied upon condition of the payment of fees, dues, assessments, etc., in an organization which provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(13) "Parent organization" shall mean that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates in the State.

(14) "Person" shall mean any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any other group or combination acting as a unit. This definition shall not be deemed to include any authorized individual who solicits solely on behalf of a licensed or exempt charitable organization.

(15) "Professional fund-raising counsel" shall mean any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the State, or the bona fide salaried officer or employee of a

parent organization certified as tax exempt shall not be deemed to be a professional fund-raising counsel.

(16) "Professional solicitor" shall mean any person who, for a financial or other consideration, solicits contributions for or on behalf of a charitable organization, whether such solicitation is performed personally or through its agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person; or a person who plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this Part. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the State or the bona fide salaried officer or employee of a parent organization certified as tax exempt shall not be deemed to be a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, shall be deemed, as the result of such advice, to be a professional fund-raising counsel or a professional solicitor.

(17) "Religious purposes" shall mean maintaining or propagating religion or supporting public religious services, according to the rites of a particular denomination.

(18) "Sale and benefit affair" shall mean and include, but not be limited to, athletic or sports event, bazaar, benefit, campaign, circus, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, social gathering, theater, or variety show which the public is requested to patronize or attend or to which the public is requested to make a contribution for any charitable or religious purpose connected therewith.

(19) The words "sale," "sell" and "sold" shall mean the transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

(20) "Secretary" shall mean the Secretary of the North Carolina Department of Human Resources.

(21) "Secular" shall mean relating to the affairs of the present world, including but not limited to providing food, clothing, counseling, education, disaster relief, medical assistance, training and shelter.

(22) The words "solicit" and "solicitation" shall mean the request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including without limitation, the following methods of requesting such contribution:

a. Any oral or written request;

b. Any announcement to the press, over the radio or television or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

c. The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support;

d. The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in

connection with which any appeal is made for any charitable purpose; or where the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale; or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

Solicitation as defined herein, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution. (1969, c. 546, s. 1; 1975, c. 747, s. 1.)

§ 108-75.4. Authority to license. — (a) The Department is hereby authorized and directed to issue licenses to charitable organizations, professional fund-raising counsel and professional solicitors for soliciting in accordance with the provisions of this Part and the standards, rules and regulations promulgated by the Commission under the authority of this Part and under the authority of G.S. 143B-153.

(b) Each license shall be valid throughout the State for a period of one year or less from the date of issue and may be renewed for additional one-year periods or less upon written application to the Department under oath or affirmation in the form prescribed by the Commission and the payment of the fee prescribed herein. (1975, c. 747, s. 1.)

§ 108-75.5. Committee on Charitable Organizations; creation; members; terms; selection; powers and duties; hearings; removal; compensation. — (a) There is hereby created a Committee on Charitable Organizations which shall consist of the Secretary and seven citizens of the State, none of whom shall be a State employee, and who shall be appointed by the Governor. Four appointees shall be representative of the public solicited and the various categories of charitable persons for whom solicitations are made, and shall be selected from no more than 20 names submitted to the Governor by the following organizations:

(1) The managing heads of the better business bureaus in the State;
(2) The North Carolina Association of C.P.A.'s;
(3) The North Carolina League of Municipalities; and
(4) The North Carolina Bar Association.

Three appointees shall represent licensed charitable organizations, shall be either a full-time staff member or an unpaid volunteer or officer of a licensed charitable organization, and shall be selected from no more than 15 names submitted to the Governor by the following organizations:

(5) The local and State United Way organizations of North Carolina;
(6) The North Carolina Child Care Association; and
(7) The North Carolina National Health Agencies Committee.

None of these organizations shall nominate more than five names and no more than one nominee shall be selected from the names submitted by any one organization.

(b) The Governor shall designate one citizen member as chairman. Each citizen member shall serve a four-year term, except that the initial appointments of citizen members shall be as follows: three for two years, two for three years, and two for four years. In making the initial appointments for the two-year term, the Governor shall select two members from the names submitted pursuant to G.S. 108-75.5(a)(1) through (4) and one member from the names submitted pursuant to G.S. 108-75.5(a)(5) through (7); the Governor shall select the initial appointees for the three and four-year terms so as to respectively provide for one appointee from the names submitted pursuant to G.S. 108-75.5(a)(1) through (4) and one appointee from the names submitted pursuant to G.S. 108-75.5(a)(5)

through (7). At the expiration of their respective terms, citizen members shall be replaced or reappointed in the same manner as provided for in the original appointments for terms of four years. Any vacancy occurring before the expiration of a term shall be filled in the same manner as provided for in the original appointment and the appointee shall serve the balance of the unexpired term.

(c) The Committee shall have the power and the duty to recommend to the Commission rules, regulations and procedures for the licensing and regulation of charitable organizations, professional fund-raising counsel and professional solicitors. The rules and regulations shall take into consideration the existence of an adequate, responsible and functioning governing board of the charitable organization, professional fund-raising counsel or professional solicitor; its chartered responsibility; its need to conduct public solicitation; the proposed uses of solicited funds; the percentage of solicited funds used for management and fund-raising expenses, fund-raising activities, including but not limited to sale and benefit affairs and program services; the accountability of the charitable organization, professional fund-raising counsel or professional solicitor and disclosure of information and financial reports to the general public; and other matters proper for the protection of the public interest with respect to public solicitation. The Committee shall also recommend to the Commission the forms for license application and other forms required by this Part. After due notice, a hearing shall be arranged by the Committee with representatives of charitable organizations, professional fund-raising counsel and professional solicitors, and an opportunity for all such to be heard to make effective such recommendations of standards, rules, regulations, forms and procedures by the Committee to the Commission.

(d) The Committee shall meet semiannually and at such other times as called by the chairman of the Committee.

(e) The Governor shall have the power to remove any citizen member from the Committee for misfeasance, malfeasance or nonfeasance in accordance with G.S. 143B-13.

(f) The citizen members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(g) All clerical and other services required by the Committee shall be supplied by the Secretary. The Committee shall give to the public full information from time to time about its activities and shall publish an annual report analyzing the effectiveness of its recommendations and the activities of persons subject to this Part. (1975, c. 747, s. 1.)

§ 108-75.6. Application for licensing. — (a) Every charitable organization, except as otherwise provided in this Part, which intends to solicit contributions within the State or have funds solicited on its behalf, shall, prior to any solicitation, file an application with the Department upon forms prescribed by the Commission for a license to solicit. It shall be the duty of the president, chairman, or principal officer of the charitable organization to make such application and file such reports as are required by this Part. Such statements shall contain the following information:

(1) The name of the organization and the purpose for which it was organized.
(2) The principal street address and the mailing address, if different, of the organization, and the addresses of any offices maintained by the organization in this State. If the organization does not maintain an office, the name and address of the person having custody of its financial records within the State.

(3) The names and addresses of any chapters, branches or affiliates in this State and organizations elsewhere that share in contributions raised in this State.
(4) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code. In the initial application it is required that true copies be submitted of either the articles of incorporation or Constitution plus all amendments; a proposed program of activities for the applicant's current fiscal year; the bylaws and all approved changes; a copy of the tax-exempt status letter from the Internal Revenue Service including the letter of determination status and the agreements of affiliation, if applicable. Future applications require only notice of any changes in or revocations of these documents.
(5) The names, addresses and occupations of the officers, directors, trustees and key personnel. The term "key personnel" means: any officers, employees, or other personnel who are directly in charge of any of the fund-raising activities of the charitable organization; any officers or individuals maintaining custody of the organization's financial records; and any officers or individuals who will have custody of the contributions.
(6) A copy of the balance sheet and income and expense statement audited by an independent certified public accountant for the organization's immediately preceding fiscal year, or a copy of a financial statement audited by an independent certified public accountant covering, in a consolidated report, complete information as to all of the preceding year's fund-raising activities of the charitable organization, showing the balance sheet, kind and amounts of funds raised, costs and expenses incidental thereto, allocation or disbursement of funds raised, changes in fund balances, notes to the audit and the opinion as to the fairness of the presentation by the accountant. This report shall conform to the accounting and reporting procedures set forth in the "Audit Guides" published by the American Institute of Certified Public Accountants, and as may be modified from time to time by said Institute or its successor: Provided that the Commission shall adopt rules and regulations for simplified reporting by organizations that do not raise or receive contributions totalling more than fifteen thousand dollars ($15,000) in gross receipts for said preceding fiscal year.
(7) A statement indicating whether the organization is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raising counsel or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.
(8) A statement indicating whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.
(9) The location of the organization's financial records in the State.
(10) Methods by which solicitation will be made, including a statement as to whether such solicitation is to be conducted by voluntary unpaid solicitors, by professional solicitors, or both; and a narrative description of the promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and the location of all telephone solicitation facilities.
(11) The names and addresses of any professional fund-raising counsel and professional solicitors who are acting or who have agreed to act on behalf of the organization together with a statement setting forth the

terms of the arrangements for salaries, bonuses, commissions, or other remuneration to be paid the professional fund-raising counsel and professional solicitors.

(12) The period of time during which the solicitations will be made and if less than statewide, the area or areas in which such solicitation will generally take place.

(13) The purposes for which contributions to be solicited will be used, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom.

(14) The name or names under which the organization intends to solicit contributions.

(15) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.

(16) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.

(17) A sample copy of the authorization issued by the organization to individuals soliciting by means of personal contact in its behalf. Each individual solicitor shall receive instructions that said authorization is to be shown at the request of any person, law-enforcement officer or agent of the Department.

(18) Such other information as may be reasonably required by the Commission for the public interest or for the protection of contributors.

(b) If there is any change in fact, policy or procedure that would alter the information given in any license application, the applicant or licensee shall notify the Secretary in writing thereof within five days, excluding Saturdays, Sundays and legal holidays after such change.

(c) The Secretary or his designee shall examine each initial application of a charitable organization for the right to solicit funds and each renewal application of a charitable organization for the right to solicit funds, and if found to be in conformity with the requirements of this Part and all relevant rules and regulations promulgated by the Commission, it shall be approved for licensing.

(d) The license application forms and any other documents prescribed by the Commission shall be signed by an authorized officer or by an independent certified public accountant, and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(e) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, shall separately report the information required by this section or report the information to its parent organization, which shall then furnish such information as to itself and all of its State chapters, branches or affiliates in a consolidated form. All affiliated organizations included in a consolidated license application shall be considered as one charitable organization for all purposes of this Part. If a consolidated license application is filed, all applications thereafter filed shall be upon the same basis unless permission to change is granted by the Secretary.

(f) Each federated fund-raising organization shall report the information required by this section in a consolidated form. Any federated fund-raising organization may elect to exclude from its consolidated application information relating to the separate fund-raising activities of any of its independent member agencies. No member agency of a federated fund-raising organization shall be required to report separately any information contained in such a consolidated application: Provided, however, that any separate solicitations campaign conducted by, or on behalf of, any such member agency shall nevertheless be subject to all other provisions of this Part and the rules and regulations promulgated by the Commission.

(g) Both the chapter, branch or affiliate soliciting in this State as well as the parent organization which has its principal place of business outside of the State

shall be subject to all of the provisions of this Part and the rules and regulations adopted by the Commission.

(h) Upon receipt of a request from the Secretary or upon its own initiative, the Commission shall make or cause to be made such investigation of any applicant as it may deem necessary. As a result of its investigation and action, the Commission shall certify to the Secretary its recommendation for approval or disapproval of the application. No applicant shall be approved if one or more of the following facts is found to exist:

(1) That one or more of the statements in the application are not true.

(2) That the applicant is or has engaged in a fraudulent transaction or enterprise.

(3) That a solicitation would be a fraud upon the public.

(4) That solicitation and fund-raising expenses (including not only payments to professional solicitors, but also payments to professional fund-raising counsel, and internal fund-raising and solicitation salaries and expenses) during the year immediately preceding the date of application have exceeded, or for the specific year in which the application is submitted will exceed, thirty-five percent (35%) of the total moneys, pledges, or other property raised or received or to be raised or received by reason of any solicitation and/or fund-raising activities or campaigns. As used in this subdivision and in G.S. 108-75.23, the term "internal fund-raising and solicitation salaries and expenses" shall include, but not be limited to, such portions of the charitable organization's salary and overhead expenses as is fairly allocable (on a time or other appropriate basis) to its solicitation and/or fund-raising expense. In the event special facts or circumstances are presented showing that expenses higher than thirty-five percent (35%) were not or will not be unreasonable, the Commission has the discretion to allow such higher expense.

(i) A charitable organization which plans no solicitation of contributions in the State upon the expiration of its current license shall file a financial report within 90 days of the expiration date of the current license period.

(j) Newly created charitable organizations with no financial history may be granted a license if, in the judgment of the Secretary, all requirements for licensing except that of the financial report are satisfied. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 747, s. 1.)

§ 108-75.7. Exemptions from licensing. — (a) The following persons shall be exempt from the licensing provisions of this Part:

(1) A corporation sole or other religious corporation, trust, or organization incorporated or established for religious purposes, or other religious organizations which serve religion by the preservation of religious rights and freedom from persecution or prejudice or by the fostering of religion, including the moral and ethical aspects of a particular religious faith: Provided, however, that such corporation sole or other religious corporation, trust or organization established for religious purposes shall not be exempt from filing a license application with respect to secular activities: Provided further, however, that no part of the net income of which inures to the benefit of any individual and that the organization had received a declaration of current tax-exempt status as a religious organization from the government of the United States.

(2) Educational institutions, the curricula of which in whole or part are registered, approved or accredited by either the State Department of Public Education, the University of North Carolina Board of Governors, the Southern Association of Colleges and Schools or an equivalent regional accrediting body; any foundation or department having an

established identity with any of the aforementioned educational institutions; and any other educational institution confining its solicitation to its student body, alumni, faculty, staff and trustees, and their families; or a library established under the laws of this State.

(3) Charitable organizations which do not intend to solicit and receive during a calendar year, and have not actually raised or received during any of the next preceding calendar years, contributions from the public in excess of two thousand dollars ($2,000) or which do not receive contributions from more than 10 persons during a calendar year: Provided that all of their functions, including fund-raising activities, must be carried on by persons who are unpaid for their services and no part of their assets or income shall inure to the benefit of or be paid to any officer or member: Provided further, that if the contributions raised from the public, whether all of such is or is not received by the charitable organization during any calendar year, shall be in excess of two thousand dollars ($2,000), it shall, within 30 days after the date the contributions reach two thousand dollars ($2,000), file an application for licensing by and report to the Department as required by this Part.

(4) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when:

a. The solicitation is managed and conducted solely by persons who are unpaid for such services;

b. The contributions collected do not exceed two thousand dollars ($2,000) in any six-month period; and

c. All of the contributions collected, without any deductions whatsoever except for the actual cost of a sale and benefit affair are turned over to the named individual beneficiary for his use.

(5) Organizations which solicit only within the membership of the organization by the members thereof.

(6) Any organization established solely to operate a hospital licensed pursuant to Article 13A of Chapter 131 of the General Statutes by the North Carolina Division of Facility Services: Provided, however, that the governing board of the hospital authorizes the solicitation and receives an accounting of funds collected and expended.

(7) A local post, camp, chapter, or similarly designated element, or a county unit of such elements, of a bona fide veteran's organization which issues charters to such local elements throughout this State; a bona fide organization of volunteer firemen; a bona fide ambulance or rescue squad association; fraternal beneficiary societies, orders or associations operating under the lodge system; or bona fide auxiliaries or affiliates of such organizations: Provided that all of the fund-raising activities are carried on by members of such organizations or of auxiliaries or affiliates thereof, and such members receive no compensation directly or indirectly therefor.

(8) Any nonprofit community club, civic club, garden club, or other similar civic group organized and in existence for more than two years, with no capital stock or salaried executive employees, officers, members or agents, with at least 10 members with annual dues collected of not less than five dollars ($5.00) per member, in which all of the funds collected, less reasonable expenses, are disbursed pursuant to the directions of the membership or the board of directors, and with the membership being furnished at least one written report each year by the directors as to its charitable activities.

(b) Any exempt charitable organization shall lose such exemption when it employs a professional fund-raising counsel or a professional solicitor.

(c) Nothing in this Part shall require licensing of or application for licensing by radio and television stations or legal newspapers, or their employees acting within the scope of their employment, which solicit contributions from the public on behalf of a person exempt from this Part under the provisions of G.S. 108-75.7, nor shall any such station, newspaper or employee thereof be considered a charitable organization, professional fund-raising counsel or professional solicitor. (1939, c. 144, s. 2a; 1947, c. 572; 1963, c. 110; 1965, c. 990; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 747, s. 1.)

§ 108-75.8. Licensing of professional fund-raising counsel and professional solicitors. — (a) No person shall act as a professional fund-raising counsel or professional solicitor for any charitable organization subject to the provisions of this Part unless he has first applied for and received a license from the Department. Applications for such licensing shall be in writing and verified under oath or affirmation in the form prescribed by the Commission, and shall contain such reasonable information as the Commission shall require about the identity and previous related activities of the applicant as may be necessary or appropriate for the public interest or for the protection of contributors. No person convicted of a felony in this or any other state shall be eligible for a license from the Department or shall serve as an employee, member, officer or agent of any professional fund-raising counsel or professional solicitor until his civil rights have been restored.

(b) An individual, partnership, unincorporated association or corporation, which is a professional fund-raising counsel or professional solicitor, may apply for a license for and pay a single fee on behalf of all of its employees, officers, members and agents. The names and addresses of all employees, officers, members and agents of all professional fund-raising counsel and professional solicitors or any other persons employed to work under the direction of a professional fund-raising counsel or professional solicitor must be listed in the application. The Department shall be notified in writing within two working days of any personnel changes concerning the employees, members, officers or agents of such professional fund-raising counsel or professional solicitor.

(c) The applicant shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of five thousand dollars ($5,000) with one or more sureties, satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The bond shall run to the State for the use of said bond for any penalties and to any person who may have a cause of action against the obligor of the bond for any losses from malfeasance, misfeasance, or nonfeasance in the obligor's conduct of any and all activities subject to this Part or arising out of a violation of this Part or any rule or regulation of the Commission. An individual, partnership, unincorporated association or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all of its employees, officers, members and agents.

(d) The Secretary or his designee shall examine each application, and if he finds the application to be in conformity and that the applicant has complied with the requirements of this Part and all rules and regulations of the Commission, he shall approve the granting of a license. (1939, c. 144, s. 2; 1947, c. 572; 1969, c. 546, s. 1; 1975, c. 747, s. 1.)

§ 108-75.9. Information filed to become public records. — All license applications, reports, professional fund-raising counsel and professional solicitor contracts and all other documents and information required to be filed under this Part or the rules and regulations of the Commission, shall become public records in the office of the Secretary, and shall be open to the general public for inspection at such time and under such conditions as the Secretary may prescribe. In addition, the Department shall, within 10 days after approval or renewal, send a list of licensees under this Part to the clerk of superior court in each county who shall file but not record said lists. (1975, c. 747, s. 1.)

§ 108-75.10. Written contracts. — (a) Every contract or agreement between a professional fund-raising counsel and a charitable organization shall be in writing and shall be filed with the Department within 10 days after such written contract or agreement is entered into.

(b) Every contract, or a written statement of the nature of the arrangement to prevail in the absence of a contract, between a professional solicitor and a charitable organization shall be filed with the Department within 10 days after such contract or arrangement is entered into. If the Secretary or his designee concludes that such a contract or arrangement does not provide for compensation on a percentage basis, the Secretary shall examine the contract or arrangement to ascertain whether the compensation to be paid in such circumstances is likely to exceed fifteen percent (15%) of the total moneys, pledges or other property raised or received as a result of the contract or arrangement. If the reasonable probabilities are that the compensation will exceed fifteen percent (15%) of the total moneys, pledges or other property, the Secretary shall request the parties to provide satisfactory explanation and may, if not satisfied, request renegotiation of the arrangement upon terms acceptable to him. In the event this is not done within 10 days, the Secretary may disapprove the contract or arrangement.

(c) No licensed charitable organization or professional solicitor shall carry out or execute a disapproved contract, receive or perform services, or receive or make payments pursuant to a disapproved contract. (1975, c. 747, s. 1.)

§ 108-75.11. Limitation on amount of payments for solicitation activities. — (a) No charitable organization shall pay or agree to pay to a professional solicitor or his agents, servants or employees in the aggregate, including reimbursement for expenses incurred, a total amount in excess of fifteen percent (15%) of the gross amount of moneys, pledges or other property raised or received by it as a result of his or their solicitation activities or campaigns.

(b) For purposes of this section, the payments to the professional solicitor shall not include the purchase price to the charitable organization of any tangible personal property or services which are resold by the organization as a part of its fund-raising activities, but the amount so expended by the organization shall be deducted from the gross amount collected by it, or the organization's support received directly from the public, before the computation of the percentage limitation. (1975, c. 747, s. 1.)

§ 108-75.12. Records to be kept by charitable organizations. — Every charitable organization subject to the provisions of this Part shall, in accordance with the rules and regulations promulgated by the Commission, keep true fiscal records as to its activities in this State as may be covered by the provisions of this Part for all fiscal years beginning on and after October 1, 1975, in conformity with the generally accepted principles set out in the "Audit Guides" published by the American Institute of Certified Public Accountants, and as may be modified from time to time by said Institute or its successor. Such records shall be retained for a period of at least three years after the end of the period of licensing to which they relate. Upon demand, such records shall be made

available to the Department, the Commission or the Attorney General for inspection. (1975, c. 747, s. 1.)

§ 108-75.13. Publication of warning concerning certain charitable organizations. — If the Secretary shall determine that any charitable organization not licensed by the Department and not exempt from licensing, irrespective of whether such organization is subject to the jurisdiction of this State, is directly or indirectly soliciting in this State by any means, including without limitation, telephone or telegraph, direct mail or advertising in national media, after 10 days' written notice mailed to the charitable organization, he may cause to be printed in one or more newspapers published in this State a notice in substantially the following form: "WARNING — UNLICENSED CHARITABLE SOLICITATION. The organization named below has solicited contributions from North Carolina citizens for allegedly charitable purposes. It has not been licensed by the State Department of Human Resources as required by law. Contributors are cautioned that their contributions to such organization may be used for noncharitable purposes." (1975, c. 747, s. 1.)

§ 108-75.14. Computation of fund-raising expenses. — Each charitable organization shall, as a part of its license application, compute the percentage which its fund-raising expenses for its preceding fiscal year bore to the support received directly from the public during such year. (1975, c. 747, s. 1.)

§ 108-75.15. Reciprocal agreements. — (a) The Department may enter into reciprocal agreements with the appropriate authority of any other state or with the Internal Revenue Service for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements, the Department may accept information filed by a charitable organization, professional fund-raising counsel or professional solicitor with the appropriate authority of another state or with the Internal Revenue Service in lieu of the information required to be filed in accordance with the provisions of this Part and the rules and regulations of the Commission, if such information is substantially similar to the information required under this Part and the rules and regulations of the Commission.

(b) The Department may also grant exemption from the requirement of filing an annual license application to charitable organizations organized under the laws of another state, having their principal place of business in such other state, having funds derived principally from sources outside this State, and having been granted exemption from the filing of license applications or registration statements by such other state, if such state has a statute similar in substance to the provisions of this Part and participates in a reciprocal agreement pursuant to this section. (1975, c. 747, s. 1.)

§ 108-75.16. Out-of-state enforcement proceedings. — Any state of the United States shall have the right to sue in the courts of this State to enforce the civil provisions of any statute thereof, general in application, regulating charitable solicitations, when the like right is accorded this State by such state, whether such right is granted by statutory authority or as a matter of comity. (1975, c. 747, s. 1.)

§ 108-75.17. Designation of Secretary of State as agent for service of process by nonresident charitable organizations, professional fund-raising counsel and professional solicitors; notice of such service by Secretary of State. — (a) Any charitable organization, professional fund-raising counsel or professional solicitor having his or its principal place of business without the State, or which is organized under and by virtue of the laws of a foreign state, and which solicits contributions from people in this State, shall be subject to the provisions of this Part and shall be deemed to have irrevocably appointed the

Secretary of State as an agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel or professional solicitor or any partner, principal officer or director thereof in any action or proceeding.

(b) Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof at the office of the Secretary of State, and such service shall be sufficient service: Provided, that notice of such service and a copy of such process are sent by the Secretary of State to such charitable organization, professional fund-raising counsel or professional solicitor by registered or certified mail with return receipt requested, at the address set forth in the application form required to be filed with the Department pursuant to this Part or, in default of the filing of such form, at the last address known to the Secretary of State. Service of such process shall be complete 10 days after the receipt by the Secretary of State of a return receipt purporting to be signed by the addressee or a person qualified to receive such registered or certified mail, in accordance with the rules and customs of the United States Postal Service, or after the return to the Secretary of State of the original envelope bearing a notation by the postal authorities that receipt thereof was refused. (1975, c. 747, s. 1.)

§ 108-75.18. Denial, suspension or revocation of license. — The Secretary shall revoke, suspend or deny issuance of a license to a charitable organization, professional fund-raising counsel or professional solicitor at any time upon a finding that:

(1) An unreasonable percentage of the contributions solicited, or to be solicited, is not applied, or will not be applied to a charitable purpose.
(2) The contributions solicited, or to be solicited, are not applied, or will not be applied to the purpose or purposes as represented in the license application.
(3) The applicant or licensee has failed to comply with any of the provisions of this Part, or with any rules and regulations adopted by the Commission pursuant to this Part. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 747, s. 1.)

§ 108-75.19. Secretary to inform of decision to deny, suspend or revoke license; applicant's or licensee's right to hearing and judicial review. — (a) The Secretary shall inform the applicant or licensee of the decision to deny, suspend or revoke the license by registered or certified mail with return receipt requested and directed to the address shown in the license application. The notification shall contain a statement of the reason or reasons for the action being taken citing appropriate statutes, rules or regulations. The notice shall also advise the applicant or licensee of his right to appeal the decision and furnish the name and address of the chairman of the Commission, to whom the request for a hearing shall be sent.

(b) Any applicant or licensee who shall be aggrieved by any denial, suspension or revocation of a license by order of the Secretary may, within 20 days from the date of such order, denial, suspension or revocation, request a hearing before the Commission, which hearing shall be held within 20 days of the date of the request, unless the applicant or licensee requests a longer period in writing. The Commission shall, within 15 days of the termination of such hearing, render a final decision which it deems to be just and equitable and shall inform the applicant or licensee in writing of said final decision by registered or certified mail with return receipt requested.

(c) The Commission shall have the power to subpoena witnesses, administer oaths and compel the production of necessary records and documents.

(d) Any person who is aggrieved by a final decision of the Commission in a contested case is entitled to judicial review of such final decision. In order to

obtain judicial review the person seeking review must file a petition in the Superior Court of Wake County, which petition may be filed at any time after final decision but no later than 30 days after a written copy of the decision is received by the person seeking the review. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this Part, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the Commission's decision under this Part notwithstanding such waiver. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 747, s. 1.)

§ 108-75.20. Prohibited acts. — (a) No charitable organization, professional fund-raising counsel or professional solicitor shall use or exploit the fact of licensing so as to lead the public to believe that such licensing in any manner constitutes an endorsement or approval by the State: Provided, however, that the use of the following statement shall not be deemed a prohibited exploitation, "Licensed to solicit in North Carolina by the Department of Human Resources as required by law. Licensing does not imply endorsement of a public solicitation for contributions."

(b) No person shall, in connection with the solicitation of contributions for or the sale of tangible personal property or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if he has reason to believe such is not the fact.

(c) No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services for charitable purposes, misrepresent to or lead anyone by any manner, means, practice or device whatsoever to believe that any other person sponsors or endorses such solicitation of contributions, sale of tangible personal property or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith, unless such other person has given written consent to the use of his name for these purposes: Provided that any member of the board of directors or trustees of a charitable organization, any officer or employee thereof, or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in the campaign. Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership, or for the purpose of reporting contributions to contributors.

(d) No person shall make any representation that he is soliciting contributions for or on behalf of a charitable organization or shall use or display any symbol, emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(e) No person shall denominate any membership fee or purchase price of tangible personal property or services sold, as a contribution or as a donation or in any other manner represent or imply that the member or the purchaser of such tangible personal property or services will be entitled to an income tax deduction for his cost or any portion thereof unless (i) there shall have been first obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible, or (ii) the member or purchaser is informed in writing that such cost may not be deductible; nor shall any charitable organization, other than an organization exempt under G.S. 108-75.7(a)(3), represent or imply that a contributor thereto will be entitled to an

income tax deduction for his contribution unless there shall have been first obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be so deductible.

(f) No professional solicitor shall solicit in the name of or on behalf of any charitable organization unless such solicitor has:

(1) Written authorization of two officers of such organization, a copy of which shall be filed with the Secretary. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.

(2) Such authorization with him when making solicitations, which shall be exhibited on request to persons solicited, or law-enforcement officers, or agents of the Department.

(g) No charitable organization shall accept any contribution exceeding five dollars ($5.00) in cash or tangible property without providing on request of the donor a written receipt acknowledging such contribution and personally signed by the person accepting such contribution.

(h) No person, and no organization of which such person is an officer, professional fund-raising counsel or professional solicitor, shall solicit within the State if:

(1) Such person has been convicted in any jurisdiction of any felony unless his civil rights have been restored; or

(2) Such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the Secretary shall first determine in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within this State.

(i) No person shall solicit within this State for the benefit of any other person located without the State, if such other person refuses to supply any information which the Secretary deems necessary to assure himself that the provisions of this Part and the rules and regulations of the Commission are complied with. A solicitation shall be deemed to be on behalf of every person who or which receives, directly or indirectly, more than ten percent (10%) of the gross amount collected. (1975, c. 747, s. 1.)

§ 108-75.21. Refiling of denied or revoked license. — (a) When a license has been denied, suspended or revoked, a charitable organization may file another license application for the purpose of soliciting contributions within the State of North Carolina for the next fiscal year, provided it submits to the Secretary the following:

(1) Written assurance that the subject matter of the denial, suspension or revocation of the license and the reasons therefor have been submitted to [the] governing board of the charitable organization and placed on the agenda for consideration at its next meeting;

(2) An extract of the minutes of such meeting covering this subject matter and a statement listing all corrective measures that shall be taken in order to ensure compliance with the order or decision of the Secretary, which measures have been agreed to by the charitable organization's board; and

(3) A letter signed by the principal officer of the charitable organization transmitting the extract of the minutes cited in subdivision (2) of this subsection and indicating a willingness to attend a hearing for the purpose of providing any further information regarding the charitable organization's operations or programs.

(b) Any professional fund-raising counsel or professional solicitor whose application has been denied or whose license has been suspended or revoked may file another license application for the next fiscal year, provided he submits to the Secretary the following:

(1) A written statement listing all corrective measures that shall be taken in order to ensure compliance with the order or decision of the Secretary, and
(2) A letter signed by the professional fund-raising counsel or professional solicitor which states that he is willing to attend a hearing for the purpose of providing any further information regarding his operations or programs. (1975, c. 747, s. 1.)

§ 108-75.22. Enforcement and penalties. — (a) If any charitable organization, professional fund-raising counsel or professional solicitor fails to file an application for a license, a report, document, statement or any other information required to be filed with the Department, or otherwise violates the provisions of this Part or the rules and regulations of the Commission, the Department shall notify the delinquent or violating charitable organization, professional fund-raising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to its last known address. If the required application, report, document, statement or other information is not filed or if the existing violation is not discontinued within 15 days after the formal notification or receipt of such notice, the Department shall deny the issuance of the license or revoke or suspend the current license in effect.

(b) The Secretary, upon his own motion or upon the complaint of any person, may, if he has reasonable ground to suspect a violation, investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or professional solicitor has violated the provisions of this Part or the rules and regulations of the Commission, or has filed any application or other information required under this Part which contains false or misleading statements.

(c) The license of any charitable organization, professional fund-raising counsel or professional solicitor who knowingly makes a false or misleading statement in any application for license, statement, report or other information required to be filed with the Department under this Part, shall be revoked.

(d) In addition to the foregoing, any person who willfully and knowingly violates any provisions of this Part or the rules and regulations of the Commission, or who shall willfully and knowingly give false or incorrect information to the Department in filing statements or reports required by this Part or by the rules and regulations of the Commission, whether or not such report or statement is verified, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced for the first offense to pay a fine of not less that [than] one hundred dollars ($100.00) and not more than five hundred dollars ($500.00) or be imprisoned for not more than six months, or both; and for the second and any subsequent offense to pay a fine of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) or to be imprisoned for not more than one year, or both.

(e) Whenever the Attorney General or any district attorney shall have reason to believe or shall be advised by the Secretary or the Commission (who shall have given due notice and full hearing to a charitable organization, professional fund-raising counsel or professional solicitor) that a charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this Part or the rules and regulations of the Commission; or whenever a charitable organization, professional fund-raising counsel or professional solicitor has failed to file a license application, statement, report or other information required by this Part or the rules and regulations of the Commission; or whenever there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme, or artifice to defraud or to obtain money or property by means

of any false pretense, representation or promise; or whenever the officers or representatives of any charitable organization, professional fund-raising counsel or professional solicitor have refused or failed after notice to produce any records of such organization; or whenever the funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization: In addition to all other actions authorized by law, the Attorney General or district attorney may bring an action in the name of the State against such charitable organization and its officers, professional fund-raising counsel, professional solicitor or other person to enjoin such charitable organization, professional fund-raising counsel, professional solicitor or other person from continuing such violation, solicitation or collection, or engaging therein, or doing any acts in furtherance thereof or from further temporary or permanent solicitation of funds in this State, and for such other relief as to the court deems appropriate.

(f) The Secretary may exercise the authority granted in this section against any charitable organization which operates under the guise or pretense of being an organization exempted by the provisions of G.S. 108-75.7 and is not in fact an organization entitled to such an exemption. (1939, c. 144, s. 3; 1947, c. 572; 1969, c. 546, s. 1; 1975, c. 747, s. 1.)

§ 108-75.23. Fees. — (a) License fees shall be collected by the Secretary at the time of the filing of an application for a license from the Department, according to the following schedule:

SCHEDULE OF FEES.

(1) Every charitable organization which does not engage a professional fund-raising counsel or a professional solicitor, expends less than seven percent (7%) of the contributions received for internal fund-raising and solicitation salaries and expenses, and submits a proper license application statement to the Department shall pay an annual license fee of ten dollars ($10.00).

(2) Every other charitable organization which submits a proper license application to the Department shall pay an annual license fee of twenty-five dollars ($25.00) if the charitable organization solicits and receives gross contributions from the public of twenty-five thousand dollars ($25,000) or less during the immediate preceding fiscal year.

(3) Every charitable organization which submits a proper license application to the Department shall pay an annual license fee of one hundred dollars ($100.00) if the charitable organization solicits and receives gross contributions in excess of twenty-five thousand dollars ($25,000) during the immediate preceding fiscal year.

(4) A parent organization filing on behalf of one or more chapters, branches or affiliates and a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual license fee of one hundred dollars ($100.00) for itself and such chapters, branches, affiliates or member agencies included in the license application.

(5) Every professional fund-raising counsel and professional solicitor which submits a proper license application to the Department shall pay an annual license fee of fifty dollars ($50.00).

(b) The fund created by the collection of these fees shall be set aside for the sole purpose of financing the requirements of the administration of this Part. Additional funds, if any, as may be required for the administration of this Part shall be appropriated from the general fund of the State. (1975, c. 747, s. 1.)

§ 108-75.24. Conflicting laws. — Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county, relating to the regulation of the solicitation of charitable funds, shall not be superseded by this Part: Provided, that such ordinances or regulations are and continue to be consistent and compatible with the provisions of this Part, as amended, and rules and regulations promulgated by the Commission. (1975, c. 747, s. 1.)

§ 108-75.25. Applicability to certain foundations and trusts. — This Part shall not apply to public-supported community foundations or public-supported community trusts as defined in section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions or any subsequent federal tax laws. (1975, c. 747, s. 4.)

Part 2. Licensing of Private Institutions.

§ 108-77. Licensing of homes for the aged and infirm. — (a) The Department of Human Resources shall inspect and license, under the rules and regulations adopted by the Social Services Commission, all boarding homes, rest homes, and convalescent homes for persons who are aged or are mentally or physically infirm, except those exempted in subsection (c) below. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked for cause earlier by the Secretary of Human Resources. For licensing purposes, the homes heretofore described as rest homes and convalescent homes for persons who are aged shall be divided into two categories. The first category shall be licensed as family care homes and may be occupied by no more than five persons being served. The second category shall be licensed as homes for the aged and may be occupied by six or more persons being served. The structure of a family care home may be no more than two stories in height; provided, however, that none of the aged or physically infirm persons being served in a family-care home may be housed on the second floor of such home.

(1975, c. 729.)

Editor's Note. — The 1975 amendment added the last four sentences of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

ARTICLE 4.

Protection of the Abused or Neglected Elderly Act.

§§ 108-91 to 108-101: Recodified as §§ 108-102 to 108-106.8.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 797, and has been recodified as Article 4A, §§ 108-102 to 108-106.8.

ARTICLE 4A.

Protection of the Abused, Neglected, or Exploited Disabled Adult Act.

§ 108-102. Short title. — This Article may be cited as the Protection of the Abused, Neglected, or Exploited Disabled Adult Act. (1973, c. 1378, s. 1; 1975, c. 797.)

Editor's Note. — This Article is Article 4 of this Chapter as rewritten by Session Laws 1975, c. 797, and recodified. No attempt has been made to point out the changes made by the 1975 act, but, where appropriate, the historical citations to the sections of the former Article have been added to corresponding sections of the new Article.

§ 108-103. Legislative intent and purpose. — Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-104. Definitions. — (a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(b) The word "caretaker" shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(c) The word "director" shall mean the director of the county department of social services or his representative in the county in which the person resides or is present.

(d) The words "disabled adult" shall mean any person 18 years of age or over who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

(e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for him essential services.

(f) The words "district court" shall mean the judge of that court.

(g) The word "emergency" refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108-106.2.

(h) The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

(i) The words "essential services" shall refer to those social, medical, psychiatric, or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include but not be limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person

into physical custody without his consent except as provided for in G.S. 108-106.3 and in Chapter 122 of the General Statutes.

(j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

(k) The word "indigent" shall mean indigent as defined in G.S. 7A-450.

(l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, included but not limited to provisions for health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.

(m) The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental and physical health or is not receiving the services from his caretaker.

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-105. Duty to report; content of report; immunity. — (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

(c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-106. Duty of director upon receiving report. — (a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.

(b) The staff and physicians of local health departments, mental health clinics, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-106.1. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal. — (a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.

(b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.

(c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-106.2. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc. — (a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with G.S. 33-7. No disabled adult may be committed to a mental health facility under this Article. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-106.3. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner. — (a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:

(1) A disabled adult lacks capacity to consent and that he is in need of protective service;
(2) An emergency exists; and
(3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

(b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108-106.2.

(c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.

(d) Notice of the filing of such petition, and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108-106.3(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time within 20 days thereafter and show cause, if any exist, for the dissolution or modification of the said order, otherwise same to remain in effect; and copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection.

(e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

(f) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith. (1975, c. 797.)

§ 108-106.4. Motion in the cause. — Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-106.5. Payment for essential services. — At the time the director, in accordance with the provisions of G.S. 108-106, makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services. (1973, c. 1378, s. 1; 1975, c. 797.)

§ 108-106.6. Reporting abuse. — Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (1975, c. 797.)

§ 108-106.7. Funding of protective services. — Any funds appropriated by counties for home health care, boarding home, nursing home, emergency assistance, medical or psychiatric evaluations, and other protective services and for the development and improvement of a system of protective services, including additional staff, may be matched by State and federal funds. Such funds shall be utilized by the county department of social services for the benefit of disabled adults in need of protective services. (1975, c. 797.)

§ 108-106.8. Adoption of standards. — The Department of Human Resources and the administrative office of the court shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this Article no later than 90 days before January 1, 1976. (1975, c. 797.)

Chapter 110.

Child Welfare.

Article 5.

Interstate Compact on Juveniles.

Sec.
110-64.1 to 110-64.5. [Reserved.]

Article 5A.

Interstate Parole and Probation Hearing Procedures for Juveniles.

110-64.6. Parole and probation hearing procedures for juveniles.
110-64.7. Hearing officers.
110-64.8. Due process at parole or probation violation hearing.
110-64.9. Effect of parole or probation violation hearing outside the State.

Article 7.

Day-Care Facilities.

110-86. Definitions.
110-87. [Repealed.]
110-88. Powers and duties of the Commission.
110-89. [Repealed.]
110-90. Powers and duties of Secretary of Administration.
110-91. Mandatory standards for a license.
110-92. Duties of State and local agencies.
110-93. Licensing procedure.
110-94. Administrative appeal.
110-95. Appeal hearing.
110-96. Judicial review of administrative appeals.
110-97. Judicial review hearing.
110-100. Licenses are property of the State.
110-101. Registration.

Sec.
110-102. Information for parents.

Article 8.

Child Abuse and Neglect.

110-117. Definitions.
110-118. Reports of child abuse or neglect.
110-123 to 110-127. [Reserved.]

Article 9.

Child Support.

110-128. Purposes.
110-129. Definitions.
110-130. Action by the designated representatives of the county commissioners.
110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.
110-132. Acknowledgment of paternity and agreement to support.
110-133. Agreements of support.
110-134. Filing of agreements; disclosure.
110-135. Debt to State created.
110-136. Garnishment for enforcement of child-support obligation.
110-137. Acceptance of public assistance constitutes assignment of support rights to the county.
110-138. Duty of county to obtain support.
110-139. Location of absent parents.
110-140. Conformity with federal requirements.
110-141. Effectuation of intent of Article.

Article 5.

Interstate Compact on Juveniles.

§§ 110-64.1 to 110-64.5: Reserved for future codification purposes.

Article 5A.

Interstate Parole and Probation Hearing Procedures for Juveniles.

§ 110-64.6. Parole and probation hearing procedures for juveniles. — Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact on Juveniles, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or a probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this Article within a reasonable time, unless such hearing is waived by the parolee or probationer.

The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or the reincarceration. (1975, c. 228.)

§ 110-64.7. Hearing officers. — Any hearing pursuant to this Article may be before the Administrator of the Interstate Compact on Juveniles, a deputy of such Administrator, or any other person authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile parole or probation violations, except that no hearing officer shall be the person making the allegation of violation. (1975, c. 228.)

§ 110-64.8. Due process at parole or probation violation hearing. — With respect to any hearing pursuant to this Article, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that the purpose of the hearing is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions.

A record of the proceedings shall be made and preserved. (1975, c. 228.)

§ 110-64.9. Effect of parole or probation violation hearing outside the State. — In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact on Juveniles, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this Article, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (1975, c. 228.)

ARTICLE 7.

Day-Care Facilities.

§ 110-86. Definitions. — Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) "Commission" means the Child Day-Care Licensing Commission created under this Article.

(5) Repealed by Session Laws 1975, c. 879, s. 15, effective July 1, 1975.

(6) "License" means a license issued by the Commission to any day-care facility which meets the statutory standards established under this Article.

(1975, c. 879, s. 15.)

Cross Reference. — As to the creation and organization of the Child Day-Care Licensing Commission, see §§ 143B-375, 143B-376.

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commission" for "Board" in two places in subdivision (1) and once in subdivision (6) and repealed subdivision (5), which defined "Director."

As the other subdivisions were not changed by the amendment, they are not set out.

§ 110-87: Repealed by Session Laws 1975, c. 879, s. 15, effective July 1, 1975.

§ 110-88. Powers and duties of the Commission. — The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any day-care facility which meets the health and safety standards established under this Article.

(2) To approve the issuance of licenses for day-care facilities based upon inspections by and written reports from existing agencies of State and local government where available, or based upon inspections by and reports from personnel employed by the Commission where such services are not otherwise available.

(3) To develop a system or plan for registration of day-care plans in such form and place as shall be determined by the Commission so that day-care plans which are not subject to licensing may be identified, so that there can be an accurate census of the number of children placed in day-care resources, and so that providers of day care who do not receive the educational and consultation services related to licensing may receive educational materials or consultation through the Commission.

(4) Repealed by Session Laws 1975, c. 879, s. 15, effective July 1, 1975.

(5) To make rules and regulations and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules and regulations for the issuance of a provisional license to a day-care facility which does not conform in every respect with the standards relating to health and safety established in this Article provided that the Secretary of Administration finds, and the Commission concurs in the finding that the operator is making a reasonable effort to conform to such standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission shall be empowered to issue two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Commission.

(8) To develop a procedure by which the Department [of Administration] shall furnish such forms as may be required for implementation of this Article.
(9) To serve as an administrative-appeal body to determine all issues related to the issuance, renewal and revocation of licenses.
(10) Repealed by Session Laws 1975, c. 879, s. 15, effective July 1, 1975. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, repealed subdivisions (4), relating to employment of the Director, and (10), relating to travel and per diem expenses, rewrote subdivision (8), substituted "Secretary of Administration" for "Director" in subdivision (6) and also substituted "Commission" for "Board" throughout the section.

§ 110-89: Repealed by Session Laws 1975, c. 879, s. 15, effective July 1, 1975.

§ 110-90. Powers and duties of Secretary of Administration. — The Secretary of Administration shall have the following powers and duties under the policies, rules and regulations of the Commission:
(8) To issue a rated license when any operator of a day-care facility required to be licensed hereunder has satisfied the Commission that it has met the voluntary standards developed and adopted by the Commission. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director" in the introductory language and "Commission" for "Board" in the introductory language and in two places in subdivision (8).

As subdivisions (1) through (7) were not changed by the amendment, they are not set out.

§ 110-91. Mandatory standards for a license. — The following standards relating to the health and safety of children shall be complied with by all day-care facilities, except as otherwise provided in this Article. These standards shall be the only required standards for issuance of a license by the Secretary of Administration under policies and procedures of the Commission.
(1) Medical Care and Sanitation. — Each day-care facility, and all personnel, shall meet the minimum health and sanitation standards developed by the Commission for Health Services subject to adoption by the Commission not inconsistent with the provisions of this Article. The health and sanitation standards developed by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; health of staff members; and such other items and facilities as are necessary in the interest of the public health. Each year, or more often if required by the Commission in a particular case, each day-care facility shall submit evidence satisfactory to the Commission that it conforms to these health and sanitation standards.

Each child shall have a medical examination by a licensed physician prior to being admitted or within two weeks following admission to a day-care facility; a record of such examination shall be on file in the records of the facility, provided, however, that no medical certificate shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a medical examination on religious grounds which conform to the

teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in such manner as to meet the requirements of Articles 9 and 9A of Chapter 130 of the General Statutes.

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific instructions from a physician or the child's parent, guardian or full-time custodian. Medical information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility in the records of the facility in accordance with a form approved by the Commission for this purpose.

There shall be a separate bed, cot or mat for each child to use during rest periods, equipped with individual linen, except for school children who are cared for only during after-school hours; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be folded so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day-care facility.

(2) Health-Related Activities. — Each child in a day-care facility shall receive a lunch which is nutritionally adequate for good health. In addition, each child shall receive refreshments or a snack in the morning and the afternoon.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. — Each day-care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Commission.

(4) Building. — Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. — All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after consultation with local fire departments and volunteer fire departments, subject to adoption by the Commission.

(6) Space Requirements. — There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of air space per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules and regulations to be adopted by the Commission which shall be related to the size and type

of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection.

(7) Staff-Child Ratio. — In determining the staff-child ratio, children of the supervisor or other children under 13 years of age shall be included. The Commission shall adopt rules and regulations regarding staff-child ratio, provided, however, that such rules and regulations shall in no event require a ratio of staff members to children more stringent than the following:

a. For day-care facilities caring for less than 30 children, the ratios shall be as follows:

1. In facilities licensed for six to 10 children, inclusive, one full-time supervising adult with another person between the ages of 16 and 70 years, inclusive, available for emergencies in relief.
2. In facilities licensed for 11 to 20 children, inclusive, there must be one full-time supervising adult and one full-time staff member, one of whom may have responsibility for food preparation.
3. In facilities licensed for 21 to 29 children, inclusive, there must be one full-time supervising adult and two full-time staff members, one of whom may have responsibility for food preparation.

b. For facilities caring for 30 or more children, the ratio shall be as follows:

Ages of Children	*No. of Children*	*Staff Members*
0 to 2 years	8	1
2 to 3 years	12	1
3 to 4 years	15	1
4 to 5 years	20	1
5 or more years	25	1

1. Children under two years of age in any facility must be kept separate from older children, and with a full-time adult always in attendance.
2. Staff members required to be responsible for the care of children shall not have responsibility for food preparation.

c. To provide for absenteeism and withdrawals without notice, a 20 percent (20%) tolerance shall be allowed as to groups and numbers of children specified in this section and as to the total number for which the facility is licensed, except that no more than 25 children shall be attended by one staff member.

d. Each facility may care for school age children in after-school hours up to 20 percent (20%) in excess of the number for which it is licensed. However, if there are more than 10 after-school-hour children, an additional staff member must be present to supervise them during their hours at the facility, and there shall be no more than 25 of these children in the care of any one staff member.

(8) Qualifications for Staff. — Each day-care facility shall be under the direction or supervision of a literate person at least 21 years of age. Each staff member employed in a day-care facility supervising children shall be not less than 16 years of age, nor more than 70 years of age. No person shall be an operator of nor be employed in a day-care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is

mentally retarded or mentally ill to an extent that may be injurious to children.

(9) Records. — Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Commission.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any day-care facility, except financial records, shall be subject to review by the Secretary of Administration or by duly authorized representatives of the Commission or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Commission shall be deemed by the Commission to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

(10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care. (1971, c. 803, s. 1; 1973, c. 476, s. 128; 1975, c. 879, s. 15.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted "with the approval of the Board" at the end of the third paragraph of subdivision (9) and substituted "Commission" for "Board" and "Secretary of Administration" and "Secretary" for "Director" throughout the section.

Articles 9 and 9A of Chapter 130, referred to in this section, were combined and rewritten by Session Laws 1971, c. 191, as present Article 9 of Chapter 130.

§ 110-92. Duties of State and local agencies. — Nothing in this Article shall be interpreted to interfere with the authority of the Department of Human Resources to visit or approve or disapprove a day-care facility for purchase of care with federal funds available for such purposes or for placement of children from families receiving financial assistance or other services through the Department of Human Resources or a county department of social services. Provided the Department of Human Resources shall have no authority to inspect a private day-care facility not choosing to participate in federally purchased day-care or family assistance program financed by public or charitable funds.

When requested by an operator of a day-care facility or by the Secretary of Administration, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards developed by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department on forms approved by the Commission and provided by the Department.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary of Administration on forms provided by the Commission so that such reports may serve as the basis for action or decisions by the Secretary or

Commission as authorized by this Article. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "and to submit written reports on such visits or inspections to the Department on forms approved by the Commission and provided by the Department" for "and to submit written reports on such visits or inspections to the Director on forms approved and provided by the Board" at the end of the second paragraph. The amendment also substituted "Secretary of Administration" and "Secretary" for "Director" in the second and third paragraphs and "Commission" for "Board" in two places in the third paragraph.

§ 110-93. Licensing procedure. — (a) Each operator of a day-care facility shall annually apply to the Commission for a license. The application shall be in such form as is required by the Commission. Each operator seeking a license shall be responsible for accompanying his application with the necessary supporting data and reports to show conformity with the standards established or authorized by this Article including reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Commission.

(b) If an operator conforms to the standards established or authorized by this Article as shown in his application and other supporting data, the Secretary of Administration shall issue a license effective for one year subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required standards, the Secretary may issue a provisional license under the policies of the Commission provided that the operator shall be notified in writing by registered or certified mail of the reasons for issuance of a provisional license.

(c) Each licensed operator of [a] day-care facility must annually apply in order to renew his license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article.

(d) If a licensed day-care facility fails to meet or maintain the standards for a license, the Secretary of Administration shall report such fact to the Commission which may thereupon notify, by registered or certified mail, the applicant or licensee of his right to appear before the Commission at a specified place and time not less than 10 or more than 60 days from the date of the notice, to show cause, if any exists, why the Commission should not deny or revoke the license. If the applicant or licensee fails to satisfy the Commission at said hearing that the standards have been maintained, the Commission may deny or revoke the license. The operator shall retain any current license pending disposition of any appeal. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commission" for "Board" and "Secretary of Administration" and "Secretary" for "Director" throughout the section. The amendment also deleted "or his staff" preceding "may issue" in the second sentence of subsection (b).

§ 110-94. Administrative appeal. — Upon receipt by the Secretary of Administration of notice of an appeal, the Secretary shall arrange for an appeal hearing before the Commission within 60 days, provided that the Commission may delegate the hearing of appeals to a panel consisting of three or more Commission members, at least one of whom must be the operator of a licensed private day-care facility, and may designate a chairman of such panel for the purpose of presiding at such hearings. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" and "Secretary" for "Director" near the beginning of the section and "Commission" for "Board" in three places.

§ 110-95. Appeal hearing. — Upon notification by the Commission to an operator of his right to appear before the Commission as provided in G.S. 110-93(d), or upon receipt of an appeal, the Secretary of Administration shall notify all interested persons of whom he has notice or knowledge of the time and place of the hearing. The operator involved and other persons having a legitimate interest shall have a right to be present, to be represented by counsel, and to present evidence on the issue of whether the standards involved were complied with by the day-care operator and facility. The Secretary shall notify the appellant and the operator, if other than the appellant, of the decision of the Commission in writing by registered or certified mail, including an explanation of the reasons for such decision. The decision of the Commission with regard to any license shall be final. All decisions of the Secretary and of the Commission shall be retained by the Commission for two years as matters of public record. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" and "Secretary" for "Director" and "Commission" for "Board" throughout the section.

§ 110-96. Judicial review of administrative appeals. — Any party may appeal a decision of the Commission to deny or revoke a license to the superior court in the county where the day-care facility is located. Notice of intention to appeal shall be given by registered or certified mail to the Secretary of Administration and to the clerk of superior court of such county within 30 days after receipt of the Commission's order by the operator. The right to judicial review shall be deemed waived if notice is not given as herein provided. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commission" for "Board," "Secretary of Administration" for "Director" and "Commission's" for "Board's."

§ 110-97. Judicial review hearing. — The appeal hearing shall be de novo before any superior court judge holding court in the district who shall cause sufficient notice of the appeal hearing to be given to all parties of record. The hearing shall be conducted by the judge without a jury, and the court may affirm, reverse, or modify the Commission's order. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commission's" for "Board's" near the end of the section.

§ 110-98. Mandatory license.

Editor's Note. — Because this section relates to past events, no change has been made in it pursuant to Session Laws 1975, c. 879, s. 15.

§ 110-100. Licenses are property of the State. — Any license issued to a day-care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary of Administration in the event that the license is not renewed or is revoked or has expired or in the event that the grade or rating is changed. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director."

§ 110-101. Registration. — It shall be unlawful for any person to offer or provide a day-care plan unless such day-care plan is registered with the Commission in accordance with the system for registration which shall be developed by the Commission. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commission" for "Board" in two places.

§ 110-102. Information for parents. — The Commission shall provide to each operator of a day-care facility a summary of this Article to be furnished by the operator to the parents, guardian, or full-time custodian of each child receiving care in the facility, which summary shall include the name and address of the Secretary of Administration and address of the Commission, in such form as shall be provided by the Commission to all operators. (1971, c. 803, s. 1; 1975, c. 879, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Commission" for "Board" in three places and "Secretary of Administration" for "Director" in one place.

ARTICLE 8.

Child Abuse and Neglect.

§ 110-117. Definitions. — As used in this Article, unless the context otherwise requires:

(1) "Abused child" means a child less than 18 years of age whose parent or other person responsible for his care:

a. Inflicts or allows to be inflicted upon such child a physical injury by other than accidental means which causes or creates a substantial risk of death or disfigurement or impairment of physical health or loss or impairment of function of any bodily organ, or

b. Creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or disfigurement or impairment of physical health or loss or impairment of the function of any bodily organ, or

c. Commits or allows to be committed any sex act upon a child in violation of law.

(4) "Neglected child" means a child less than 18 years of age who comes within the definition of "neglected child" under G.S. 7A-278(4).

(1975, c. 237, ss. 1, 2.)

Editor's Note. —
The 1975 amendment substituted "18 years" for "16 years" in the introductory language in subdivision (1) and in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (4) are set out.

§ 110-118. Reports of child abuse or neglect.

(d) Any physician or administrator of a hospital, clinic or other similar medical facility to which an abused child is brought for medical diagnosis or treatment shall have the right to retain temporary physical custody of such child where the physician who examines the child certifies in writing that the child should remain for medical reasons or that in his opinion it may be unsafe for the child to return to his parents or other caretakers. In such case, the physician or administrator shall notify the parents or other caretakers and the director of the county where the child resides of such action. If the parents or other caretakers contest this action, the parents shall request a hearing before the chief district court judge or some district court judge designated by him within the judicial district wherein the child resides or where the hospital or institution is located for review and determination of whether the child shall be returned to his parents or caretaker.

Pending such juvenile hearing, the hospital, clinic or other similar medical facility:

(1) May retain temporary physical custody of the child in which event said hospital, clinic, or medical facility

(2) Shall request the director of social services in the county where the child resides to petition the district court in the district where the child resides to award temporary custody of the child to the director for placement with a relative or in a foster home under the supervision of the county department of social services or

(3) Shall request the director of social services in the county where the hospital or other medical facility is located to petition the district court in the district where the hospital or other medical facility is located to award temporary physical custody of the child to the director for placement with a relative or in a foster home under the supervision of the county department of social services.

Upon receipt of such request in (2) or (3), the director of social services shall file such petition without delay. (1971, c. 710, s. 1; 1975, c. 310.)

Editor's Note. — The 1975 amendment substituted the present second and third paragraphs of subsection (d) for the former last sentence of the subsection, which authorized the medical facility to retain temporary custody of the child or to request the director in the county of the child's residence to assume temporary custody of the child for placement with a relative or in a foster home.

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§§ 110-123 to 110-127: Reserved for future codification purposes.

Article 9.

Child Support.

§ 110-128. Purposes. — The purposes of this Article are to provide for the financial support of dependent children; to provide that public assistance paid to needy children is a supplement to the support provided by the responsible

parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support. (1975, c. 827, s. 1.)

Editor's Note. — Session Laws 1975, c. 827, s. 3, makes the act effective July 1, 1975.

Session Laws 1975, c. 827, s. 2, contains a severability clause.

§ 110-129. Definitions. — As used in this Article:

(1) "Court order" means any judgment or order of the courts of this State or of another state.

(2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the armed forces of the United States.

(3) "Responsible parent" means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of an illegitimate child if paternity has been established in a judicial proceeding or if he has acknowledged paternity in open court or by verified written statement. (1975, c. 827, s. 1.)

§ 110-130. Action by the designated representatives of the county commissioners. — Any county interested in the paternity and/or support of a dependent child may, if the mother, custodian, or guardian of the child neglects to bring such action, institute civil proceedings against the responsible parent of the child and may take up and pursue any action commenced by the mother, custodian or guardian for the maintenance of the child, including any ancillary action to establish paternity, if she fails to prosecute to final judgment. Such action shall be undertaken by the designated representative of the county commissioners in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony. (1975, c. 827, s. 1.)

§ 110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance. — (a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the county in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before any judge of the district court and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the county department of social services for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before a judge of the district court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of said court and may be fined not more than one hundred dollars ($100.00) or imprisoned not more than six months or both.

(c) Any parent who is declared ineligible for public assistance by the county department of social services shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50. (1975, c. 827, s. 1.)

§ 110-132. Acknowledgment of paternity and agreement to support. — (a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a written agreement to support said child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged before a clerk or assistant clerk of superior court and filed with, and approved by a judge of the district court, at any time, shall have the same force and effect, retroactively or prospectively, in accordance with the terms of said agreement, as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the district court of an acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. Provided that, in the case of a child, who upon reaching the age of 18 years is mentally or physically incapable of self-support, the putative father shall not be relieved of the duty of support unless said child is a long-term patient in a facility owned or operated by the North Carolina Division of Mental Health. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources. (1975, c. 827, s. 1.)

§ 110-133. Agreements of support. — In lieu of or in conclusion of any legal proceeding instituted to obtain support for a dependent child from the responsible parent, a written agreement to support said child by periodic payments executed by the responsible parent when acknowledged before a clerk or assistant clerk of superior court and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources. (1975, c. 827, s. 1.)

§ 110-134. Filing of agreements; disclosure. — All agreements entered into under the provisions of G.S. 110-132 and 110-133 shall be filed by the clerk of superior court in the county in which they are entered, any filing fees to be taxed to the responsible parent, and no information concerning any such agreement, the parties thereto or the contents thereof may be disclosed other than to the North Carolina Department of Human Resources, the county department of social services, the designated representative of the county commissioners, or the State Registrar of Vital Statistics except on order of a judge of this State. (1975, c. 827, s. 1.)

§ 110-135. Debt to State created. — Payment of public assistance to or on behalf of a dependent child creates a debt due and owing the State by the responsible parent or parents of the child. Provided, however, that where a court has ordered child support incident to a final divorce decree or other final order for child support, the debt shall be limited to the amount specified in the decree or order. This liability shall attach only with respect to the period of time during which public assistance is granted and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney shall represent the State in all proceedings brought under this section. (1975, c. 827, s. 1.)

§ 110-136. Garnishment for enforcement of child-support obligation. — (a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than 20 percent (20%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension or retirement program) which remains after the deduction of any

amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any county interested in the support of a dependent child may petition the court for an order of garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be garnished, not to exceed 20 percent (20%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The responsible parent and his alleged employer shall have 20 days from the date of service or 30 days from the date stated in the notice of service of process by publication to respond to the petition for garnishment.

(c) A hearing on the petition shall be held within 10 days after the time for response has elapsed or within 10 days after the responses of both the responsible parent and the garnishee have actually been filed. Following the hearing the court may enter an order of garnishment not to exceed 20 percent (20%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Human Resources.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt. (1975, c. 827, s. 1.)

§ 110-137. Acceptance of public assistance constitutes assignment of support rights to the county. — By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state. (1975, c. 827, s. 1.)

§ 110-138. Duty of county to obtain support. — Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall notify the designated representative of the county commissioners who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child. (1975, c. 827, s. 1.)

§ 110-139. Location of absent parents. — The Department of Human Resources shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. All records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. (1975, c. 827, s. 1.)

§ 110-140. Conformity with federal requirements. — Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. (1975, c. 827, s. 1.)

§ 110-141. Effectuation of intent of Article. — The North Carolina Department of Human Resources shall supervise the administration of this program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents. The Department of Human Resources and a county may negotiate alternative arrangements to the procedure as outlined in G.S. 110-130 for designating a local agency to administer the provisions of this Article in said county. (1975, c. 827, s. 1.)

Chapter 111.

Aid to the Blind.

Article 1.

General Duties of Department of Human Resources.

Sec.
111-4. Register of State's blind.

ARTICLE 1.

General Duties of Department of Human Resources.

§ 111-4. Register of State's blind. — It shall be the duty of the Department of Human Resources to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the Department of Human Resources to be of value. (1935, c. 53, s. 3; 1973, c. 476, s. 143; 1975, c. 19, s. 35.)

Editor's Note. —
The 1975 amendment corrected an error in the 1973 amendatory act by substituting "the" for "this" preceding "Department of Human Resources" the first time those words appear in the section.

Chapter 113.

Conservation and Development.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1B.

Aviation.

Sec.
113-28.5. Authority of Department of Transportation generally; "airport" defined.
113-28.6. Administration of Article; powers of Department of Transportation.
113-28.8. Limitations on State financial aid.
113-28.9. Sources of State funds.
113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds.
113-28.11. Receipt of federal grants.
113-28.12. Authority of Department of Transportation to operate airports and expend funds therefor.

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2B.

Forestry Study Act.

113-44.3. Short title.
113-44.4. Definitions.
113-44.5. Purpose.
113-44.6. Duties and powers of Secretary.

Article 3.

Private Lands Designated as State Forests.

113-45 to 113-50. [Repealed.]

Article 4.

Protection and Development of Forests; Fire Control.

113-54. Duties of forest rangers; payment of expenses by State and counties.
113-55. Powers of forest rangers to prevent and extinguish fires.
113-55.1. Powers of forest law-enforcement officers.

SUBCHAPTER III. GAME LAWS.

Article 7.

North Carolina Game Law of 1935.

113-92. Officers constituted deputy game protectors.
113-95. Licenses required.
113-95.2. Big-game hunting license.
113-95.3. Licenses for disabled veterans.
113-95.4. Report to Wildlife Resources Commission required upon killing of bear, wild turkey, deer or wild boar.

Sec.
113-95.5. Primitive weapons hunting license.
113-95.6. Sportsman's combination license.
113-96. Trappers' licenses.
113-96.1. Schedule of licenses.
113-104. Manner of taking game.
113-109. Punishment for violation of Article.

Article 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

113-109.8. Article inapplicable to certain counties.

Article 8.

Fox-Hunting Regulations.

113-112. Police power of protectors in enforcing county laws relative to foxes.

Article 10.

Regulation of Fur Dealers; Licenses.

113-114. Fur dealer's license; fees.
113-115. Annual report of furs bought.
113-117. Permits may be issued to nonresident dealers.
113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer.

Article 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor.
113-120.2. Regulations as to posting of property.

Article 11.

Miscellaneous Provisions.

113-123. Assent of State to act of Congress providing for aid in wildlife restoration projects.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

Article 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.

Article 20.

Miscellaneous Regulatory Provisions.

Sec.
113-262. Taking by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish as evidence.

Article 21.

Inland Fishing Licenses.

113-271. Hook-and-line licenses in inland fishing waters.
113-272. Special trout licenses.
113-272.1. Sportsman's combination license.

Article 23B.

Fishermen's Economic Development Program.

113-315.18. Fishermen's Economic Development Program.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

Article 27.

Oil and Gas Conservation.

Part 2. The Oil and Gas Conservation Act.

Sec.
113-394. Limitations on production; allocating and prorating "allowables."

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1B.

Aviation.

§ 113-28.5. Authority of Department of Transportation generally; "airport" defined. — (a) The Department of Transportation is hereby authorized, subject to the limitations and conditions of this Article, to provide State aid in form of loans and grants to cities, counties, and public airport authorities of North Carolina for the purpose of planning, acquiring, constructing, or improving municipal, county, and other publicly owned airport facilities, and to authorize related programs of aviation safety, education, promotion, and long-range planning.

(b) "Airport" for the purposes of this Article is defined as any plot of land or water set aside and designated as a place where aircraft may land and take off. (1967, c. 1006, s. 1; 1975, c. 716, s. 3.)

Cross Reference. — As to the Division of Aeronautics and the Aeronautics Council of the Department of Transportation, see §§ 143B-355 through 143B-357.

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the former provisions of this section as subsection (a) and added subsection (b).

§ 113-28.6. Administration of Article; powers of Department of Transportation. — The Department of Transportation shall carry out the provisions of this Article. In exercising such power, the Department shall:

(1) Promote the further development and improvement of air routes, airport facilities, seaplane bases, heliports, protect their approaches and stimulate the development of aviation, commerce and air facilities. In exercising this power, the Department shall prepare and develop goals, objectives, standards and policies for the most efficient and economical expenditure of State funds as may be appropriated for the purposes of this Article.

(2) Publish and make available to aviation interests, the Federal Aviation Administration, and the people of the State generally, current information regarding such criteria, standards, and policies.

(3) Prepare and keep current a State airport plan and submit annual revisions of that plan to the Federal Aviation Administration.
(4) Make a detailed and thorough study of all applications for State assistance authorized herein and make specific recommendations regarding applications to the Federal Aviation Administration for federal grants.
(5) Develop a plan of priorities and allocations of State funds to be revised annually.
(6) Represent the State before all federal agencies and elsewhere where the aviation interests of the State may be affected.
(7) Subject to the availability of funds for the purpose, conduct such promotional, educational and other programs as may be necessary to keep the people of the State properly informed with respect to aviation and to further aeronautics generally throughout the State.

In exercising the powers and performing the duties herein provided for by this section, the Department of Transportation shall consult with and seek the advice of the aeronautics council. (1967, c. 1006, s. 1; 1973, c. 507, s. 5; c. 1262, ss. 28, 86; c. 1443, s. 1; 1975, c. 716, s. 3.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, rewrote the introductory paragraph, which formerly designated the Department of Natural and Economic Resources, Commerce and Industry Division, as the State agency to carry out the provisions of this Article, substituted "Federal Aviation Administration" for "Federal Aviation Agency" and subdivisions (2), (3) and (4), and made other changes in subdivisions (1), (4) and (5), eliminated former subdivision (8), which provided for a consulting committee to be known as the Governor's Aviation Committee, and added the present last paragraph of the section.

§ 113-28.8. Limitations on State financial aid. — Grants and loans of funds authorized by this Article shall be subject to the following conditions and limitations:

(2) Loans and grants of State funds shall be limited to a maximum of fifty percent (50%) of the nonfederal share of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources provided, however, using Department of Transportation personnel and one hundred percent (100%) State funding in its discretion, the Department of Transportation may purchase, install, and maintain navigational aids necessary for the safe, efficient use of airspace, mark serviceable runways and taxiways and correct minor safety deficiencies which are determined to be hazardous to the flying public.

(1975, c. 716, s. 3.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, deleted "and Highway Safety" following "Department of Transportation" the second time those words appear in subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

§ 113-28.9. Sources of State funds. — State financial assistance under this Article shall be limited to appropriations of funds made for the purpose by the General Assembly to the Department of Transportation, or to private funds which may become available to the Department for such purpose. (1967, c. 1006, s. 1; 1973, c. 1262, s. 86; 1975, c. 716, s. 3.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Department of Natural and Economic Resources."

§ 113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds. — All North Carolina municipalities, counties and public airport authorities are hereby authorized to accept, receive, receipt for, disburse and expend State funds, and other funds, public and private, which may be made available to them to accomplish any purpose of this Article. All federal funds accepted and expended by any municipality or county shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the United States and not inconsistent with State law. All State funds accepted by any municipality, county or public airport authority shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the Department of Transportation. Unless otherwise prescribed by the federal or State agency from which funds were made available, the chief financial officer of the municipality, county or public airport authority shall deposit all funds received and keep the same in separate funds according to the purpose for which they were received. The accounting of all such funds shall be subject to the municipal and county fiscal control acts. (1967, c. 1006, s. 1; 1973, c. 1262, s. 86; 1975, c. 716, s. 3.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "State Department of Natural and Economic Resources" at the end of the third sentence.

§ 113-28.11. Receipt of federal grants. — (a) The Department of Transportation is hereby designated the State agency to accept grants for public airport development and improvements made by the United States pursuant to federal law. The Department shall have authority to comply with federal-aid provisions, to obtain and to disburse said grants in accordance with applicable federal laws and regulations, and to enter into contracts with the federal government, municipalities, counties, or airport authorities in connection with said grants.

(b) The Department of Transportation shall have authority to act as an agent of any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary of Transportation of the United States an application for federal aid in connection with airport development, improvement, or planning. (1969, c. 1109, ss. 1, 2; 1973, c. 1262, s. 86; 1975, c. 716, s. 3.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "North Carolina Department of Natural and Economic Resources" at the beginning of subsection (a) and for "Department of Natural and Economic Resources" near the beginning of subsection (b), substituted "for public airport development and improvements made by the United States pursuant to federal law" for "made by the United States, under the 'Aviation Facilities Expansion Act of 1969' or any substantially similar federal law" at the end of the first sentence of subsection (b), deleted "of Natural and Economic Resources" following "Department" near the beginning of the second sentence of subsection (a) and inserted "to comply with federal-aid provisions, to obtain

and" in that sentence and substituted "federal aid in connection with airport development, improvement, or planning" for "financial assistance under the provisions of the Aviation Facilities Expansion Act of 1969 or any similar federal act" at the end of subsection (b).

§ 113-28.12. Authority of Department of Transportation to operate airports and expend funds therefor. — The Department is authorized to operate state-owned or leased airports or any airport for which the State has obtained a special use permit to operate. The Department may expend funds appropriated for grants to airports for the purpose of operating, maintaining, and improving state-owned or leased airports, or any airport for which the State has obtained a special use permit to operate and maintain. (1969, c. 1109, s. 3; 1973, c. 1262, s. 86; 1975, c. 716, s. 3.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote this section, which formerly authorized the Department of Natural and Economic Resources to acquire property necessary to establish or develop airports.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2B.

Forestry Study Act.

§ 113-44.3. Short title. — This Article shall be known as the Forestry Study Act. (1975, c. 676, s. 1.)

§ 113-44.4. Definitions. — As used in this Article:

(1) "Forest practice" means any activity conducted on or directly pertaining to forestland and relating to growing, harvesting, or processing timber, including but not limited to:
   a. Road and trail construction and maintenance,
   b. Harvesting,
   c. Precommercial thinning,
   d. Reforestation,
   e. Fertilization,
   f. Prevention and suppression of diseases and insects,
   g. Salvage of trees, and
   h. Brush control.

   "Forest practices" shall not include preparatory work, such as tree-marking, surveying, and road-flagging and removal or harvesting of incidental vegetation from forestlands, such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot ordinarily be expected to result in damage to forest soils, timber, or public resources.

(2) "Secretary" means the Secretary of the Department of Natural and Economic Resources. (1975, c. 676, s. 2.)

§ 113-44.5. Purpose. — (a) The General Assembly finds that:

(1) Unfavorable environmental impacts, although currently of a local and sporadic nature, are occurring as a result of forest practices. It is imperative that corrective action be developed now to prevent more serious problems in the future.

(2) Regeneration of unproductive forestland is a high-priority problem requiring prompt attention and action.

(3) The technical knowledge exists to design standard operating procedures or guidelines for harvesting and cultural practices which would minimize damage to the soil and water resources of the State. This is not the case with respect to the problem of forest regeneration.

(4) This State's diverse forest regions require flexibility in the design and administration of such standard operating procedures or guidelines.

(5) A comprehensive program of education, training, and financial incentives to encourage voluntary compliance with these standard guidelines for forest practices is preferable to enforced regulation. The complexity of developing such programs requires extensive study and evaluation.

(b) The purpose of this Article is to direct the Secretary of the Department of Natural and Economic Resources to conduct continuing studies and investigations and make recommendations to future sessions of the General Assembly. These investigations and recommendations should be:

(1) Designed to assure the continuous growing and harvesting of forest tree species and to protect the soil, air, and water resources, including but not limited to streams, lakes, and estuaries;

(2) Designed to coordinate activities among State agencies that are concerned with the forest environment;

(3) Designed to develop programs to deal with emerging forestry problems, including but not limited to forest taxation, forest incentives, and forest practices;

(4) Designed to keep the General Assembly fully informed concerning forestry and its related problems and needs; and

(5) Designed to develop needed legislation to further the purposes of this Article. (1975, c. 676, s. 3.)

§ 113-44.6. Duties and powers of Secretary. — The Secretary, in carrying out the policy and purposes of this Article, shall:

(1) Conduct continuing studies and investigations concerning the purposes of this Article.

(2) Continue the work of the Forest Practices Study Committee in investigating the need for forest practices legislation.

(3) Develop regional guidelines for forest practices within the State.

(4) Appoint a citizen advisory committee in each of the three geographic regions of the State (Coastal Plain, Piedmont, and Mountain) as may be deemed necessary.

a. Each advisory committee shall be composed of seven members representing various interests and residing in the geographic area and should provide technical advice and assistance to the Secretary in all matters relating to regional forest practices.

b. For each advisory committee three members shall be appointed initially for a one-year term and four members for a two-year term. Thereafter all appointments shall be for a two-year term.

c. The members of the committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(5) Prepare a report to the 1977 General Assembly and succeeding biennial sessions concerning the status of forestry in North Carolina.

(6) Provide to any appointed citizen advisory committee necessary secretarial and professional staff assistance. (1975, c. 676, s. 4.)

ARTICLE 3.

Private Lands Designated as State Forests.

§§ 113-45 to 113-50: Repealed by Session Laws 1975, c. 253.

ARTICLE 4.

Protection and Development of Forests; Fire Control.

§ 113-54. Duties of forest rangers; payment of expenses by State and counties. — Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the Secretary of Natural and Economic Resources; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the Secretary of Natural and Economic Resources, and shall perform such other acts and duties as shall be considered necessary by the Secretary of Natural and Economic Resources for the purposes set out in Articles 4, 4A, and 6A of this Chapter in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the Secretary of Natural and Economic Resources; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the Secretary of Natural and Economic Resources shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the Secretary of Natural and Economic Resources. Appropriations made by a county for the purposes set out in Articles 4, 4A, and 6A of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the Secretary of Natural and Economic Resources for the work in said county, but are to serve as a supplement thereto. The funds appropriated to the Department of Natural and Economic Resources in the biennial budget appropriation act for the purposes set out in Articles 4, 4A, and 6A of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program. (1915, c. 243, s. 4; C. S., s. 6136; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575; 1961, c. 833, s. 17; 1963, c. 312, s. 1; 1973, c. 1262, s. 86; 1975, c. 620, s. 1.)

Editor's Note. — The 1975 amendment deleted "shall make arrests for violation of forest laws" preceding "shall post along highways" near the beginning of the first sentence.

§ 113-55. Powers of forest rangers to prevent and extinguish fires. — Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the Secretary of the Department of Natural and Economic Resources or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger. (1915, c. 243, s. 6; C. S., s. 6137; 1925, c. 106, ss. 1, 2; c. 240; 1927, c. 150, s. 4; 1951, c. 575; 1963, c. 312, s. 2; 1973, c. 108, s. 65; c. 1262, s. 86; 1975, c. 620, s. 2.)

Editor's Note.—

The 1975 amendment rewrote this section. Session Laws 1975, c. 620, s. 5, provides: "It is the intent and purpose of this act to exclude from the provisions of Chapter 17A of the General Statutes and any rules or regulations adopted by the North Carolina Criminal Justice Training and Standards Council, all forest rangers of the Department of Natural and Economic Resources except those forest rangers and deputy forest rangers designated in writing by the Secretary of the Department of Natural and Economic Resources as forest law-enforcement officers to the North Carolina Criminal Justice Training and Standards Council."

§ 113-55.1. Powers of forest law-enforcement officers. — The Secretary of the Department of Natural and Economic Resources is authorized to appoint as many forest law-enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department of Natural and Economic Resources. Forest law-enforcement officers shall have all the powers and the duties of a forest ranger enumerated in G.S. 113-54 and 113-55. Forest law-enforcement officers shall, in addition to their other duties, enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, insects, or disease and for the obstructing of streams and drainage ditches in forests or woodlands and shall make arrests for violation of forest laws and for violation of G.S. 77-13 and 77-14 occurring in forests or woodlands. Any forest law-enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated regulation of the Department of Natural and Economic Resources. (1975, c. 620, s. 3.)

Cross Reference. — For intent and purpose of act, see Editor's note under § 113-55.

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-92. Officers constituted deputy game protectors. — All sheriffs, deputy sheriffs, police officers, forest law-enforcement officers, park patrolmen and all other peace officers are hereby made deputy game protectors, and it shall be their duty to aid in the enforcement of this law. (1935, c. 486, s. 9; 1939, c. 119; 1973, c. 108, s. 66; 1975, c. 620, s. 4.)

Editor's Note. — The 1975 amendment substituted "forest law-enforcement officers" for "forest wardens" and deleted "refuse keepers" following "park patrolmen."

§ 113-95. Licenses required. — No person shall at any time take any wild animals or birds without first having procured a license as provided by this Article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Executive Director of the North Carolina Wildlife Resources Commission. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Executive Director of the North Carolina Wildlife Resources Commission, game protectors and such other persons as the Executive Director of the North Carolina Wildlife Resources Commission may authorize in writing:

License Fees

License	Fee
Nonresident hunting license	$25.00
Nonresident six-day hunting license	20.00
Resident State hunting license	7.50
Resident combination hunting and fishing license	10.00
Resident county hunting license	3.50

One dollar ($1.00) of each nonresident hunting license fee and nonresident six-day hunting license fee shall be used by the North Carolina Wildlife Resources Commission for the propagation, management, and control of migratory waterfowl in North Carolina and a like portion of such license fees shall be contributed by the North Carolina Wildlife Resources Commission to a proper agency or agencies in the United States; said sum to be spent in Canada for the propagation, management, and control of migratory waterfowl.

Any applicant who is a resident of this State shall pay to the authorized license-issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, as his fee for issuing each license, the sum of twenty-five cents (25¢) for each license costing less than five dollars ($5.00) and the sum of fifty cents (50¢) for each license costing five dollars ($5.00) or more. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. Any person who shall have resided in this State for a period of at least six months or shall have maintained his domicile in this State

for a period of at least 60 days immediately preceding the making of application shall be deemed a resident for the purposes of this Article, provided that when resort must be had to the circumstances of domicile rather than to the mere fact of residence, such person shall sign a certificate of domicile on a form supplied by the Wildlife Resources Commission stating the necessary facts and intent to constitute legal domicile within this State for the required period of time. A nonresident of this State shall obtain a nonresident hunting license which shall entitle him to hunt during the entire season, or such nonresident may obtain a nonresident six-day hunting license which shall entitle him to hunt during six consecutive days during the open season. The combination hunting and fishing license may be obtained only by a resident of this State and shall authorize him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Wildlife Resources Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of five dollars and twenty-five cents ($5.25), the Wildlife Resources Commission being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Executive Director of the North Carolina Wildlife Resources Commission is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Executive Director of the North Carolina Wildlife Resources Commission may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands and in the county where the deed to such lands is registered by payment of a license fee of nine dollars and fifty cents ($9.50) plus fifty cents (50¢) for the issuing officer. Such nonresident must make a sworn application to the Executive Director of the North Carolina Wildlife Resources Commission, on forms provided by said Executive Director of the North Carolina Wildlife Resources Commission, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Executive Director of the North Carolina Wildlife Resources Commission, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty 100 acres or more of land in the State of North Carolina may hunt upon such lands, subject to the

provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve," as defined in subdivision (7) of G.S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of nine dollars and fifty cents ($9.50) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license.

Any resident of this State who has attained the age of 65 years may, upon making application, including satisfactory proof of age, to the license section of the Wildlife Resources Commission at its headquarters in Raleigh, and upon payment of a fee of ten dollars ($10.00), receive from the Wildlife Resources Commission a nontransferable combination hunting and fishing license which shall be valid for the life of such person. Such license shall not relieve the holder thereof from the purchase of any additional license or permit which may be required for hunting big game, fishing for mountain trout, hunting and fishing on public wildlife management areas, or using special devices for fishing inland waters. Provided, however, that such lifetime combination hunting and fishing license shall be issued without charge to any such resident applicant who has attained the age of 70 years.

The certificate of domicile required in the third paragraph of this section to be supplied by the Wildlife Resources Commission shall as near as practicable be in form and contents as follows:

North Carolina Wildlife Resources Commission
Raleigh, North Carolina

State of North Carolina } Certificate of Domicile
County of . . . . }

I,. . . . . , do hereby represent and certify
(name of applicant)
to the North Carolina Wildlife Resources Commission that on the . . . . day of . . . ., 19. . . ., I established my bona fide residence and abode at . . . ., ... ,
(street or R.F.D. No.) (city or town)
North Carolina; and I do hereby further represent and certify that at the time of establishment of such residence or abode and at all times since my intention was, has been, and still is to maintain such abode, or some other abode located within the State of North Carolina, as my principal place of residence either permanently or indefinitely.

Witness my hand this, the . . . . day of . . . . . ., 19 . . . .

. . . .
(Signature of applicant)

Witness:
. . . .

(1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4.)

Editor's Note. —
The 1975 amendment revised the schedule of fees in the first paragraph, decreased the fee for a guide's license from $10.00 to $5.25, increased the fee for a landowning nonresident's license from $5.00 to $9.50 and increased the fee for a special controlled shooting preserve license from $6.00 to $9.50.

Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-95.2. Big-game hunting license. — In addition to such hunting licenses as are required by G.S. 113-95, no one may hunt any species of big game without first having procured a big-game hunting license which shall be issued to a resident of this State upon payment of a license fee in the sum of three dollars and twenty-five cents ($3.25) plus twenty-five cents (25¢) for the issuing agent, and to a nonresident of this State upon payment of a license fee in the sum of four dollars and fifty cents ($4.50) plus fifty cents (50¢) for the issuing agent. For the purpose of this section "big game" is defined as deer, bear, wild boar and wild turkey. (1969, c. 1042, s. 7; 1975, c. 197, s. 5.)

Editor's Note. — The 1975 amendment rewrote the first sentence of this section.

Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-95.3. Licenses for disabled veterans. — Any resident of this State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration shall be issued a lifetime license for hunting, fishing and trapping as provided in this Chapter, upon payment of the sum of seven dollars and fifty cents ($7.50). (1969, c. 1042, s. 13; 1975, c. 197, s. 6.)

Editor's Note. — The 1975 amendment substituted "Any resident of this State who is a fifty percent (50%) or more disabled war veteran" for "All one-hundred-percent (100%) disabled war veterans" at the beginning, and substituted "the sum of seven dollars and fifty cents ($7.50)" for "one annual license fee" at the end, of the section.

Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-95.4. Report to Wildlife Resources Commission required upon killing of bear, wild turkey, deer or wild boar. — Any person killing a bear, wild turkey, deer or wild boar shall make a report of such kill to the Wildlife Resources Commission. The Commission is authorized and empowered by appropriate regulations to prescribe the method of making such report and the contents thereof, and to require positive identification of the carcass of the kill, by tagging or otherwise, pending completion of the report. (1973, c. 1097, s. 1; 1975, c. 171.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, substituted "deer or wild boar" for "or antlerless deer" in the first sentence.

§ 113-95.5. Primitive weapons hunting license. — Any person may obtain a license to hunt wild animals or birds with bow and arrow, muzzle-loading firearm or other primitive weapon during any special season established by the Wildlife Resources Commission for hunting with authorized primitive weapons on payment of a license fee of four dollars and fifty cents ($4.50) plus fifty cents (50¢) for the issuing agent. This license shall not relieve the holder thereof from the necessity of purchasing an appropriate resident or nonresident hunting license or any additional license or permit which may be required for hunting big game or hunting on game lands. (1975, c. 197, s. 7; c. 673, s. 1.)

Editor's Note. — Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

The 1975 amendment substituted the language beginning "wild animals or birds" and ending "authorized primitive weapons" for "exclusively with bow and arrow as authorized by G.S. 113-104" in the first sentence and substituted the language beginning "an appropriate resident" and ending "on game lands" for "any additional license or permit which may be required for hunting big game, hunting on game lands, or using a bow and arrow as a special device in taking nongame fish" in the second sentence.

§ 113-95.6. Sportsman's combination license. — In lieu of the hunting licenses required by G.S. 113-95, 113-95.2 and 113-95.5 and the fishing licenses required by G.S. 113-271 and 113-272, an applicant may obtain a sportsman's combination license which entitles the holder thereof, during the open seasons and subject to the applicable bag, creel, and possession limits, to hunt with firearms or authorized primitive weapons wild animals and birds, including big game, and to fish by means of hook and line in joint and inland fishing waters, including public mountain trout waters, on any lands which are open to hunting and fishing, including game lands. The sportsman's combination license authorized by this section shall be issued upon payment of a license fee in the sum of twenty-four dollars and fifty cents ($24.50) by a resident of this State, or in the sum of forty-nine dollars and fifty cents ($49.50) by a nonresident, plus fifty cents (50¢) for the issuing agent. (1975, c. 197, s. 8; c. 673, s. 2.)

Editor's Note. — Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

The 1975 amendment substituted "authorized primitive weapons" for "bow and arrow as authorized by G.S. 113-104" near the middle of the first sentence.

§ 113-96. Trappers' licenses. — Any person who shall at any time take fur-bearing animals by trapping shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of four dollars and fifty cents ($4.50) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of nine dollars and fifty cents ($9.50) as a license fee and the sum of fifty cents (50¢) as a fee to the officer or person other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months,

or an alien, shall pay to the officer or person issuing the license, the sum of fifty-nine dollars and fifty cents ($59.50) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the Executive Director of the North Carolina Wildlife Resources Commission, and shall be distinguished from the general hunting licenses above provided. The manner of taking fur-bearing animals by trapping shall be as provided in this Article. The Wildlife Resources Commission is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this Article. (1929, c. 278, s. 3; 1969, c. 1042, s. 6; 1973, c. 1262, s. 18; 1975, c. 197, ss. 9-11.)

Editor's Note. —

The 1975 amendment increased the cost of resident county and State trappers' licenses and the fees retained by the officers issuing them and increased the cost of a nonresident State trappers' license.

Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-96.1. Schedule of licenses. — The several hunting and trapping licenses required and authorized by the preceding G.S. 113-95, 113-95.2, 113-95.3, 113-95.5, 113-95.6 and 113-96 are summarized and tabulated as follows:

License	Fee
Nonresident hunting license	$25.00
Nonresident six-day hunting license	20.00
Nonresident landowner's county hunting license	10.00
Resident State hunting license	7.50
Resident combination hunting and fishing license	10.00
Resident county hunting license	3.50
Controlled shooting preserve hunting license	10.00
Resident big game hunting license	3.50
Nonresident big game hunting license	5.00
Primitive weapons hunting license	5.00
Resident sportsman's combination license	25.00
Nonresident sportsman's combination license	50.00
Nonresident trapping license	60.00
Resident State trapping license	10.00
Resident county trapping license	5.00
Lifetime combination licenses:	
Resident fifty percent (50%) or more disabled veteran	7.50
Resident 65 years old	10.00
Resident 70 years old	(No Charge).

(1969, c. 1042, s. 8; 1975, c. 197, s. 12; c. 673, s. 3.)

Editor's Note. — The first 1975 amendment rewrote this section, increasing the rates and adding to the schedule of licenses.

The second 1975 amendment substituted "Primitive weapons hunting license" for "Bow and arrow hunting license" near the middle of the schedule.

Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-100. Open season.

Local Modification. — By virtue of Session Laws 1975, c. 217, Beaufort should be stricken from the Replacement Volume.

§ 113-104. Manner of taking game. — No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this Article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Wildlife Resources Commission, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this Article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this Article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this Article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset, with a shotgun not larger than number 10 gauge, a rifle, or with bow having minimum pull of 45 pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven eighths of an inch, unless otherwise specifically permitted by this Article: Provided, however, blunt-type arrowheads may be used in taking game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants; provided that [in Alexander, Buncombe, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Macon, Madison, Mitchell, Polk, Rutherford, Transylvania and Yancey Counties] pistols with barrels not less than six inches in length and a muzzle velocity of not under 1100 feet per second and bullet weight of not less than 35 grains or more than 70 grains may be used in the hunting or taking of squirrels or rabbits on one's own land or on land in one's legal possession, or on lands of another where expressed permission has been granted therefor. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine-powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations when hunting raccoons or opossums with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this Article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game to run trials or train dogs at any time: Provided, that no shotgun or rifle be used and that no game birds or game animals shall be taken during the closed season by reason

thereof. The Wildlife Resources Commission shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Wildlife Resources Commission. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

No person shall take any wild animal or wild bird at night with the aid of an artificial light if such taking is from any aircraft, vehicle, watercraft, or other conveyance; provided however that this section does not prohibit the collection of specimens for scientific and medical studies when conducted under permit issued by the North Carolina Wildlife Resources Commission.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined; provided, that this sentence shall not apply to any person while lawfully hunting on a licensed "controlled shooting preserve" as defined by G.S. 113-84(7). It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters, their guns, dogs, or other hunting equipment or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat or floating device. This paragraph shall not apply to the Counties of Beaufort, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Person, Robeson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. With respect to the Roanoke River and its tributaries in Northampton and Bertie Counties, but not to any of its tributaries in Halifax and Edgecombe Counties, between the Roanoke River's intersection with U.S. Highway 301 at Weldon in Northampton County and its intersection with U.S. Highway 17 at Williamston in Bertie County, this paragraph shall apply; provided, however, this paragraph shall not apply to any other river or stream in Bertie, Edgecombe, Halifax and Northampton Counties. For the purposes of this section, no portion of the Roanoke River shall be deemed to lie in Martin County.

It shall be unlawful for any person to take any migratory waterfowl with the aid of bait or live decoys, or on, over or within 300 yards of any place where any grain, salt or other feed is exposed so as to constitute an attraction to migratory waterfowl or has been so exposed during any of the 10 consecutive days immediately preceding the taking, or on, over or within 300 yards of any

place where tame or captive migratory waterfowl are present, unless such birds are and have been for a period of 10 consecutive days prior to such taking confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl. Nothing in this paragraph shall prohibit the taking of migratory waterfowl on or over standing crops, flooded croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, cc. 75, 140; 1971, c. 439, ss. 1-3; c. 899, s. 1; 1973, c. 1096; c. 1262, s. 18; 1975, c. 669.)

Local Modification. —
By virtue of Session Laws 1975, c. 217, Beaufort should be stricken from the Replacement Volume.

Editor's Note. —
The 1975 amendment added the last paragraph.

In order to implement the intention of Session Laws 1973, c. 1262, s. 18, "Wildlife Resources Commission" has been substituted for "Wildlife Commission" in the second paragraph.

§ 113-109. Punishment for violation of Article.

(e) Any person who shall take or kill or attempt to take or kill any deer from any boat or other floating device in violation of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or imprisoned for not less than 30 days nor more than 60 days, in the discretion of the court. This subsection shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Surry, Swain, Tyrrell, Washington and Yadkin.
(1975, c. 216.)

Editor's Note. —
The 1975 amendment deleted Wayne from the list of counties in the second sentence of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

Article 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

§ 113-109.8. Article inapplicable to certain counties. — This Article shall not apply to Anson, Beaufort, Carteret, Currituck, Dare, Hyde, Montgomery, Onslow, Tyrrell, and Warren Counties. (1973, c. 823, ss. 1, 5; c. 926; 1975, c. 579.)

Editor's Note. —
The 1975 amendment inserted Warren in the list of counties.

ARTICLE 8.

Fox-Hunting Regulations.

§ 113-112. Police power of protectors in enforcing county laws relative to foxes. — All game protectors duly appointed by the Wildlife Resources Commission and all ex officio game protectors named in the North Carolina Game Law shall be authorized and empowered as fully as is the sheriff and other local officers to enforce local and county laws relating to the open and closed seasons to hunt or protect red and grey foxes. (1931, c. 143, s. 5; 1973, c. 1262, s. 86; 1975, c. 613.)

Editor's Note. —
The 1975 amendment substituted "Wildlife Resources Commission" for "Department of Natural and Economic Resources."

ARTICLE 10.

Regulation of Fur Dealers; Licenses.

§ 113-114. Fur dealer's license; fees. — Every person, firm or corporation who engages in the business of buying and selling raw furs, pelts or skins of fur-bearing animals shall before beginning such business, and annually thereafter, obtain a license from the Wildlife Resources Commission. The fees for such licenses shall be as follows:

(1) For a resident statewide license, the sum of thirty dollars ($30.00). This license will entitle the holder to buy and sell furs in any or all of the counties in North Carolina.

(2) For a resident county license, the sum of fifteen dollars ($15.00). This license will entitle the holder to buy and sell furs only in the county designated in the license. The fee for each additional county shall be ten dollars ($10.00).

(3) For a resident county license which entitles the dealer to buy or sell only at a fixed place of business in the county of his residence, the sum of ten dollars ($10.00).

(4) For a nonresident of the State, the sum of one hundred and fifty dollars ($150.00) for a statewide license.

These licenses shall be issued through the game protectors or agents of the Wildlife Resources Commission as a part of their official duties. The funds so received from the sale of the above licenses shall be deposited with the State Treasurer to the credit of the Wildlife Resources Commission and they shall be expended for the protection and promotion of the fur-bearing industry in North Carolina and for the administration and enforcement of this Article and for no other purpose. (1929, c. 333, ss. 1, 2; 1933, c. 337, s. 1; 1973, c. 1262, s. 86; 1975, c. 197, ss. 13, 14.)

Editor's Note. —
The 1975 amendment substituted "Wildlife Resources Commission" for "Department of Natural and Economic Resources" throughout the section and increased the fees in subdivisions (1) through (4).

Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-115. Annual report of furs bought. — Every person, firm or corporation who takes out a fur dealer's license shall report to the Wildlife Resources Commission on April 1 of each year and every year the total amount of furs bought by such dealer, including the species of fur-bearing animals and the number of each, and such other information as required by the Wildlife Resources Commission. (1929, c. 333, s. 3; 1973, c. 1262, s. 86; 1975, c. 197, s. 13.)

Editor's Note. —
The 1975 amendment substituted "Wildlife Resources Commission" for "Department of Natural and Economic Resources."
Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-117. Permits may be issued to nonresident dealers. — It shall be lawful for the Wildlife Resources Commission to issue permits to nonresident dealers for the purchase of raw furs from only statewide licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3; 1935, c. 471, s. 1; 1973, c. 1262, s. 86; 1975, c. 197, s. 13.)

Editor's Note. —
The 1975 amendment substituted "Wildlife Resources Commission" for "Department of Natural and Economic Resources."
Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

§ 113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer. — Any nonresident person, firm or corporation or any agent or person acting as agent therefor, who in any manner purchases or solicits to purchase furs in North Carolina, except as provided in G.S. 113-117, shall be subject to and shall procure from the Wildlife Resources Commission a nonresident fur dealer's license before he shall be entitled to purchase or solicit to purchase furs as above set out in this section. (1929, c. 333, s. 7; 1935, c. 471, s. 2; 1973, c. 1262, s. 86; 1975, c. 197, s. 13.)

Editor's Note. —
The 1975 amendment substituted "Wildlife Resources Commission" for "Department of Natural and Economic Resources."
Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor. — Any person who willfully goes on the land, waters, ponds,

or a legally established waterfowl blind of another upon which notices, signs or posters, described in G.S. 113-120.2, prohibiting hunting, fishing, or trapping, or upon which "posted" notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00), or by imprisonment for not more than six months, or by both fine and imprisonment. Provided, further, that no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax, Onslow, Warren. (1949, c. 887, s. 1; 1953, c. 1226; 1965, c. 1134; 1975, c. 280, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the penalty provisions at the end of the first sentence.

§ 113-120.2. Regulations as to posting of property. — The notices, signs or posters described in G.S. 113-120.1 shall measure not less than 120 square inches and shall be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart. (1949, c. 887, s. 2; 1953, c. 1226; 1965, c. 923; 1975, c. 280, ss. 2, 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "120 square inches" for "10 inches by 12 inches" and "200 yards" for "500 yards" in the first sentence and "200 yards" for "300 yards" in the last sentence.

Article 11.

Miscellaneous Provisions.

§ 113-123. Assent of State to act of Congress providing for aid in wildlife restoration projects. — The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public [Law], number 415, 75th Congress), and the North Carolina Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the [Wildlife Resources Commission] under the direction of the North Carolina Wildlife Resources Commission. (1939, c. 271; 1973, c. 1262, s. 86; 1975, c. 613.)

Editor's Note. — The 1975 amendment substituted "Wildlife Resources Commission" for "Department of Natural and Economic Resources" near the beginning and at the end of the section.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

ARTICLE 13.

Jurisdiction of Fisheries Agencies.

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 113-139. Search warrants.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

§ 113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes. — (a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department of Natural and Economic Resources. Granting of a State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The North Carolina Department of Water and Air Resources [Department of Natural and Economic Resources] shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(d) Except in the case of an application for a special emergency dredge or fill permit, the applicant shall cause to be served in the manner provided by subdivision (g)(9) of this section upon an owner of each tract of riparian property adjoining that of the applicant a copy of the application filed with the State of North Carolina and each such adjacent riparian owner shall have 30 days from the date of such service to file with the Department of Natural and Economic Resources written objections to the granting of the permit to dredge or fill. An owner may be served by publication, in the manner provided by subdivision (g)(10) of this section, whenever the owner's address, whereabouts, dwelling house or usual place of abode is unknown and cannot with due diligence be ascertained, or there has been a diligent but unsuccessful attempt to serve the owner under subdivision (g)(9) of this section. In the case of a special emergency dredge or fill permit the applicant must certify that he took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the secretary shall issue or deny the permit within the time period specified in (e) of this section, upon the express understanding from the applicant that he will be entirely liable and hold the State harmless for all damage to

adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department of Natural and Economic Resources among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Marine Fisheries Commission shall by rule, after at least two public hearings, enumerate such conditions as it deems necessary to carry out the purposes of this subsection. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act upon an application for permit within 90 days after the application is filed except for applications for a special emergency permit in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary of the Department of Natural and Economic Resources is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Marine Fisheries Commission may, after public hearings, elaborate by rule on upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(1975, c. 456, ss. 1-7.)

Editor's Note. —

The 1975 amendment added "Except as hereinafter provided" at the beginning of subsection (a), added "Except in the case of an application for a special emergency dredge or fill permit" at the beginning of subsection (d), added the last two sentences of subsection (d), inserted "except special emergency permit applications" in the first sentence of subsection (e), added the fifth, sixth, seventh and eighth sentences in subsection (e), inserted "except for applications for a special emergency permit in which case the

Department shall act within two working days after an application is filed" in the last sentence of subsection (e) and added subsection (e1).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Only the subsections added or changed by the amendment are set out.

If the record on appeal contains no narrative statement or transcript of the evidence offered before the Board [now Department], its conclusion is presumed to be correct. In re Appeal of Seashell Co., 25 N.C. App. 470, 213 S.E.2d 374 (1975).

ARTICLE 20.

Miscellaneous Regulatory Provisions.

§ 113-262. Taking by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish as evidence. — (a) Except as otherwise provided in this Article, or in regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) in the discretion of the court to take any fish through the use of poisons, drugs, explosives, or electricity.

(b) The possession of any fish which bears evidence of having been killed in violation of this section constitutes prima facie evidence that the person in possession intentionally took such fish. (1883, c. 290; Code, s. 1094; Rev., s. 3417; C. S., s. 1968; 1927, c. 107; 1953, c. 1134; 1955, c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1965, c. 957, s. 2; 1975, c. 728.)

Editor's Note. — The 1975 amendment inserted "by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00)" in subsection (a).

ARTICLE 21.

Inland Fishing Licenses.

§ 113-271. Hook-and-line licenses in inland fishing waters.

(d) The hook-and-line fishing licenses are granted upon such terms and for such prices as set out below. The amount stated in parentheses following the price of a license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

(1) Resident State license, $7.50 (50¢). This license is valid only for use by an individual resident of the State.

(2) Resident State combination hunting-fishing license, $10.00 (50¢). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-95.

(3) Resident county license, $3.50 (25¢). This license is valid only for use by an individual resident of the State within the county in which he lives.

(4) Resident three-day license, $3.00 (25¢). This license is valid only for use on three consecutive days by an individual resident of the State.

(5) Nonresident State license, $12.50 (50¢). This license is valid for use by an individual within the State.

(6) Nonresident State three-day license, $5.50 (50¢). This license is valid only for use on three consecutive days by an individual within the State.

(7) Repealed by Session Laws 1975, c. 197, s. 15. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9; 1973, c. 476, s. 143; c. 504; 1975, c. 197, s. 15.)

Editor's Note. —
The 1975 amendment increased the fees in subdivisions (1), (2), (3) and (5) and rewrote subdivisions (4) and (6) of subsection (d). The amendment also deleted former subdivision (7) of subsection (d), relating to a nonresident State daily license.
Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."
As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 113-272. Special trout licenses.

(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident special trout license, $3.25 (25¢). This license is valid only for use by an individual resident of the State in public mountain trout waters.

(2) Nonresident special trout license, $6.25 (50¢). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2; 1969, c. 1042, s. 10; 1973, c. 1262, s. 18; 1975, c. 197, s. 16.)

Editor's Note. —
The 1975 amendment increased the resident and nonresident special trout license fees in subsection (d).
Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."
As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 113-272.1. Sportsman's combination license. — In lieu of the hook-and-line fishing licenses required by G.S. 113-271 and 113-272 and the hunting licenses required by G.S. 113-95, 113-95.2 and 113-95.5, an applicant may obtain a sportsman's combination license which entitles the holder thereof, during the open seasons and subject to the applicable creel, bag and possession limits, to fish by means of hook and line in joint and inland fishing waters, including public mountain trout waters, and to hunt wild animals and birds, including big game, on any lands which are open to hunting and fishing, including game lands. The sportsman's combination licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident sportsman's combination license, $25.00 (50¢).

(2) Nonresident sportsman's combination license, $50.00 (50¢). (1975, c. 197, s. 17.)

Editor's Note. — Session Laws 1975, c. 197, s. 18, provides: "All provisions of this act which relate to hunting, trapping and combination licenses shall become effective on August 1, 1975; all provisions of this act which relate exclusively to fishing or fishing licenses, other than combination licenses, shall become effective on January 1, 1976; all other provisions of this act shall become effective upon ratification."

ARTICLE 23B.

Fishermen's Economic Development Program.

§ 113-315.18. Fishermen's Economic Development Program. — The Secretary of Natural and Economic Resources is hereby authorized to provide

through his Department of Natural and Economic Resources and the extension services of the University of North Carolina those services intended to promote the economic development of the fishermen, including but not limited to:

(1) Instituting business management services to promote better business management practices throughout the fishing and seafood industry, and to promote the better use of credit and other business management techniques.

(2) Providing counseling services to the fishermen at all levels and assisting them in meeting the Federal and State environmental, safety and health requirements.

(3) Improving waterways, harbors, inlets, and generally the water transportation system of North Carolina so as to more efficiently and safely accommodate commercial and sport fishing craft, and to provide access to and from fishing grounds. (1973, c. 618, s. 1; c. 1262, s. 28; 1975, c. 19, s. 36.)

Editor's Note. — The 1975 amendment corrected an error in Session Laws 1973, c. 618, s. 1, by substituting "his" for "its" preceding "Department of Natural and Economic Resources" in the introductory language.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

ARTICLE 27.

Oil and Gas Conservation.

Part 2. The Oil and Gas Conservation Act.

§ 113-394. Limitations on production; allocating and prorating "allowables."

(c) Whenever the Department limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Department shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the Department shall limit the total amount of gas which may be produced from such pool. The Department shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(1975, c. 19, ss. 37, 38.)

Editor's Note. —
The 1975 amendment corrected an error by substituting "subsection G.S. 113-392(d)" for "subsection I of section 9 of this law" in subsections (c) and (d).

As the rest of the section was not changed by the amendment, only subsections (c) and (d) are set out.

Chapter 113A.

Pollution Control and Environment.

Article 3.

Natural and Scenic Rivers System.

Sec.
113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.
113A-35.2. Additional components.

Article 4.

Sedimentation Pollution Control Act of 1973.

113A-51. Preamble.
113A-52. Definitions.
113A-57. Mandatory standards for land-disturbing activity.

Article 7.

Coastal Area Management.

Part 2. Planning Processes.

113A-109. County letter of intent; timetable for preparation of land-use plan.

Part 4. Permit Letting and Enforcement.

Sec.
113A-116. Local government letter of intent.
113A-117. Implementation and enforcement programs.
113A-125. Transitional provisions.

Article 9.

Land Policy Act.

113A-160 to 113A-164. [Reserved.]

Article 10.

Control of Outdoor Advertising near the Blue Ridge Parkway.

113A-165. Advertisements prohibited within 1,000 feet of centerline; exceptions.
113A-166. Rules and regulations.
113A-167. Existing billboards.
113A-168. Removal, etc., of unlawful advertising.
113A-169. Condemnation procedure.
113A-170. Violation a misdemeanor; injunctive relief.

ARTICLE 1.

Environmental Policy Act.

§ 113A-2. Purposes.

Filing of Statement. — Nothing in this Chapter makes the filing of a statement a condition precedent to the commencement of construction of a building for which State funds have been appropriated. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 113A-4. Cooperation of agencies; reports; availability of information.

Filing of Statement. — Nothing in this Chapter makes the filing of a statement a condition precedent to the commencement of construction of a building for which State funds have been appropriated. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

ARTICLE 3.

Natural and Scenic Rivers System.

§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system. — That segment of the south fork of the New River extending from its confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany Counties to its confluence with the north fork of the New River and the main fork of the New River in Ashe and Alleghany Counties downstream to the Virginia State line shall be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers System.

The Department of Natural and Economic Resources shall prepare a management plan for said river section. This management plan shall recognize and provide for the protection cf the existing undeveloped scenic and pastoral features of the river. Furthermore, it shall specifically provide for continued use of the lands adjacent to the river for normal agricultural activities, including, but not limited to, cultivation of crops, raising of cattle, growing of trees and other practices necessary to such agricultural pursuits.

For purposes of implementing this section and the management plan, the Department of Natural and Economic Resources is empowered to acquire in fee simple not more than 400 acres and to acquire easements, to provide for protection of scenic values as described in G.S. 113A-38 and to provide for public access, in as many as 1,500 acres. Easements obtained for the purpose of implementing this section and the management plan shall not abridge the water rights being exercised on May 26, 1975.

Should the Governor seek inclusion of the said river segment in the National System of Wild and Scenic Rivers by action of the Secretary of Interior, such inclusion shall be at no cost to the federal government, as prescribed in the National Wild and Scenic Rivers Act, and therefore shall be under the terms described in this section of the North Carolina Wild and Scenic Rivers Act and in the management plan developed pursuant thereto. (1973, c. 879; 1975, c. 404.)

Editor's Note. — The 1975 amendment rewrote this section.

As to State's attempts to stay federal Power Commission order regarding dam on New River, see North Carolina v. Federal Power Comm'n, 393 F. Supp. 1116 (M.D.N.C. 1975).

§ 113A-35.2. Additional components. — That segment of the Linville River beginning at the State Highway 183 bridge over the Linville River and extending approximately 13 miles downstream to the boundary between the United States Forest Service lands and lands of Duke Power Company (latitude 35° 50' 20") shall be a scenic river area and shall be included in the North Carolina Natural and Scenic River System. (1975, c. 698.)

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-51. Preamble. — The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this Article to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation. In recognition of the desirability of early coordination of sedimentation control planning, it is the intention of the General Assembly that preconstruction conferences be held among the affected parties, subject to the availability of staff. (1973, c. 392, s. 2; 1975, c. 647, s. 3.)

Editor's Note. — The 1975 amendment added the last sentence.

§ 113A-52. Definitions. — As used in this Article, unless the context otherwise requires:

(11) "Working days" means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken. (1973, c. 392, s. 3; c. 1417, s. 1; 1975, c. 647, s. 1.)

Editor's Note. — The 1975 amendment inserted "or soil conditions" in subdivision (11).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (11) are set out.

§ 113A-54. Powers and duties of the Commission.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 113A-57. Mandatory standards for land-disturbing activity. — No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearer the land-disturbing activity, provided, that this subdivision (1) shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(1975, c. 647, s. 2.)

Editor's Note. — The 1975 amendment inserted "during periods of construction or improvement to land" near the beginning of subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

ARTICLE 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-100. Short title.

Editor's Note. — Session Laws 1975, c. 452, s. 5, amends Session Laws 1973, c. 1284, s. 3, so as to change the expiration date of the 1973 act from June 30, 1981, to June 30, 1983.

The basic thrust of this Article is directed toward protecting areas of environmental concern by requiring permits for development in those areas. Rankin v. Coleman, 394 F. Supp. 647 (E.D.N.C. 1975).

Part 2. Planning Processes.

§ 113A-109. County letter of intent; timetable for preparation of land-use plan. — Within 120 days after July 1, 1974, each county within the coastal area shall submit to the Commission a written statement of its intent to develop a land-use plan under this Article or its intent not to develop such a plan. If any county states its intent not to develop a land-use plan or fails to submit a statement of intent within the required period, the Commission shall prepare and adopt a land-use plan for that county. If a county states its intent to develop a land-use plan, it shall complete the preparation and adoption of such plan within 480 days after adoption of the State guidelines. In the event of failure by any county to complete its required plan within this time, the Commission shall promptly prepare and adopt such a plan.

In any case where the Commission has adopted a land-use plan for a county that county may prepare its own land-use plan in accordance with the procedures of this Article, and upon approval of such plan by the Commission it shall supersede the Commission's plan on a date specified by the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 1.)

Editor's Note. — The 1975 amendment substituted "480 days" for "300 days" in the third sentence of the first paragraph.

Part 4. Permit Letting and Enforcement.

§ 113A-116. Local government letter of intent. — Within two years after July 1, 1974, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S. 113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary of Natural and Economic Resources shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance. (1973, c. 1284, s. 1; 1975, c. 452, s. 2.)

Editor's Note. — The 1975 amendment substituted "two years" for "one year" near the beginning of the first sentence.

§ 113A-117. Implementation and enforcement programs. — (a) The Secretary of Natural and Economic Resources shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 20 months after July 1, 1974, the Commission shall adopt and transmit said

criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 36 months after July 1, 1974. The board of commissioners of each coastal-area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 36 months after July 1, 1974, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116. Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.
(1975, c. 452, s. 3.)

Editor's Note. — The 1975 amendment substituted "20 months" for "14 months" in the last sentence of subsection (a) and "36 months" for "20 months" in the first and second sentences of subsection (b).

As subsections (c) and (d) were not changed by the amendment, they are not set out.

§ 113A-123. Judicial review.

Editor's Note. —
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 113A-125. Transitional provisions. — (a) Existing regulatory permits shall continue to be administered within the coastal area by the agencies presently responsible for their administration until a date (not later than 44 months after July 1, 1974), to be designated by the Secretary of Natural and Economic Resources as the permit changeover date. Said designation shall be effective from and after its filing with the Secretary of State.
(1975, c. 452, s. 4.)

Editor's Note. —
The 1975 amendment substituted "44 months" for "27 months" in the parentheses in the first sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Article 9.

Land Policy Act.

§§ 113A-160 to 113A-164: Reserved for future codification purposes.

ARTICLE 10.

Control of Outdoor Advertising near the Blue Ridge Parkway.

§ 113A-165. Advertisements prohibited within 1,000 feet of centerline; exceptions. — No advertisement or advertising structure shall be erected, constructed, installed, maintained or operated within 1,000 feet of the centerline of the Blue Ridge Parkway, except the following:

(1) Sign displays or devices which advertise sale, lease, rental, or development of the property on which it is located.

(2) On-premises Signs. — For the purpose of this Article, those signs, displays or devices which carry only advertisements strictly related to the lawful use of the property on which it is located including signs, displays or devices which identify the business transacted, services rendered, goods sold or produced on the property, name of the business, [and] name of the person, firm or corporation occupying or owning the property. The size of signs advertising the major business activity is not regulated hereunder. Signs which advertise brand-name products or service sold or offered for sale on the property shall not be displayed as on-premise[s] signs unless such signs are on or attached to the building in which such products are sold. All such signs permitted under this subsection shall be located not more than 150 feet from the building in which such business activity is carried on.

(3) Historic markers erected by duly constituted and authorized public authorities.

(4) Highway markers and signs erected or caused to be erected by the Board of Transportation or other authorized authorities in accordance with the law.

(5) Directional and official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with lawful authorization for the purpose of carrying out the official duty or responsibility.

(6) Signs located within a 1,000-foot radius of intersections created by the crossing of the centerline of the Blue Ridge Parkway with the center lines of components of the National System of Interstate and Defense Highways, Federal Aid Primary Highway System, or the North Carolina System of Primary Highways, not, however, inconsistent with other provisions of the General Statutes. (1973, c. 507, s. 5; 1975, c. 385.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "State Highway Commission" in subdivision (4) of this section as enacted by Session Laws 1975, c. 385.

§ 113A-166. Rules and regulations. — The Secretary of the Department of Natural and Economic Resources shall have authority to make and promulgate rules and regulations necessary for the carrying out of the provisions of this Article. (1975, c. 385.)

§ 113A-167. Existing billboards. — Any billboard in existence upon May 26, 1975, and which does not conform to the requirements of this Article may be maintained for the life of such advertisement or advertising structure, provided that: The Department of Natural and Economic Resources is authorized to acquire by purchase, gift or condemnation all outdoor advertising and all property rights pertaining thereto existing on May 26, 1975, which are nonconforming.

(1) In any acquisition, purchase or condemnation, just compensation to the owner of the outdoor advertising where the owner of the outdoor advertising does not own the fee shall be limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real property on which the outdoor advertising is located and such value shall include the value of the outdoor advertising.

(2) In any acquisition, purchase or condemnation, just compensation to the owner of the fee or other interest in the real property upon which the outdoor advertising is located where said owner does not own the outdoor advertising located thereon shall be limited to the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Commission of the right to erect and maintain such outdoor advertising thereon, and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration.

(3) In any acquisition, purchase or condemnation, just compensation to the owner of the fee in the real property upon which the outdoor advertising is located where said owner also owns the outdoor advertising located thereon shall be limited to the fair market value of the outdoor advertising plus the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Department of Natural and Economic Resources of the right to erect and maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration. (1975, c. 385.)

§ 113A-168. Removal, etc., of unlawful advertising. — Any outdoor advertising erected or established after May 26, 1975, in violation of the provisions of this Article shall be unlawful and shall constitute a nuisance. The Department of Natural and Economic Resources shall give 30 days' notice by certified mail to the owner of the nonconforming outdoor advertising structure, if such owner is known or can by reasonable diligence be ascertained, to move the outdoor advertising structure or to make it conform to the provisions of this Article and rules and regulations promulgated by the Department of Natural and Economic Resources hereunder. The Department of Natural and Economic Resources or its agents shall have the right to remove or contract to have removed the nonconforming outdoor advertising at the expense of the said owner if the said owner fails to act within 30 days after receipt of such notice. The Department of Natural and Economic Resources or its agents or contractor and his employees may enter upon private property for the purpose of removing outdoor advertising prohibited by this Article or rules and regulations promulgated by the Department of Natural and Economic Resources hereunder without civil or criminal liability. (1975, c. 385.)

§ 113A-169. Condemnation procedure. — For the purposes of this Article, the Department of Natural and Economic Resources shall use the procedure for condemnation of property as provided for by Article 9 of Chapter 136 of the General Statutes. (1975, c. 385.)

§ 113A-170. Violation a misdemeanor; injunctive relief. — Any person, firm, corporation or association placing or erecting outdoor advertising structure or junkyard along the Blue Ridge Parkway in violation of this Article or any regulations passed pursuant thereto shall be guilty of a misdemeanor. In addition thereto, the Department of Natural and Economic Resources may seek injunctive relief in the superior court of the county in which the said nonconforming outdoor advertising is located and require the outdoor advertising to conform to the provisions of this Article and rules and regulations promulgated pursuant hereto, or require the removal of the said nonconforming outdoor advertising. (1975, c. 385.)

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 1.

Energy Policy Council.

Sec.
113B-1. Legislative findings and purpose.
113B-2. Creation of Energy Policy Council; purpose of Council.
113B-3. Composition of Council; appointments; terms of members; qualifications.
113B-4. Chairman of Council; replacement; reimbursement of members.
113B-5. Organization of the Council; adoption of rules of procedure therefor.
113B-6. General duties and responsibilities.
113B-7. Energy Conservation Plan; components.
113B-8. Energy Management Plan; components.
113B-9. Emergency Energy Program; components.
113B-10. Energy Research and Development Program; information gathering; coordination of energy research and planning.
113B-11. Powers and authority.
113B-12. Annual reports; contents.
113B-13 to 113B-19. [Reserved.]

Article 2.

Energy Crisis Administration.

113B-20. Definition; declaration of energy crisis.
113B-21. Creation of Legislative Committee on Energy Crisis Management.
113B-22. Procedures for adopting emergency proposals; emergency powers.
113B-23. Administration of plans and procedures.
113B-24. Enforcement; penalties for violations.

Editor's Note. — Session Laws 1975, c. 877, which amended § 62-2 and enacted this Chapter, provides, in s. 1, that the act shall be known as the North Carolina Energy Policy Act of 1975.

Session Laws 1975, c. 877, s. 6, makes the act effective July 1, 1975.

Session Laws 1975, c. 877, s. 5, contains a severability clause.

ARTICLE 1.

Energy Policy Council.

§ 113B-1. Legislative findings and purpose. — Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State economy;

(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;

(3) It is the responsibility of State government to encourage a reliable and adequate supply of energy for North Carolina at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general welfare; and

(4) The State has not provided the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning and efficient management of the rate of consumption of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy, and to prudently conserve energy resources in a manner

consistent with assuring a reliable and adequate supply of energy for North Carolina.

(5) It is the expressed intent of this Chapter to provide for development of such a unified energy policy for the State of North Carolina. (1975, c. 877, s. 3.)

§ 113B-2. Creation of Energy Policy Council; purpose of Council. — (a) There is hereby created a council, to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council which shall be located within the Department of Military and Veterans Affairs.

(b) Notwithstanding any other provision of this Chapter, the provisions of the Executive Organization Act of 1973 or any other statute, the Energy Policy Council shall have the duty of recommending energy programs to the Governor and the General Assembly pursuant to this Article. The Energy Policy Council shall carry out its responsibilities under Articles 1 and 2 of this Chapter independently of the Secretary of the Department of Military and Veterans Affairs.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy. (1975, c. 877, s. 4.)

§ 113B-3. Composition of Council; appointments; terms of members; qualifications. — (a) The Energy Policy Council shall consist of 14 members to be appointed as follows:

(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;

(2) Two members of the North Carolina Senate to be appointed by the President of the Senate;

(3) Seven public members who are citizens of the State of North Carolina to be appointed by the Governor;

(4) The chairman of the North Carolina Utilities Commission, the Secretary of the Department of Natural and Economic Resources and the Commissioner of Agriculture shall serve as members of the Energy Policy Council.

(b) Initial appointments to the Energy Policy Council shall be made by July 15, 1975, and each such appointee shall serve until January 31, 1977. Thereafter, the appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

(1) One such member shall be experienced in the electric power industry;

(2) One such member shall be experienced in the natural gas industry;

(3) One such member shall be experienced in the petroleum marketing industry;

(4) One such member shall be experienced in economic analysis of energy requirements;

(5) One such member shall be experienced in environmental protection;

(6) One such member shall be experienced in industrial energy consumption;

(7) One such member shall be knowledgeable of alternative sources of energy. (1975, c. 877, s. 4.)

§ 113B-4. Chairman of Council; replacement; reimbursement of members. — (a) On July 15, 1975, on January 31, 1977, and every four years thereafter, the Governor shall designate one of the members of the Energy Policy Council to serve as chairman of the Council.

(b) In case of a vacancy in the membership on the Energy Policy Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5. Funds for said purpose shall be paid from the Contingency and Emergency Fund. (1975, c. 877, s. 4.)

§ 113B-5. Organization of the Council; adoption of rules of procedure therefor. — (a) To facilitate the work of the Energy Policy Council and for administrative purposes, the chairman of the Energy Policy Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy Policy Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy Policy Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council. (1975, c. 877, s. 4.)

§ 113B-6. General duties and responsibilities. — The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long-range State energy policy to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to an energy conservation plan, an energy management plan, an emergency energy program, and an energy research and development program;

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such energy forms in a manner consistent with State energy policy;

(3) To continually review and coordinate all State government research, education and management programs relating to energy matters and to continually educate and inform the general public regarding such energy matters;

(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable. (1975, c. 877, s. 4.)

§ 113B-7. Energy Conservation Plan; components. — (a) The Energy Policy Council shall prepare a recommended Energy Conservation Plan for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Conservation Plan shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Conservation Plan shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy Policy Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended plan.

(d) In addition to specific conservation recommendations, the Energy Conservation Plan shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Conservation Plan, the Council shall transmit said plan, to be known as the State Energy Conservation Plan, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation.

(f) The Governor shall transmit the approved Energy Conservation Plan to the President of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the Energy Conservation Plan, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section. (1975, c. 877, s. 4.)

§ 113B-8. Energy Management Plan; components. — (a) The Energy Policy Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976.

(b) The Energy Management Plan shall be designed to encourage the most efficient use of all sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable or uneconomical sources of energy.

(c) The Energy Management Plan shall include but not be limited to the following:

(1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply;

(2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption;

(3) An independent analysis, in five-, 10- and 20-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion;

(4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State;

(5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina;

(6) An assessment of the social, economic and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations;

(7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five-, 10- and 20-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) In addition to the above, the Energy Management Plan shall contain proposals for the implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Management Plan, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(f) The Council shall update such plan upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f). (1975, c. 877, s. 4.)

§ 113B-9. Emergency Energy Program; components. — (a) The Energy Policy Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) Within four months of July 1, 1975:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the Energy Policy Council shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy Policy Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy Policy Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy Policy Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy Policy Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy Policy Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(4) Procedures for implementing the State's responsibility as delegated by the Federal Mandatory Allocation Program for Middle Distillate Fuels as set forth in Chapter XIII of Title 32A, Code of Federal Regulations, as well as any succeeding federal programs, laws, orders, rules or regulations relating to the allocation, conservation or consumption of energy resources, including the Emergency Petroleum Allocation Act of 1973 and all orders, rules and regulations pursuant thereto.

(g) The Energy Policy Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update said program every three years and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f). (1975, c. 877, s. 4.)

§ 113B-10. Energy Research and Development Program; information gathering; coordination of energy research and planning. — (a) The Energy Policy Council shall encourage, through its activities, research studies and projects which are related to energy conservation and management and to the development of alternative energy technologies.

(b) The Council shall develop and coordinate a statewide program of research and development in energy related matters and shall give priority in encouraging and supporting such efforts to those areas of energy research and development which are of particular importance to North Carolina.

(c) The Council shall have as the central repository within State government for the collection and storage of data and information on energy-related matters. To this end the Council shall develop an energy information reporting system for use by all governmental agencies and by the general public.

(d) The Council shall review and coordinate all State agency research and planning relating to energy in an effort to reduce duplication of work and shall be the lead State agency for coordination of energy matters with local government, regional organizations, other states and the federal government.

(e) The Council may request and utilize the advice, information and services of all State, regional, local and federal agencies and shall cooperate with the President of the United States and all said agencies in matters relating to energy research, programs and policy. (1975, c. 877, s. 4.)

§ 113B-11. Powers and authority. — (a) The Energy Policy Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

(b) To assure the adequate development of relevant energy information, as provided in G.S. 113B-10, the Council may require all energy producers and major energy consumers, as determined by the Council, to file such reports and forecasts and at such dates as the Council may request; provided, however, that the Council may request only specific energy-related information which it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Council shall have authority to apply for and utilize grants, contributions and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all such applications and requests are made through and administered by the Department of Military and Veterans Affairs.

(d) The Council shall have authority to request said Division [Department] to allocate and dispense any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of Military and Veterans Affairs shall structure an energy staff capability so as to provide sufficient permanent staffing for the Energy Policy Council to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article. The Department shall further designate one such staff person as staff coordinator for the Council. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State energy policy. (1975, c. 877, s. 4.)

§ 113B-12. Annual reports; contents. — (a) Beginning January 1, 1977, and every year thereafter, the Energy Policy Council shall transmit to the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the Utilities Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters, a comprehensive report providing a general overview of energy conditions in the State. On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five-, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis and evaluation of the means by which the projected annual growth rate of energy demand may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated;

(5) The status of the Council's ongoing energy research and development program and an assessment of the energy research and planning efforts carried out in North Carolina;

(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;

(7) A summary of the Council's activities since its inception, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium. (1975, c. 877, s. 4.)

§§ 113B-13 to 113B-19: Reserved for future codification purposes.

ARTICLE 2.

Energy Crisis Administration.

§ 113B-20. Definition; declaration of energy crisis. — (a) "Energy crisis". — An energy crisis exists when the health, welfare or safety of the citizens of North Carolina are threatened by reason of an actual or impending acute shortage in usable, necessary energy resources.

(b) Upon a finding by the Governor that the conditions stated in subsection (a) do exist, the Governor may declare the existence of an energy crisis. (1975, c. 877, s. 4.)

§ 113B-21. Creation of Legislative Committee on Energy Crisis Management. — (a) There is hereby created a Legislative Committee on Energy Crisis Management to consist of the Speaker as chairman, the Speaker Pro Tem of the House of Representatives, and the President Pro Tem and Majority Leader of the Senate. The Lieutenant Governor shall serve as a nonvoting, ex officio member, provided, however, that he shall vote to break a tie.

(b) The Legislative Committee shall convene within 24 hours following the declaration of an energy crisis, as provided in G.S. 113B-20.

(c) Members of the Legislative Committee shall be reimbursed for their services pursuant to the provisions of G.S. 138-5. (1975, c. 877, s. 4.)

§ 113B-22. Procedures for adopting emergency proposals; emergency powers. — (a) Upon the declaration of an energy crisis, the Governor shall submit to the Legislative Committee for its prompt consideration such emergency orders, rules and regulations as deemed necessary to alleviate the effects of the energy crisis.

(b) The Legislative Committee shall act immediately on the Governor's emergency proposals and in no event shall such action be taken later than 48 hours following receipt of said proposals. The Legislative Committee may approve, amend or rescind such emergency proposals as it may deem advisable to alleviate the effects of the energy crisis. If the Legislative Committee fails to act within 48 hours of receipt, the emergency orders, rules or regulations shall become effective as promulgated by the Governor.

(c) No order, rule or regulation promulgated under the provisions of this section shall remain in effect for more than 30 days unless it is renewed by affirmative action of the Legislative Committee.

(d) The Governor's orders, rules and regulations, promulgated, subject to the review of the Legislative Committee, pursuant to this section, may also include, by way of further enumerated example rather than limitation, provisions for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities. (1975, c. 877, s. 4.)

§ 113B-23. Administration of plans and procedures. — (a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the Energy Policy Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy Policy Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee for further action.

(b) Upon the declaration of an energy crisis and upon the approval of the Legislative Committee, the Governor shall order the Energy Policy Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant

to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22. (1975, c. 877, s. 4.)

§ 113B-24. Enforcement; penalties for violations. — (a) The Attorney General and the law-enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules and regulations promulgated pursuant to G.S. 113B-22.

(b) Any person who violates this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 or knowingly or willfully submits false information in any report required herein shall be guilty of a misdemeanor punishable as provided in G.S. 14-3.

(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy Policy Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur. (1975, c. 877, s. 4.)

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.
114-4.2B. Employment of attorney for North Carolina Memorial Hospital at Chapel Hill.
114-4.2C. Employment of attorney for the Real Estate Licensing Board.
114-5. Additional clerical help.

Article 3.

Division of Criminal Statistics.

Sec.
114-10.1. Police Information Network.

Article 4.

State Bureau of Investigation.

114-13. Director of the Bureau; personnel.

ARTICLE 1.

Attorney General.

§ 114-4.2B. Employment of attorney for North Carolina Memorial Hospital at Chapel Hill. — The Attorney General is hereby authorized to employ an attorney to be assigned by him full time to the North Carolina Memorial Hospital at Chapel Hill. Such attorney shall be subject to all the provisions of Chapter 126 of the General Statutes, relating to the State Personnel System. Such attorney shall also perform additional duties as may be assigned to him by the Attorney General.

The attorney employed by the Attorney General under provisions of this section shall be paid from the funds of the North Carolina Memorial Hospital at Chapel Hill. (1975, c. 526, s. 1.)

Editor's Note. — Session Laws 1975, c. 526, s. 2, makes the act effective July 1, 1975.

§ 114-4.2C. Employment of attorney for the Real Estate Licensing Board. — The Attorney General is hereby authorized to employ an attorney and assign him full time to the North Carolina Real Estate Licensing Board. Such attorney shall be subject to all the provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned to him by the Attorney General.

The North Carolina Real Estate Licensing Board shall fully reimburse the North Carolina Department of Justice for the compensation of such attorney employed under the provisions of this section. (1975, c. 835, ss. 1, 2.)

Editor's Note. — Session Laws 1975, c. 835, s. 3, makes the act effective July 1, 1975.

§ 114-5. Additional clerical help. — The Attorney General shall be allowed such additional clerical help as shall be necessary; the amount of such help and the salary therefor shall be fixed by the Department of Administration and the Attorney General. (1925, c. 207, s. 2; 1957, c. 269, s. 1.)

Editor's Note. —
Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the end of the section. See § 143-344(a).

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10.1. Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 4.

State Bureau of Investigation.

§ 114-13. Director of the Bureau; personnel. — The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Department of Administration under G.S. 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Department of Administration under G.S. 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus.

All the benefits, duties, authority and requirements of subsections (b), (c), (d), and (e) of G.S. 20-185 applicable to members and officers of the State Highway Patrol, shall be applicable to officers and special agents of the State Bureau of Investigation whose salaries are fixed as provided by law, and wherever in said subsections any duty, responsibility or authority is vested in the Commanding Officer of the State Highway Patrol or the Commissioner of Motor Vehicles, such duty, responsibility, or authority is hereby vested in the Director of the State Bureau of Investigation. Wherever in said subsection [s] any benefits, duties, authority, or requirements are vested in, placed on, or extended to officers and members of the State Highway Patrol, such benefits, duties, authority and requirements are vested in, placed on, and extended to officers and special agents of the State Bureau of Investigation. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1; 1957, c. 269, s. 1.)

Editor's Note. —
Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in the first and third sentences of the first paragraph. See § 143-344(a).

§ 114-19. Criminal statistics.

Editor's Note. —
Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

Photographing of Juveniles Committed to Custody of Division of Youth Development Not Prohibited. — See opinion of Attorney General to Mr. James F. Smith, Department of Correction, 44 N.C.A.G. 146 (1974).

Chapter 115.

Elementary and Secondary Education.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

State Plan for Public Education.

Sec.
115-1.1. State policy.
115-1.2. Annual census; promulgation of rules, etc.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 2.

The State Board of Education.

115-10. Organization of Board.
115-11. Powers and duties generally.
115-11.2. Authority to expend funds for transportation of children with special needs.
115-11.3 to 115-11.5. [Reserved.]

Article 3.

State Superintendent of Public Instruction.

115-14. Administrative duties.

Article 4.

Powers and Duties of Controller.

115-17. Duties of controller defined.

Article 5.

County and City Boards of Education.

115-18. How constituted.
115-29. Compensation of board members.
115-37. Subjects taught in public schools.
115-48. [Repealed.]
115-52.1. Purchase of activity buses with local capital outlay tax funds.

Article 6.

Powers and Duties of Superintendents.

115-60 to 115-62. [Repealed.]
115-65. [Repealed.]

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

Article 9.

County and City Boards of Education and Budgets.

115-78 to 115-80. [Repealed.]
115-81 to 115-90. [Repealed.]

Article 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

Sec.
115-91 to 115-98. [Repealed.]
115-100. [Repealed.]

Article 10A.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

115-100.1. Short title.
115-100.2. Definitions.
115-100.3. Uniform system; conflicting laws and local acts superseded.
115-100.4. [Reserved.]

Part 2. Budget.

115-100.5. Annual balanced budget resolution.
115-100.6. Uniform budget format.
115-100.7. Preparation and submission of budget and budget message.
115-100.8. Filing and publication of the budget; budget hearing.
115-100.9. Approval of budget; submission to county commissioners; commissioners' action on budget.
115-100.10. Apportionment of county appropriations among administrative units.
115-100.11. Procedure for resolution of dispute between board of education and board of county commissioners.
115-100.12. The budget resolution; adoption; limitations; tax levy; filing.
115-100.13. Amendments to the budget resolution; budget transfers.
115-100.14. Interim budget.
115-100.15 to 115-100.17. [Reserved.]

Part 3. Fiscal Control.

115-100.18. School finance officer.
115-100.19. Duties of school finance officer.
115-100.20. Allocation of revenues to the administrative unit by the county.
115-100.21. Provision for disbursement of State money.
115-100.22. Facsimile signatures.
115-100.23. Accounting system.
115-100.24. Budgetary accounting for appropriations.
115-100.25. Fidelity bonds.
115-100.26. Investment of idle cash.

Sec.
115-100.27. Selection of depository; deposits to be secured.
115-100.28. Daily deposits.
115-100.29. Semiannual reports on status of deposits and investments.
115-100.30. Annual independent audit.
115-100.31. Special funds of individual schools.
115-100.32. Proceeds of insurance claims.
115-100.33. School food services.
115-100.34. Reports to State Board of Education.
115-100.35. Fines and forfeitures.

SUBCHAPTER VI. SCHOOL PROPERTY.

Article 15.

School Sites and Property.

115-126. Sale, exchange or lease of school property; easements and rights-of-way.
115-133.3. Use of schools and other public buildings for political meetings.

SUBCHAPTER VII. EMPLOYEES.

Article 17.

Principals' and Teachers' Employment and Contracts.

115-143. Health certificate required for teachers and other school employees.

Article 18.

Certification and Salaries of Employees; Workmen's Compensation.

115-152. Prerequisites for employment.
115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information.
115-155. Employing persons not holding nor qualified to hold certificate; salaries not paid.
115-157. Pay of school officials and other employees.

SUBCHAPTER VIII. PUPILS.

Article 19.

Admissions, Attendance, and Student Records.

115-165. [Repealed.]
115-165.1. Student records; maintenance; contents.

Article 20.

General Compulsory Attendance Law.

Sec.
115-166. Parent or guardian required to keep child in school; exceptions.

Article 20A.

Child Health Program.

115-175.1. [Repealed.]

Article 21.

Assignment and Enrollment of Pupils.

115-179.1. Exceptional children; special program; dissatisfaction with assignment; right to appeal.

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

Article 22.

School Buses.

115-183. Use and operation of school buses.
115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.
115-188. Purchase and maintenance of school buses, materials and supplies.
115-190. Contracts for transportation.

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

115-198. Standard course of study for each grade.
115-200. [Repealed.]

Article 24A.

Kindergartens.

115-205.14 to 115-205.18. [Reserved.]

Article 24B.

Summer Schools.

115-205.19. Summer schools.

Article 25A.

Textbooks and Instructional Material.

115-206.19 to 115-206.23. [Reserved.]

Article 25B.

Librarians.

115-206.24. Librarians for schools.

Article 36.

Training of Mentally Retarded Children.

Sec.
115-296 to 115-299. [Repealed.]

Article 37.

Training of Educable Mentally Handicapped Children.

115-300 to 115-305. [Repealed.]

Article 38.

Education of Exceptionally Talented Children.

115-306 to 115-315. [Repealed.]

Article 38C.

Section for the Education of Children with Learning Disabilities.

115-315.16 to 115-315.22. [Repealed.]

Article 38D.

Regional Educational Training Centers.

Sec.
115-315.23. Creation.
115-315.24. Functions.
115-315.25. Organization of centers.
115-315.26. Rules and regulations.

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

Article 40.

Governor Morehead School.

115-321. Incorporation, name and management.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

State Plan for Public Education.

§ 115-1. General and uniform system of schools.

Mandates of Constitution. — The provisions of North Carolina Const., Art. I, § 15 (1971) and North Carolina Const., Art. IX, § 2(1), with the activating statutes, including this section, embody mandates for the establishment of free public schools in North Carolina, the untrammeled privilege of education for all students, and "the duty of the State to maintain and guard that right," while guaranteeing equal opportunities to all students. Webster v. Perry, 512 F.2d 612 (4th Cir. 1975).

§ 115-1.1. State policy. — (a) The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in this section shall be excluded from service or education for any reason whatsoever. This policy shall be the practice of the State for children from birth through age 21 and the State requires compliance by all local education agencies and city and county administrative units, all local human resources agencies including, but not limited to, local health departments, local social service departments, community mental health centers and all State departments, agencies, institutions except institutions of higher education, and private providers which are recipients of general funds as these funds are defined in G.S. 143-1.

(b) The General Assembly of North Carolina further declares that the public policy of North Carolina is defined in greater detail to carry out the foregoing stated policies as follows:

(1) The State shall provide for a comprehensive early childhood development program by emphasizing preventative and remedial measures designed to provide the services which will enable children to develop to the maximum level their physical, mental, social, and emotional potentials and to strengthen the role of the family as the first and most fundamental influence on child development. The General Assembly finds that the complexity of early childhood development precludes the enactment of legislation which is of a sufficiently

comprehensive nature to encompass all possible implications. The Departments of Public Instruction and Human Resources shall, therefore, jointly develop an early childhood development program plan with flexibility sufficient to meet the State's policy as set forth in this subsection. Said plan shall provide for the operation of a statewide early childhood development program no later than June 30, 1980, and shall be presented to the Commission on Children with Special Needs by February 2, 1976.

(2) The State requires a system of educational opportunities for all children with special needs and requires the identification and evaluation of the needs of children and the adequacy of various education programs before placement of children, and shall provide for periodic evaluation of the benefits of programs to the individual child and the nature of the child's needs thereafter.

(3) The State shall prevent denial of equal educational and service opportunity on the basis of national origin, sex, economic status, race, religion, and physical, mental, social or emotional handicap in the provision of services to any child. Each local education agency shall develop program plans to meet the educational requirements of children with special needs and each local human resources agency shall develop program plans to meet the human service requirements of children with special needs in accordance with program standards and in a planning format as shall be prescribed by the State Board of Education and the Department of Human Resources respectively. The State Board and the Secretary of Human Resources shall present a summary of said present program standards and planning format to the Commission on Children with Special Needs by February 2, 1977, and to the General Assembly for its approval.

The General Assembly intends that the educational program and human service program requirements of Session Laws 1973, Chapter 1293, shall be realized no later than June 30, 1982. The General Assembly further intends that currently imposed barriers to educational and human service opportunities for children with special needs by reason of a single standardized test, income, federal regulations, conflicting statutes, or any other barriers are hereby abrogated; except that with respect to barriers caused by reason of income, it shall be permissible for the State or any local education agency or local human resources agency to charge fees for special services rendered, or special materials furnished to a child with special needs, his parents, guardian or persons standing in loco parentis unless the imposition of such fees would prevent or substantially deter the child, his parents, guardian, or persons standing in loco parentis from availing themselves of or receiving such services or materials.

(4) It is recognized that children have a variety of characteristics and needs, all of which must be considered if the potential of each child is to be realized; that in order to accomplish this the State must develop a full range of service and education programs, and that a program must actually benefit a child or be designed to benefit a particular child in order to provide such child with appropriate educational and service opportunities. The General Assembly requires that all programs employ least restrictive alternatives as shall be defined by the Department of Public Instruction and Human Resources.

(c) The General Assembly of North Carolina finds that various studies and various programs have been undertaken and that tremendous public interest exists to seek ways of more effectively rendering a beneficial service to all of our children, and especially with children who have special needs.

In this context the term "child with special needs" means any child who because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, environmental factors, or other specific learning disability is inhibited from achieving his full potential; to include, but not limited to, the educable, trainable, profoundly, and functionally retarded, emotionally disturbed, learning disabled, the physically handicapped or other impairments including hospitalized, homebound, or pregnant, the deaf or hearing-impaired, the language or speech-impaired, the blind or visually-impaired, gifted and talented, autistic, dependent, abused, neglected, multiple-impaired, and socially maladjusted. (1973, c. 1293, ss. 2-4; 1975, c. 563, ss. 1-5.)

Editor's Note. — The 1975 amendment added the second sentence of subsection (a), added the second, third and fourth sentences of subdivision (b)(1), substituted "requires" for "shall develop" and for "require" near the beginning of subdivision (b)(2), added the second and third sentences of the first paragraph of subdivision (b)(3) and added the second paragraph of that subdivision and added the second sentence in subdivision (b)(4).

Session Laws 1973, c. 1293, from which this section was codified and which is referred to in this section, is informally known as the Equal Educational Opportunities Act.

§ 115-1.2. Annual census; promulgation of rules, etc. — (a) The Departments of Public Instruction and Human Resources shall jointly develop and promulgate procedures for the establishment and operation of an annual ongoing census of children with special needs. Local education agencies through their respective superintendents shall have primary responsibility for conducting the census in each local education agency and each local human resources agency shall cooperate and actively participate in said census. Said census shall be for the purposes of aiding local providers and the respective departments in anticipating personnel, equipment and budgetary requirements; and shall permit the General Assembly to ensure that all children with special needs are identified and that appropriate programs are provided.

(b) The Departments of Public Instruction and Human Resources shall each develop and promulgate such standards, rules and regulations as may be necessary to develop and implement the educational and human service program requirements of Session Laws 1973, Chapter 1293; and shall cause appropriate internal organizational realignments within the respective departments which are designed to enhance the planning, educational program and human service program development and delivery, orderly implementation, and monitoring requirements established by Session Laws 1973, Chapter 1293. (1973, c. 1293, ss. 6, 7; 1975, c. 563, ss. 6, 7.)

Editor's Note. — This section is codified from Session Laws 1973, c. 1293, ss. 6 and 7, as rewritten by Session Laws 1975, c. 563, ss. 6 and 7. The two sections of the 1973 act were not previously codified.

Session Laws 1973, c. 1293, is informally known as the Equal Educational Opportunities Act.

§ 115-4. Administrative units classified.

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

§ 115-9. "Tax-levying authorities" defined.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 10, effective July 1, 1976, will rewrite this section to read as follows:

"§ 115-9. "Tax-levying authorities" defined. — As used in this Chapter, the term "tax-levying authorities" shall mean the board of county commissioners of the county or counties in which an administrative unit is located or such other unit of local government as may be granted by local act authority to levy taxes on behalf of a school administrative unit."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 2.

The State Board of Education.

§ 115-10. Organization of Board.

(f) Committees. — The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall with approval of the majority of the Board appoint members to the several committees authorized by the Board and to any additional committees which the chairman may deem to be appropriate.

(h) Rules and Regulations. — The Board shall adopt reasonable rules and regulations not inconsistent herewith, to govern their proceedings which the Board may amend from time to time, which rules and regulations shall become effective when filed as provided by law; provided, however, a motion to suspend the rules so adopted shall require a consent of two thirds of the members. The rules and regulations shall include, but not be limited to, clearly defined procedures for electing the officers of the State Board referred to in G.S. 115-10, fixing the term of said officers, specifying how the voting shall be carried out, and establishing a date when the first election shall be held. (1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19; 1971, c. 704, s. 3; 1975, c. 699, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "with approval of the majority of the Board" near the middle of subsection (f), substituted "authorized by the Board and to any additional committees which the chairman may deem to be appropriate" for "and the secretary shall be an ex officio member of each committee so created and named" at the end of that subsection and added subsection (h).

As the rest of the section was not changed by the amendment, only subsections (f) and (h) are set out.

§ 115-11. Powers and duties generally. — The powers and duties of the State Board of Education are defined as follows:

(14) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt a standard course of study upon recommendation of the State Superintendent of Public Instruction; provided, however, that in the event the State Superintendent does not recommend a

standard course of study satisfactory to the Board the Board may cause an independent professional study to be made, with such assistance as it may deem necessary, to the end that a standard course of study appropriate to the needs of the children of the State shall be recommended to the Board for adoption; whereupon the Board shall require a public hearing to be held on the question of the adoption of the standard course of study thus proposed and it shall thereafter adopt the recommendations, with such changes as the Board may deem appropriate, which shall be required as the minimal program of every public school in the State. The standard course of study thus established shall be reviewed by the Board biennially.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To report to the General Assembly on the operation of the State Literary Fund.

f. To manage and operate a system of insurance for public school property.

g. In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(19) Liability Insurance. — The Board is authorized to purchase insurance to protect Board members from liability incurred in the exercise of their duty as members of the Board. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975.)

Editor's Note. —
The first 1975 amendment, effective July 1, 1975, added the language following "Superintendent of Public Instruction" in paragraph c of subdivision (14), redesignated former paragraphs f and g as present paragraphs e and f and added paragraph g in subdivision (14).

The second 1975 amendment added subdivision (19).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (14) and (19) are set out.

§ 115-11.1. Authority to expend funds for transportation of certain children.

Cross Reference. — As to eventual transfer of operational and fiscal responsibilities for transportation of autistic and communications-handicapped and deaf and blind children to Department of Human Resources, see § 115-11.2.

Editor's Note. — Subsection (a) of § 115-11.2, below, was designated § 115-11.1 in Session Laws 1975, c. 678, s. 9, and was apparently intended as an amendment to this section. The 1975 act did not expressly state that this section was amended, and the codifier has therefore combined ss. 9 and 10 of the act as a new § 115-11.2.

§ 115-11.2. Authority to expend funds for transportation of children with special needs. — (a) The State Board of Education is authorized to expend public funds or to otherwise provide motor vehicle transportation for children with special needs as those children are defined by G.S. 115-1.1(c). Such transportation may be provided for nonresidential students to and from the nearest public educational institution or sheltered workshop located within the State when said students are full-time equivalent students in the public schools.

(b) The General Assembly intends that the State Board of Education shall continue to provide for the transportation of autistic and communications-handicapped and deaf and blind children until June 30, 1976, at which time the Department of Human Resources shall assume the operational and fiscal responsibilities for such transportation. (1975, c. 678, ss. 9, 10.)

§§ 115-11.3 to 115-11.5: Reserved for future codification purposes.

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-14. Administrative duties. — It shall be the duty of the State Superintendent of Public Instruction:

(1) To organize and establish, subject to the approval of the State Board of Education, a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system. All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction shall be subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with the State Personnel Act.

(1975, c. 699, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, inserted "subject to the approval of the State Board of Education" near the beginning of the first sentence of subdivision (1) and added the second sentence of that subdivision.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

ARTICLE 4.

Powers and Duties of Controller.

§ 115-17. Duties of controller defined. — The controller, under the direction of the Board, shall perform the following duties:

(4) He shall satisfy himself before issuing any requisition upon the Department of Administration for payment out of the State treasury of any funds placed to the credit of any administrative unit, under the provisions of G.S. 115-84:

a. That funds are lawfully available for the payment of such requisition; and

b. Where the order covers salary payment to any employee or employees, that the amount thereof is within the salary schedule or salary rating of the particular employee.

(5) He shall procure, through the Department of Administration, a contract or contracts for the purchase of the estimated needs and requirements of the several administrative units, covering the items of janitor's

supplies, instructional supplies, supplies used by the State Board of Education, and all other supplies, the payment for which is made from funds committed to the administration of the Board.

(9) He shall employ all necessary administrative and supervisory employees who work under his direction in the administration of the fiscal affairs of the Board, subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with the State Personnel Act.

(1957, c. 269, s. 1; 1975, c. 699, s. 4; c. 879, s. 46.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, inserted "administrative and supervisory" near the beginning of subdivision (9) and added the language beginning "subject to the approval" at the end of that subdivision.

The second 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Division of Purchase and Contract" in subdivision (5).

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in subdivision (4). See § 143-344(a).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (4), (5) and (9) are set out.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 15.1, effective July 1, 1976, will amend subdivision (7) to read as follows:

"(7) He shall, in cooperation with the State Auditor, cause to be made an annual audit of the State school funds disbursed by county and city administrative units and all other funds which by law are committed to the administration of the Board."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

ARTICLE 5.

County and City Boards of Education.

§ 115-18. How constituted. — The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years. Provided, that where there are multiple school administrative units located within the county, and unless the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, only those voters who reside within the county school administrative unit boundary lines shall be eligible to vote for members of the county board of education. Where the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, the voters residing within that city school administrative unit shall be eligible to vote for members of the county board of education.

The terms of office of the members of boards of education of all school administrative units in this State, who serve on June 25, 1975, shall continue until members are elected and qualified as provided in this section unless modified by local legislation.

(1975, c. 855, ss. 1, 3.)

Editor's Note. — The 1975 amendment added the second and third sentences of the first paragraph and added the second paragraph.

Amendment Effective July 1, 1977. — Session Laws 1975, c. 855, s. 2, effective July 1, 1977, will add subsection (b) to read as follows:

"(b) For the purpose of this section, no person residing in a city or town or county school administrative unit shall be eligible for election to the board of education of that administrative unit unless such person resides within the boundary lines of that administrative unit."

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for

special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The above case dealt with the constitutionality of local statutes authorizing certain city residents to vote for some members of county school boards. — Ed. note.

Extension of the vote for county board members to city residents, while it serves the asserted policy of giving city residents a voice in the management of joint functions, makes the franchise overinclusive because the policy can be served other than by dilution of the county residents' vote. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The inevitable consequence of permitting the cities' electorates to vote for certain members of the county board is to give them a voice in the operation of the county schools in those noncooperative aspects of their operation in which there is no showing that they have any interest. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The above case dealt with the constitutionality of local statutes authorizing certain city residents to vote for some members of county school boards. — Ed. note.

§ 115-27. Board a body corporate.

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

Applied in Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975).

§ 115-29. Compensation of board members. — The tax-levying authority for a school administrative unit may, under the procedures of G.S. 153A-92, fix the compensation and expense allowances paid members of the board of education of that school administrative unit.

The State Nine Months School Fund shall provide one hundred dollars ($100.00) of the cost of the per diem and mileage of each county board of education. Funds for the per diem and a mileage for all meetings of city boards of education and for the per diem and expenses of any meetings of the county board of education in excess of the one hundred dollars ($100.00) provided by the State, shall be provided from the current expense fund budget of such city or county.

The compensation and expense allowances of members of boards of education shall continue at the same levels as paid on July 1, 1975, until changed by or pursuant to local act or pursuant to this section. (1955, c. 1372, art. 5, s. 12; 1975, c. 569, ss. 1-3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first and third paragraphs.

Session Laws 1975, c. 569, s. 4, provides: "All laws and clauses of laws, including local acts, inconsistent herewith are hereby repealed."

§ 115-31. Suits and actions.

Cited in Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

§ 115-35. Powers and duties of county and city boards generally.

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

§ 115-37. Subjects taught in public schools. — County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study at the appropriate grade levels shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, harmful or illegal drugs, including alcohol, and the free enterprise system at the high school level, its history, theory, foundation, and the manner in which it is actually practiced. Nothing in this Chapter shall prohibit city or county boards of education from operating a nongraded system in which pupils are taught at their individual learning levels. (1955, c. 1372, art. 5, s. 20; 1957, cc. 845, 1101; 1969, c. 487, s. 2; 1971, c. 356; 1975, c. 65, s. 1.)

Editor's Note. — The 1975 amendment, effective beginning with the 1975-76 school year, inserted "at the appropriate grade levels" near the middle of the first sentence and substituted "and the free enterprise system at the high school level, its history, theory, foundation, and the manner in which it is actually practiced" for "at the appropriate grade levels" at the end of the first sentence.

§ 115-39. Requirements and limitations of board in selecting superintendent and his term of office.

Applied in Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975).

§ 115-48: Repealed by Session Laws 1975, c. 437, s. 7, effective July 1, 1976.

Editor's Note. — Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-51. School food services provided by county and city boards of education.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 384, effective July 1, 1976, will amend the first paragraph of the section to read as follows:

"As a part of the function of the public school system, county and city boards of education shall provide to the extent practical school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education. In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture."

§ 115-52. Purchase of equipment and supplies.

Applicable to Purchases Made from State and Local Funds; Inapplicable to Purchase of Printing. — See opinion of Attorney General to Mr. Herbert O. Carter, State Purchasing Officer, 44 N.C.A.G. 176 (1974).

§ 115-52.1. Purchase of activity buses with local capital outlay tax funds. — County and city boards of education are authorized to purchase activity buses with local capital outlay tax funds, and authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by county and city boards of education are maintained in a safe mechanical condition. The State Board of Education shall inspect each activity bus and recommend to the board whether the bus should be replaced, but replacements will be determined by the county or city board of education. Such replacement units for activity buses shall be financed with local funds. (1975, c. 150, s. 1.)

Editor's Note. — Session Laws 1975, c. 150, s. 3, makes the section effective July 1, 1975.

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.

Effect of Purchase on Motion for Directed Verdict. — Waiver of governmental immunity to any extent by the purchase of liability insurance is sufficient to preclude a granting of a motion for a directed verdict on the ground of governmental immunity. Clary v. Alexander County Bd. of Educ., 286 N.C. 525, 212 S.E.2d 160 (1975).

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-59. School organization statement and allocation of instructional personnel.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 965, s. 3, effective July 1, 1976, will add a second sentence to subsection (b) reading as follows: "Librarians authorized under the authority of G.S. 115-206.24 shall be in addition to the teachers and other instructional personnel allocated in these categories."

§§ 115-60 to 115-62: Repealed by Session Laws 1975, c. 437, s. 7, effective July 1, 1976.

Editor's Note. — Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-64. Disbursement of local funds.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 8, effective July 1, 1976, will rewrite the section to read as follows: "**§ 115-64. Teachers must be certified to be paid; contracts to be filed; how teachers paid.** — No teacher shall be placed on the payroll of an administrative unit unless he holds a certificate as required by law, and unless a copy of the teacher's contract has been filed with the superintendent. No teacher may be paid more than he is due under the salary schedule in force in the administrative unit or special taxing district. Substitute and interim teachers may be paid under rules of the State Board of Education."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-65: Repealed by Session Laws 1975, c. 437, s. 7, effective July 1, 1976.

Editor's Note. — Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-66. When superintendent may withhold pay of teachers.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 9, effective July 1, 1976, will rewrite the section to read as follows: "**§ 115-66. When teachers' pay may be withheld.** — The board of education may withhold the salary of any supervisor, principal or teacher who delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law, the salary shall be paid forthwith."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-68. City superintendents, powers, duties and responsibilities.

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the

electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

Article 8.

Creating and Consolidating School Districts and School Administrative Units.

§ 115-77. Enlarging tax districts and city units by permanently attaching contiguous property.

Stated in Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

Article 9.

County and City Boards of Education and Budgets.

§§ 115-78 to 115-80: Repealed by Session Laws 1975, c. 437, s. 1, effective July 1, 1976.

Cross Reference. — For present provisions covering the subject matter of the repealed sections, see §§ 115-100.1 through 115-100.35.

Editor's Note. — A new Article 9, containing sections numbered 115-78 through 115-99.13, was enacted by the 1975 act that repealed this Article and Article 10 of this Chapter. The new Article has been recodified as Article 10A, §§ 115-100.1 through 115-100.35.

Session Laws 1975, c. 437, s. 16, reads: "Each school administrative unit shall prepare its budget for the fiscal year 1976-77 in accordance with the provisions of this act, but shall not adopt its budget resolution before July 1, 1976."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§§ 115-81 to 115-90: Repealed by Session Laws 1975, c. 437, s. 1, effective July 1, 1976.

Cross References. — See Editor's note to § 115-100.11. For present provisions covering the subject matter of the repealed sections, see §§ 115-100.1 through 115-100.35.

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

Article 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

§§ 115-91 to 115-98: Repealed by Session Laws 1975, c. 437, s. 1, effective July 1, 1976.

Cross Reference. — For present provisions covering the subject matter of the repealed sections, see §§ 115-100.1 through 115-100.35.

Editor's Note. — A new Article 9, containing sections numbered 115-78 through 115-99.13, was enacted by the 1975 act that repealed this Article and Article 9 of this Chapter. The new Article has been recodified as Article 10A, §§ 115-100.1 through 115-100.35.

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-100: Repealed by Session Laws 1975, c. 437, s. 1, effective July 1, 1976.

Editor's Note. — Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

ARTICLE 10A.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

§ 115-100.1. Short title. — This Article may be cited as "The School Budget and Fiscal Control Act." (1975, c. 437, s. 1.)

Editor's Note. — This Article was enacted as Article 9, §§ 115-78 through 115-99.13, of this Chapter, and has been recodified.

Session Laws 1975, c. 437, s. 19, makes this Article effective July 1, 1976.

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-100.2. Definitions. — The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Administrative unit" includes both county and city school administrative units.

(2) "Board of education" is the governing body of an administrative unit.

(3) "Budget" is a plan proposed by a board of education for raising and spending money for specified school programs, functions, activities, or objectives during a fiscal year.

(4) "Budget resolution" is a resolution adopted by a board of education that appropriates revenues for specified school programs, functions, activities, or objectives during a fiscal year.

(5) "Budget year" is the fiscal year for which a budget is proposed and a budget resolution is adopted.

(6) "Fiscal year" is the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.

(7) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions, or limitations. (1975, c. 437, s. 1.)

§ 115-100.3. Uniform system; conflicting laws and local acts superseded. — It is the intent of the General Assembly by enactment of this Article to prescribe for the public schools a uniform system of budgeting and fiscal control. To this end, all provisions of general laws and local acts in effect as of July 1, 1976, and in conflict with the provisions of this Article are repealed except local acts providing for the levy or for the levy and collection of school supplemental taxes. No local act enacted or taking effect after July 1, 1976, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section. (1975, c. 437, s. 1.)

Editor's Note. — Session Laws 1975, c. 437, s. 17, provides: "(a) Section 11 of Chapter 656 of the Session Laws of 1949, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], is hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflicts with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Section 11 of Chapter 656 of the Session Laws of 1949 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(b) Sections 2(c) and 5(d) of Chapter 707 of the Session Laws of 1963, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], are hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflict with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Sections 2(c) and 5(d) of Chapter 707 of the Session Laws of 1963 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(c) Sections 2 and 6 of Chapter 386 of the Session Laws of 1891, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], are hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflict with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Sections 2 and 6 of Chapter 386 of the Session Laws of 1891 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(d) Sections 12 and 13 of Chapter 131 of the Session Laws of 1921, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], are hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflict with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Sections 12 and 13 of Chapter 131 of the Session Laws of 1921 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(e) This section shall take effect upon the effective date of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A]."

§ 115-100.4: Reserved for future codification purposes.

Part 2. Budget.

§ 115-100.5. Annual balanced budget resolution. — (a) Each administrative unit shall operate under an annual balanced budget resolution adopted and administered in accordance with this Article. A budget resolution is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues, as those figures stand at the close of the fiscal year next preceding the budget year. The budget resolution shall cover one fiscal year.

(b) It is the intent of this Article that all moneys received and expended by an administrative unit should be included in the school budget resolution. Therefore, notwithstanding any other provisions of law, after July 1, 1976, no school administrative unit may expend any moneys, regardless of their source (including moneys derived from federal, State, or private sources), except in accordance with a budget resolution adopted pursuant to this Article.

(c) Subsection (b) of this section does not apply to funds of individual schools, as defined in G.S. 115-100.31. (1975, c. 437, s. 1.)

§ 115-100.6. Uniform budget format. — (a) The State Board of Education, in cooperation with the Local Government Commission, shall cause to be prepared and promulgated a standard budget format for use by school administrative units throughout the State.

(b) The uniform budget format shall be organized so as to facilitate accomplishment of the following objectives: (i) to enable the board of education and the board of county commissioners to make the local educational and local fiscal policies embodied therein; (ii) to control and facilitate the fiscal management of the administrative unit during the fiscal year; and (iii) to facilitate the gathering of accurate and reliable fiscal data on the operation of the public school system throughout the State.

(c) The uniform budget format shall require the following funds:

(1) The State Public School Fund.

(2) The local current expense fund.

(3) The capital outlay fund.

In addition, other funds may be required to account for trust funds, federal grants restricted as to use, and special programs. Each administrative unit shall maintain those funds shown in the uniform budget format that are applicable to its operations.

(d) The State Public School Fund shall include appropriations for the current operating expenses of the public school system from moneys made available to the administrative unit by the State Board of Education.

(e) The local current expense fund shall include appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners. These appropriations shall be funded by revenues accruing to the administrative unit by virtue of Article IX, Sec. 7 of the Constitution, moneys made available to the administrative unit by the board of county commissioners, supplemental taxes levied by or on behalf of the administrative unit pursuant to a local act or Article 14 of this Chapter, State money disbursed directly to the administrative unit, and other moneys made available or accruing to the administrative unit for the current operating expenses of the public school system.

(f) The capital outlay fund shall include appropriations for:

(1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages;

(2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physicial and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance;

(3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment;

(4) The acquisition of school buses as additions to the fleet;

(5) The acquisition of activity buses and other motor vehicles;

(6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

The cost of acquiring or constructing a new building, or reconstructing, enlarging, or renovating an existing building, shall include the cost of all real property and interests in real property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and equipment necessary or useful in connection therewith; financing charges; the cost of plans,

specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or incidental to the construction, reconstruction, enlargement, or renovation.

No contract for the purchase of a site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115-100.11 shall, insofar as the same may be applicable, be used to settle the disagreement.

Appropriations in the capital outlay fund shall be funded by revenues made available for capital outlay purposes by the State Board of Education and the board of county commissioners, supplemental taxes levied by or on behalf of the administrative unit pursuant to a local act or Article 14 of this Chapter, the proceeds of the sale of capital assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

(g) Other funds shall include appropriations for such purposes funded from such sources as may be prescribed by the uniform budget format. (1975, c. 437, s. 1.)

§ 115-100.7. Preparation and submission of budget and budget message. — (a) Before the close of each fiscal year, the superintendent shall prepare a budget for the ensuing year for consideration by the board of education. The budget shall comply in all respects with the limitations imposed by G.S. 115-100.12.

(b) The budget, together with a budget message, shall be submitted to the board of education not later than May 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the educational goals fixed by the budget for the budget year, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in educational or fiscal policy. (1975, c. 437, s. 1.)

§ 115-100.8. Filing and publication of the budget; budget hearing. — (a) On the same day that he submits the budget to the board of education, the superintendent shall file a copy of it in his office where it shall remain available for public inspection until the budget resolution is adopted. He may also publish a statement in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county that the budget has been submitted to the board of education, and is available for public inspection in the office of the superintendent of schools. The statement should also give notice of the time and place of the budget hearing authorized by subsection (b) of this section.

(b) Before submitting the budget to the board of county commissioners, the board of education may hold a public hearing at which time any persons who wish to be heard on the school budget may appear. (1975, c. 437, s. 1.)

§ 115-100.9. Approval of budget; submission to county commissioners; commissioners' action on budget. — (a) Upon receiving the budget from the superintendent and following the public hearing authorized by G.S. 115-100.8(b), if one is held, the board of education shall consider the budget, make such changes therein as it deems advisable, and submit the entire budget as approved by the board of education to the board of county commissioners not later than May 15, or such later date as may be fixed by the board of county commissioners.

(b) The board of county commissioners shall complete its action on the school budget on or before July 1, or such later date as may be agreeable to the board of education. The commissioners shall determine the amount of county revenues to be appropriated in the county budget ordinance to the administrative unit for the budget year. The board of county commissioners may, in its discretion,

allocate part or all of its appropriation by purpose, function, or project as defined in the uniform budget format.

(c) The board of county commissioners shall have full authority to call for, and the board of education shall have the duty to make available to the board of county commissioners, upon request, all books, records, audit reports, and other information bearing on the financial operation of the administrative unit.

(d) Nothing in this Article shall be construed to place a duty on the board of commissioners to fund a deficit incurred by an administrative unit through failure of the unit to comply with the provisions of this Article or rules and regulations issued pursuant hereto, or to provide moneys lost through misapplication of moneys by a bonded officer, employee or agent of the administrative unit when the amount of the fidelity bond required by the board of education was manifestly insufficient. (1975, c. 437, s. 1.)

Editor's Note. — Session Laws 1975, c. 437, s. 17, provides: "(a) Section 11 of Chapter 656 of the Session Laws of 1949, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], is hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflicts with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Section 11 of Chapter 656 of the Session Laws of 1949 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(b) Sections 2(c) and 5(d) of Chapter 707 of the Session Laws of 1963, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], are hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflict with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Sections 2(c) and 5(d) of Chapter 707 of the Session Laws of 1963 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(c) Sections 2 and 6 of Chapter 386 of the Session Laws of 1891, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], are hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflict with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Sections 2 and 6 of Chapter 386 of the Session Laws of 1891 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(d) Sections 12 and 13 of Chapter 131 of the Session Laws of 1921, to the extent the same may have been repealed by G.S. 115-80 [G.S. 115-100.3], are hereby reenacted; it being expressly intended and provided hereby that to the extent the same conflict with G.S. 115-80 [G.S. 115-100.3], G.S. 115-87 [G.S. 115-100.10] or any other section of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A], said Sections 12 and 13 of Chapter 131 of the Session Laws of 1921 shall control, and the particular sections of Chapter 115, Article 9 [Article 10A] shall be deemed modified accordingly.

"(e) This section shall take effect upon the effective date of the School Budget and Fiscal Control Act, Chapter 115, Article 9 [Article 10A]."

Close Consideration of Budget Requests. — County commissioners have the right, indeed the duty, to consider budget requests submitted by the board of education on a line-by-line basis. Certainly there can be no doubt but that this must be done where the requests of the board of education, if granted, would require an additional tax levy and the statutes clearly imply this as a requirement even where no additional tax levy is necessary. Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975), decided under former § 115-80.

Boards of commissioners can only fulfill their duty to the taxpayers by considering closely all budgets presented to them as requests for funds. Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E. 412 (1975), decided under former § 115-80.

§ 115-100.10. Apportionment of county appropriations among administrative units. — If there is more than one administrative unit in a county, all appropriations by the county to the local current expense funds of the units, except appropriations funded by supplemental taxes levied less than countywide pursuant to a local act or Article 14 of this Chapter, must be apportioned according to the membership of each unit. County appropriations are properly apportioned when the dollar amount obtained by dividing the amount so appropriated to each unit by the total membership of the unit is the same for each unit. The "total membership" of the administrative unit is the unit's projected average daily membership for the budget year to be determined by and certified to the unit and the board of county commissioners by the State Board of Education. (1975, c. 437, s. 1.)

§ 115-100.11. Procedure for resolution of dispute between board of education and board of county commissioners. — (a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations. At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, either board may refer the dispute to the clerk of superior court for arbitration within three days after the day of the joint meeting. The clerk shall render his decision on the matters in disagreement within 10 days after the day of the referral. The clerk of the superior court shall have the authority to subpoena or issue any orders necessary to have appear before him any member of a board of education and any member of a board of commissioners involved in the dispute and to require that the records of either board be presented to him for the purpose of arbitration of the issues.

(c) Within 10 days after the date of award, either board may appeal the clerk's award to the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the appeal, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an appeal taken pursuant to this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three fourths of one percent (¾ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed. (1975, c. 437, s. 1.)

Editor's Note. — Session Laws 1975, c. 724, s. 1, ratified June 24, 1975, and effective on ratification, provides: "G.S. 115-88(b) is amended by rewriting the paragraph as follows:

'(b) If no agreement is reached at the joint meeting of the two boards, either board may refer the dispute to the clerk of superior court for arbitration within three days after the day of the joint meeting. The clerk, except as hereinafter provided, shall render his decision on the matters in disagreement within 10 days after the day of the referral. The clerk of the superior court shall have the authority to subpoena or issue any orders necessary to have appear before him any member of a board of education and any member of a board of commissioners involved in the dispute and to require that the records of either board be presented to him for the purpose of arbitration of the issues. In the event the clerk of the superior court finds as a fact that 'the tax levying authority or' a board or boards of education are unwilling to arbitrate the disagreement or that the issues in disagreement cannot be resolved by arbitration, he shall transfer the matter to the Superior Court Division of the General Court of Justice for trial as hereinafter provided.' "

From the context it appears that the intention of Session Laws 1975, c. 724, was to amend subsection (b) of this section, which was originally § 115-88 in Article 9, § 115-78 et seq., as enacted by Session Laws 1975, c. 437, s. 1, effective July 1, 1976. The new Article 9 was renumbered Article 10A, § 115-100.1 et seq., by the codifier. Since this section is not effective until July 1, 1976, and the amendatory act became effective June 24, 1975, the amendment has not been given effect in this section as set out above.

Findings of Trial Judge Held Inadequate under Former Law. — See Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E. 412 (1975), decided under former § 115-87.

§ 115-100.12. The budget resolution; adoption; limitations; tax levy; filing. — (a) After the board of county commissioners has made its appropriations to the administrative unit, or after the appeal procedure set out in G.S. 115-100.11 has been concluded, the board of education shall adopt a budget resolution making appropriations for the budget year in such sums as the board may deem sufficient and proper. The budget resolution shall conform to the uniform budget format established by the State Board of Education.

(b) The following directions and limitations shall bind the board of education in adopting the budget resolution:

(1) If the county budget ordinance allocates appropriations to the administrative unit pursuant to G.S. 115-100.9(b), the school budget resolution shall conform to that allocation. The budget resolution may be amended to change allocated appropriations only in accordance with G.S. 115-100.13.

(2) Subject to the provisions of G.S. 115-100.9(d), the full amount of any lawful deficit from the prior fiscal year shall be appropriated.

(3) Contingency appropriations in a fund may not exceed five percent (5%) of the total of all other appropriations in that fund. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the board of education, which resolution shall be deemed an amendment to the budget resolution, not subject to G.S. 115-100.9(b) and 115-100.13(b), setting up or increasing an appropriation for the object of expenditure authorized. The board of education may authorize the superintendent to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditure shall be reported to the board of education at its next regular meeting and recorded in the minutes.

(4) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.

(5) The sum of estimated net revenues and appropriated fund balances in each fund shall be equal to appropriations in that fund.

(6) No appropriation may be made that would require the levy of supplemental taxes pursuant to a local act or Article 14 of this Chapter in excess of the rate of tax approved by the voters, or the expenditure of revenues for purposes not permitted by law.

(7) In estimating revenues to be realized from the levy of school supplemental taxes pursuant to a local act or Article 14 of this Chapter, the estimated percentage of collection may not exceed the percentage of that tax actually realized in cash during the preceding fiscal year, or if the tax was not levied in the preceding fiscal year, the percentage of the general county tax levy actually realized in cash during the preceding fiscal year.

(8) Amounts to be realized from collection of supplemental taxes levied in prior fiscal years shall be included in estimated revenues.

(9) No appropriation may be made to or from the capital outlay fund to or from any other fund, except as permitted by G.S. 115-100.13(d).

(c) If the administrative unit levies its own supplemental taxes pursuant to a local act, the budget resolution shall make the appropriate tax levy in accordance with the local act, and the board of education shall notify the county or city that collects the levy in accordance with G.S. 159-14.

(d) The budget resolution shall be entered in the minutes of the board of education, and within five days after adoption, copies thereof shall be filed with the superintendent, the school finance officer and the county finance officer. The board of education shall file a copy of the budget as approved and a copy of the

budget resolution with the Controller of the State Board of Education. (1975, c. 437, s. 1.)

§ 115-100.13. Amendments to the budget resolution; budget transfers. — (a) Subject to the provisions of subsection (b) of this section, the board of education may amend the budget resolution at any time after its adoption, in any manner, so long as the resolution as amended continues to satisfy the requirements of G.S. 115-100.5 and 115-100.12.

(b) If the board of county commissioners allocates part or all of its appropriations pursuant to G.S. 115-100.9(b), the board of education must obtain the approval of the board of county commissioners for an amendment to the budget that (i) increases or decreases expenditures from the capital outlay fund for projects listed in G.S. 115-100.6(f)(1) or (2), or (ii) increases or decreases the amount of county appropriation allocated to a purpose or function by twenty-five percent (25%) or more from the amount contained in the budget ordinance adopted by the board of county commissioners: Provided, that at its discretion, the board may in its budget ordinance specify a lesser percentage, so long as such percentage is not less than ten percent (10%).

(c) The board of education may by appropriate resolution authorize the superintendent to transfer moneys from one appropriation to another within the same fund, subject to such limitations and procedures as may be prescribed by the board of education or State or federal law or regulations. Any such transfers shall be reported to the board of education at its next regular meeting and shall be entered in the minutes.

(d) The board of education may amend the budget to transfer money to or from the capital outlay fund to or from any other fund, with the approval of the board of county commissioners, to meet emergencies unforeseen and unforeseeable at the time the budget resolution was adopted. When such an emergency arises, the board of education may adopt a resolution requesting approval from the board of commissioners for the transfer of a specified amount of money to or from the capital outlay fund to or from some other fund. The resolution shall state (i) the nature of the emergency, (ii) why the emergency was not foreseen and was not foreseeable when the budget resolution was adopted, (iii) what specific objects of expenditure will be added or increased as a result of the transfer, and (iv) what objects of expenditure will be eliminated or reduced as a result of the transfer. A certified copy of this resolution shall be transmitted to the board of county commissioners for their approval and to the boards of education of all other school administrative units in the county for their information. The board of commissioners shall act upon the request within 30 days after it is received by the clerk to the board of commissioners or the chairman of the board of commissioners, after having afforded the boards of education of all other administrative units in the county an opportunity to comment on the request. The board of commissioners may either approve or disapprove the request as presented. Upon either approving or disapproving the request, the board of commissioners shall forthwith so notify the board of education making the request and any other board of education that exercised its right to comment thereon. Upon receiving such notification, the board of education may proceed to amend the budget resolution in the manner indicated in the request. Failure of the board of county commissioners to act within the time allowed for approval or disapproval shall be deemed approval of the request. The time limit for action by the board of county commissioners may be extended by mutual agreement of the board of county commissioners and the board of education making the request. A budget resolution amended in accordance with this subsection need not comply with G.S. 115-100.10. (1975, c. 437, s. 1.)

§ 115-100.14. Interim budget. — In case the adoption of the budget resolution is delayed until after July 1, the board of education shall make interim appropriations for the purpose of paying salaries and the usual ordinary expenses of the administrative unit for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim appropriations so made and expended shall be charged to the proper appropriations in the budget resolution. (1975, c. 437, s. 1.)

§§ 115-100.15 to 115-100.17: Reserved for future codification purposes.

Part 3. Fiscal Control.

§ 115-100.18. School finance officer. — Each administrative unit shall have a school finance officer who shall be appointed or designated by the superintendent of schools and approved by the board of education, with the school finance officer serving at the pleasure of the superintendent. The duties of school finance officer may be conferred on any officer or employee of the administrative unit or, upon request of the superintendent, with approval by the board of education and the board of county commissioners, on the county finance officer. In counties where there is more than one school administrative unit, the duties of finance officer may be conferred on any one officer or employee of the several administrative units by agreement between the affected superintendents with the concurrence of the affected board of education and the board of county commissioners. The position of school finance officer is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution. (1975, c. 437, s. 1.)

§ 115-100.19. Duties of school finance officer. — (a) The school finance officer shall be responsible to the superintendent for:

(1) Keeping the accounts of the administrative unit in accordance with generally accepted principles of governmental accounting, the rules and regulations of the State Board of Education, and the rules and regulations of the Local Government Commission;

(2) Giving the preaudit certificate required by G.S. 115-100.24;

(3) Signing and issuing all checks, drafts, and State warrants by the administrative unit, investing idle cash, and receiving and depositing all moneys accruing to the administrative unit;

(4) Preparing and filing a statement of the financial condition of the administrative unit as often as requested by the superintendent, and when requested in writing, with copy to the superintendent, by the board of education or the board of county commissioners;

(5) Performing such other duties as may be assigned to him by law, by the superintendent, or by rules and regulations of the State Board of Education and the Local Government Commission.

All references in other portions of the General Statutes or local acts to school treasurers, county treasurers, or other officials performing any of the duties conferred by this section on the school finance officer shall be deemed to refer to the school finance officer.

(b) The State Board of Education has authority to issue rules and regulations having the force of law governing procedures for the disbursement of money allocated to the administrative unit by or through the State. The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the disbursement of all other moneys allocated or accruing to the administrative unit. The State Board of Education and the Local Government Commission may inquire into and investigate the internal control procedures of an administrative unit with respect to moneys

under their respective jurisdictions, and may require any modifications in internal control procedures which may be necessary or desirable to prevent embezzlements or mishandling of public moneys. (1975, c. 437, s. 1.)

§ 115-100.20. Allocation of revenues to the administrative unit by the county. — Revenues accruing to the administrative unit by virtue of Article IX, Sec. 7, of the Constitution and taxes levied by or on behalf of the administrative unit pursuant to a local act or Article 14 of this Chapter shall be remitted to the school finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. Revenues appropriated to the administrative unit by the board of county commissioners from general county revenues shall be made available to the school finance officer by such procedures as may be mutually agreeable to the board of education and the board of county commissioners, but if no such agreement is reached, these funds shall be remitted to the school finance officer by the county finance officer in monthly installments sufficient to meet its lawful expenditures from the county appropriation until the county appropriation to the administrative unit is exhausted. Each installment shall be paid not later than 10 days after the close of each calendar month. When revenue has been appropriated to the administrative unit by the board of county commissioners from funds which carry specific restrictions binding upon the county as recipient, the board of commissioners must inform the administrative unit in writing of those restrictions. (1975, c. 437, s. 1.)

§ 115-100.21. Provision for disbursement of State money. — The deposit of money in the State treasury to the credit of administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the Controller of the State Board of Education the expenditures to be made by the administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The Controller shall determine whether the moneys requisitioned are due the administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the administrative unit, the finance officer may issue State warrants up to the amount so certified.

The Controller may withhold money for payment of salaries for administrative officers of administrative units if any report required to be filed with State school authorities is more than 30 days overdue.

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the Controller of the State Board of Education. (1975, c. 437, s. 1.)

§ 115-100.22. Facsimile signatures. — The board of education may provide by appropriate resolution for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 437, s. 1.)

§ 115-100.23. Accounting system. — (a) System Required. — Each administrative unit shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget resolution as originally adopted and subsequently amended.

(b) Basis of Accounting. — Administrative units shall use the modified accrual basis of accounting in recording transactions.

(c) Encumbrance Systems. — Except as otherwise provided in this subsection, no administrative unit is required to record or show encumbrances in its accounting system. The Local Government Commission, in consultation with the State Board of Education, shall establish regulations, based on total membership of the administrative unit or some other appropriate criterion, setting forth which units are required to maintain an accounting system that records and shows the encumbrances outstanding against each category of expenditure appropriated in the budget resolution. Any other administrative unit may record and show encumbrances in its accounting system.

(d) Commission Regulations. — The Local Government Commission, in consultation with the State Board of Education, may prescribe rules and regulations having the force of law as to:

(1) Features of accounting systems to be maintained by administrative units.

(2) Bases of accounting, including identifying in detail the characteristics of a modified accrual basis and identifying what revenues are susceptible to accrual.

(3) Definitions of terms not clearly defined in this Article.

These rules and regulations may be varied according to the size of the administrative unit, or according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. (1975, c. 437, s. 1.)

§ 115-100.24. Budgetary accounting for appropriations. — (a) Incurring Obligations. — No obligation may be incurred by an administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act. ....
(Date)

....
(Signature of finance officer)"

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(b) Disbursements. — When a bill, invoice, or other claim against an administrative unit is presented, the finance officer shall either approve or disapprove the necessary disbursement. The finance officer may approve the claim only if (i) he determines the amount to be payable and (ii) the budget resolution includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. A bill, invoice, or other claim may not be paid unless it has been

approved by the finance officer or, under subsection (c) of this section, by the board of education.

(c) Board of Education Approval of Bills, Invoices, or Claims. — The board of education may, as permitted by this subsection, approve a bill, invoice, or other claim against the administrative unit that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget resolution, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The board of education shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. — An administrative unit may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository, by a bank wire transfer from an official depository, or by a warrant on the State Treasurer. Except as provided in this subsection each check or draft on an official depository shall bear on its face a certificate signed by the finance officer (or signed by the chairman or some other member of the board pursuant to subsection (c) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved as required by the School Budget and Fiscal Control Act.

. . . .

(Signature of finance officer)."

No certificate is required on payroll checks or drafts or on State warrants.

(e) Penalties. — If an officer or employee of an administrative unit incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he and the sureties on his official bond are liable for any sums so committed or disbursed. If the finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, he and the sureties on his official bond are liable for any sums illegally committed or disbursed thereby. (1975, c. 437, s. 1.)

§ 115-100.25. Fidelity bonds. — (a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the board of education, not less than ten thousand dollars ($10,000) nor more than two hundred fifty thousand dollars ($250,000). This bond shall cover (i) the faithful performance of all duties placed on the finance officer by or pursuant to law and (ii) the faithful accounting for all funds in his custody except State funds placed to the credit of the administrative unit by the State Treasurer. The premium on the bond shall be paid by the administrative unit.

(b) The State Board of Education shall provide for adequate and appropriate bonding of school finance officers and such other employees as it deems appropriate with respect to the disbursement of State funds. When it requires such bonds, the State Board of Education is authorized to place the bonds and pay the premiums thereon.

(c) The treasurer of each individual school and all other officers, employees and agents of each administrative unit who have custody of public school money in the normal course of their employment or agency shall give a true accounting bond with sufficient sureties in an amount to be fixed by the board of education. The premiums on these bonds shall be paid by the administrative unit. Instead of individual bonds, an administrative unit may provide for a blanket bond to cover all officers, employees, and agents of the administrative unit required to

be bonded, except the finance officer. The finance officer may be included within the blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1975, c. 437, s. 1.)

§ 115-100.26. Investment of idle cash. — (a) An administrative unit may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the board of education may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the board of education. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Local Government Commission may approve. Investment deposits shall be secured as provided in G.S. 115-100.27(b).

(c) Moneys may be invested in the following classes of securities, and no others:

(1) Obligations of the United States of America.

(2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.

(3) Obligations of the State of North Carolina.

(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the Secretary of the Local Government Commission may impose.

(5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.

(6) Obligations maturing no later than 18 months after the date of purchase of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks.

(7) Any form of investment allowed by law to the State Treasurer.

(8) Any form of investment allowed by G.S. 159-30 to local governments and public authorities.

(d) Investment securities may be bought, sold, and traded by private negotiation, and administrative units may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(g) It is the intent of this Article that the foregoing provisions of this section shall apply only to those funds received by the school administrative unit as required by G.S. 115-100.20. The county finance officer shall be responsible for the investment of all county funds allocated to the school administrative unit prior to such county funds actually being remitted to the school finance officer as provided by G.S. 115-100.20. (1975, c. 437, s. 1.)

§ 115-100.27. Selection of depository; deposits to be secured. — (a) Each board of education shall designate as the official depositories of the administrative unit one or more banks or trust companies in this State. It shall be unlawful for any money belonging to an administrative unit or an individual school to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 115-100.26(b).

(b) Money on deposit in an official depository or deposited at interest pursuant to G.S. 115-100.26(b) shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by an administrative unit because of the default or insolvency of the depository. (1975, c. 437, s. 1.)

§ 115-100.28. Daily deposits. — Except as otherwise provided by law, all moneys collected or received by an officer, employee or agent of an administrative unit or an individual school shall be deposited in accordance with this section. Each officer, employee and agent of an administrative unit or individual school whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the board of education gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars ($250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer or individual school treasurer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer, employee or agent collecting or receiving any taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer, employee or agent shall be audited at least annually. (1975, c. 437, s. 1.)

§ 115-100.29. Semiannual reports on status of deposits and investments. — Each school finance officer shall report to the Secretary of the Local Government Commission on January 1 and July 1 of each year (or such other dates as the Secretary may prescribe) the amounts of money then in his custody and in the custody of treasurers of individual schools within the unit, the amount of deposits of such money in depositories, a list of all investment securities and time deposits held by the administrative unit and individual schools therein, and a description of the surety bonds or investment securities securing demand and time deposits. If the Secretary finds at any time that any moneys of an administrative unit or an individual school are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer in charge of the moneys of the failure to comply with law. Upon such notification, the officer shall comply with the law within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the Secretary. The Local Government Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1975, c. 437, s. 1.)

§ 115-100.30. Annual independent audit. — Each administrative unit shall have its accounts and the accounts of individual schools therein audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor who audits the accounts of an administrative unit shall also audit the accounts of its individual schools. The auditor shall be selected by and shall report directly to the board of education. The audit contract shall be in writing, shall include all its terms and conditions, and shall be submitted to the Secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The financial statements accompanying the auditor's report shall be prepared in conformity with generally accepted accounting principles. The auditor shall file a copy of the audit report with the Secretary of the Local Government Commission, the Controller of the State Board of Education, the board of education and the board of county commissioners, and shall submit all bills or claims for audit fees and costs to the Secretary of the Local Government Commission for his approval. It shall be unlawful for any administrative unit to pay or permit the payment of such bills or claims without this approval. Each officer, employee and agent of the administrative unit having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a board of education or any other public officer, employee or agent shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand dollars ($1,000), or imprisoned for not more than one year, or both, in the discretion of the court.

The State Auditor, in consultation with the State Board of Education, shall have authority to prescribe the manner in which funds disbursed by administrative units by warrants on the State Treasurer shall be audited. (1975, c. 437, s. 1.)

§ 115-100.31. Special funds of individual schools. — (a) The board of education shall appoint a treasurer for each school within the administrative unit that handles special funds. The treasurer shall keep a complete record of all moneys in his charge in such form and detail as may be prescribed by the finance officer of the administrative unit, and shall make such reports to the superintendent and finance officer of the administrative unit as they or the board of education may prescribe. Special funds of individual schools shall be deposited in an official depository of the administrative unit in special accounts to the credit of the individual school, and shall be paid only on checks or drafts signed by the principal of the school and the treasurer. The board of education may, in its discretion, waive the requirements of this section for any school which handles less than three hundred dollars ($300.00) in any school year.

(b) Nothing in this section shall prevent the board of education from requiring that all funds of individual schools be deposited with and accounted for by the school finance officer. If this is done, these moneys shall be disbursed and accounted for in the same manner as other school funds except that the check or draft shall not bear the certificate of preaudit.

(c) For the purposes of this section, "special funds of individual schools" includes by way of illustration and not limitation funds realized from gate receipts of interscholastic athletic competition, sale of school annuals and newspapers, and dues of student organizations. (1975, c. 437, s. 1.)

§ 115-100.32. Proceeds of insurance claims. — Moneys paid to an administrative unit pursuant to contracts of insurance against loss of capital assets through fire or casualty shall be used to repair or replace the damaged asset, or if the asset is not repaired or replaced, placed to the credit of the capital outlay fund for appropriation at some future time. (1975, c. 437, s. 1.)

§ 115-100.33. School food services. — Until July 1, 1978, an administrative unit may, in the discretion of the board of education, treat receipts and disbursements associated with school food services as special funds of individual schools or as part of the budget of the administrative unit. Effective July 1, 1978, school food services shall be included in the budget of each administrative unit and the State Board of Education shall provide for school food services in the uniform budget format required by G.S. 115-100.6. (1975, c. 437, s. 1.)

§ 115-100.34. Reports to State Board of Education. — The State Board of Education shall have authority to require administrative units to make such reports as it may deem advisable with respect to the financial operation of the public schools. (1975, c. 437, s. 1.)

§ 115-100.35. Fines and forfeitures. — The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance officer, who shall forthwith determine what portion of the total is due to each administrative unit in the county and remit the appropriate portion of the amount to the finance officer of each administrative unit. Fines and forfeitures shall be apportioned according to the projected average daily membership of each administrative unit as determined by and certified to the administrative units and the board of county commissioners by the State Board of Education pursuant to G.S. 115-100.10. (1975, c. 437, s. 1.)

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

ARTICLE 14.

School Areas Authorized to Vote Local Taxes.

§ 115-116. Purposes for which elections may be called.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, ss. 2-4, effective July 1, 1976, will amend subsections (a), (g) and (h) to read as follows:

"(a) To Vote a Supplemental Tax. — Elections may be called by the local tax-levying authority to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the funds from State and county allotments and hereby [thereby] operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers, other than those alloted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, and for making the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the administrative units in the county pursuant to G.S. 115-100.10.

"(g) To Provide a Supplemental Tax on a Countywide Basis after Petition for Consolidation of City or County Administrative Units. — Elections may be called for an entire county on the question of a special tax to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the

boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit pursuant to the provisions of G.S. 115-74 and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a countywide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit shall not be affected. If the vote for the countywide supplemental tax carries, said tax shall not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of G.S. 115-74.

"(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts. — An election may be called in any district or districts or other school area or areas, from contiguous counties, as to whether the district or districts in one county shall be enlarged by annexing or consolidating therewith any adjoining district or districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the district or districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the district or districts in the other county. If such election carries, the said special or supplemental tax shall be collected pursuant to G.S. 115-124 and remitted to the administrative unit on whose behalf such special or supplemental tax is already levied; provided, that notwithstanding the provisions of G.S. 115-122.1, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such elections."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-117. Maximum rate and frequency of elections.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 5, effective July 1, 1976, will rewrite the section to read as follows:

"**§ 115-117. Maximum rate and frequency of elections.** — (a) A tax for supplementing the public school budget shall not exceed fifty cents (50¢) on the one-hundred-dollar ($100.00) value of property subject to taxation by the administrative unit; provided, that in any school administrative unit, district, or other school area having a total population of not less than 100,000 said local annual tax that may be levied shall not exceed sixty cents (60¢) on one-hundred-dollar ($100.00) valuation of said property.

"(b) If a majority of those who vote in any election called pursuant to the provisions of this Article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same unit, district, or area until the lapse of six months after the prior election. However, the foregoing time limitation shall not apply to any election held in a unit, district, or other school area which is larger or smaller than the unit, district, or area in which the prior election was held, or to any election held for a different purpose than the prior election."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-124. Levy and collection of taxes.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 6, effective July 1, 1976, will rewrite the section to read as follows:

"**§ 115-124. Levy and collection of taxes.** — (a) If an administrative unit or district has voted a tax to operate schools of a higher standard than that provided by State and county support, the board of county commissioners of each county in which the administrative unit is located is authorized to levy a tax on all property having a situs in the administrative unit for the purpose of supplementing the local current expense fund, the capital outlay fund, or both.

"(b) Before April 15 of each year, the tax supervisor of each county in which the administrative unit is located shall certify to the superintendent of schools an estimate of the total assessed value of property in the county subject to taxation on behalf of the administrative unit and any districts therein pursuant to this Article. The board of education,

in the budget it submits to the board of county commissioners, shall request the rate of ad valorem tax it wishes to have levied on its behalf as a school supplemental tax, not in excess of the rate approved by the voters. The board of county commissioners may approve or disapprove this request in whole or in part, and may levy such rate of supplemental tax as it may find to be in the best interests of the taxpayers and the public schools, not in excess of the rate requested by the board of education. Upon approving a supplemental tax levy pursuant to this section, the board of county commissioners shall cause the school supplemental tax to be computed for all property subject thereto. The taxes thus computed shall be shown separately on the county tax receipts for the fiscal year, and the county shall collect the school supplemental tax in the same manner that county taxes are collected. Collections shall be remitted to the administrative unit within 10 days after the close of each calendar month. Partial payments shall be proportionately divided between the county and the administrative unit. The board of county commissioners may, in its discretion, deduct from the proceeds of the school supplemental tax the actual additional cost to the county of levying, computing, billing, and collecting the tax.

"(c) It shall be unlawful for any part of a tax levied pursuant to this Article to be used for any purpose other than those purposes authorized by the election in the unit or district."

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

School Sites and Property.

§ 115-126. Sale, exchange or lease of school property; easements and rights-of-way.

(b) When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any property, other than real property, owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property either through the facilities of the North Carolina Department of Administration or at public auction. If sold at public auction such sale shall be held at such place within such county or city administrative unit as shall be designated by the board, and shall be advertised and otherwise conducted as is prescribed by statute for the sale of personal property under a power of sale contained in a chattel mortgage. Title to the property so sold shall not pass by reason of such sale until the sale has been confirmed by the board and the purchaser has complied with the terms of his bid. The proceeds of such sale shall be paid to the treasurer of the school fund of such county or city administrative unit.

(e) When in the opinion of any county board of education, or of the board of education for any city administrative unit, the use of any property owned or held by it is unnecessary or undesirable for public school purposes, but the sale of such property is not practicable or in the public interest, such board may in its discretion enter into an agreement with any other person, firm or corporation for the lease of such property to such person, firm or corporation for a term not in excess of one year, upon such terms and conditions as the board shall deem advisable and in the public interest. Upon a two-thirds vote of the board that such is in the public interest and with the approval of the board's tax levying authority, the board may enter into an agreement for the lease of such property for a term in excess of one year but for not more than 10 years, provided however the proceeds of such lease authorized herein shall be used either to reduce the bonded indebtedness of such administrative unit or for capital outlay purposes. Nothing in this subsection shall invalidate any local act authorizing the lease of any such property.

(1975, c. 264; c. 879, s. 46.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, added the last two sentences of subsection (e).

The second 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Division of Purchase and Contract" near the end of the first sentence of subsection (b).

As the rest of the section was not changed by the amendments, only subsections (b) and (e) are set out.

§ 115-131. Board cannot erect or repair building unless site is owned by board.

Local Modification. — City of Hickory: 1975, c. 103.

§ 115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 7, effective July 1, 1976, will delete the second sentence of this section.

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-133.3. Use of schools and other public buildings for political meetings. — The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of biennial precinct meetings and county and district conventions. Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465.)

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. System of employment for public school teachers.

Section prior to July 1, 1972, Construed. — In accord with original. See Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

1973 Amendment to Subsection (c). — Clarification, not change, was the purpose of the 1973 amendment to subsection (c). Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

The manifest purpose of this section is to provide teachers of proven ability for the children of this State by protecting such teachers from dismissal for political, personal, arbitrary or discriminatory reasons. Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

Subdivision (m)(2) does not require the board to follow the recommendation of the superintendent when it considers the election of career teachers as required by subsection (c). Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

Subdivision (m)(2) does not bind the board in its consideration of the renewal of a probationer's contract or the employment of a teacher who is not under contract. Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

Considering the differences in the mandatory language used in subdivision (h)(1) and the permissive language in subdivision (m)(2) with

reference to the "recommendation of the superintendent," subdivision (m)(2) is advisory only. Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

§ 115-143. Health certificate required for teachers and other school employees. — All public school employees upon initial employment, and those who have been separated from public school employment more than one school year, including superintendents, supervisors, district principals, building principals, teachers, and any other employees in the public schools of the State, shall file in the office of the county or city superintendent, before assuming his or her duties, a certificate from a physician licensed to practice medicine in the State of North Carolina, certifying that said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his or her duties. Thereafter, annually, each public school employee must, before assuming his or her duties, file in the office of the county or city superintendent a certificate from a physician licensed to practice medicine in this State, that said person does not have tuberculosis in the communicable form. Provided that a local school board or a superintendent may require any person herein named to take a physical examination when deemed necessary.

Any public school employee who has been absent for more than 40 successive school days because of a communicable disease must, before returning to work, file with the superintendent a physician's certificate certifying that the individual is free from any communicable disease.

The examining physician shall make the aforesaid certificates on an examination form supplied by the State Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the State Superintendent of Public Instruction, with approval of the Secretary of Human Resources, and such rules and regulations may include the requirement of an X-ray chest examination for all new employees of the public school system.

It shall be the duty of the county or city superintendent of the school in which the person is employed to enforce the provisions of this section.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14; 1973, c. 476, s. 128; 1975, c. 72.)

Editor's Note. —

The 1975 amendment rewrote the first sentence and added the second and third sentences of the first paragraph, added the second paragraph, substituted "certificates" for "certificate" in the first sentence of the third paragraph and added "for all new employees of the public school system" at the end of that paragraph.

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.

Constitutionality. — This section is constitutional on its face. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

A parent's right of total opposition to corporal punishment is not fundamental in a constitutional sense. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

The Fourteenth Amendment concept of liberty embraces the right of a parent to determine and choose between means of discipline of children. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

A student does have an interest, protected by the concept of liberty in the Fourteenth Amendment, in avoiding corporal punishment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

Fourteenth Amendment liberty embraces the right of parents generally to control means of

discipline of their children. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

To implement this section without according to students procedural due process would be a violation of the Fourteenth Amendment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

In their statutory context the words "reasonable" and "lawful" are not intended to be likened to the due process and equal protection clauses of the United States Constitution. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

"Reasonable" and "lawful" seem to embody no more than the traditional tort concepts that a person privileged to use force can use only the force necessary under the circumstances, i.e., reasonable force, and that he can use force only for the purpose for which he is granted the privilege, i.e., pursuant to his lawful authority. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

Due-Process Requirements. — Teachers and school officials must accord to students minimal procedural due process in the course of inflicting corporal punishment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

The State has failed to provide any procedural protection to insure that those acting under the authority of this section will adhere to its dictates and neither punish arbitrarily nor use unreasonable force. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

Except for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use, and, subject to this exception, it should never be employed as a first line of punishment for misbehavior. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

A teacher or principal must punish corporally in the presence of a second school official (teacher or principal), who must be informed beforehand and in the student's presence of the reason for the punishment. The student need not be afforded a formal opportunity to present his side to the second official; the requirement is intended only to allow a student to protest, spontaneously, an egregiously arbitrary or contrived application of punishment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

An official who has administered corporal punishment must provide the child's parent, upon request, a written explanation of his reasons and the name of the second official who was present. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

The state historically has been granted broader powers over children than over adults. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

State has an interest in the maintenance of order in the schools sufficient to sustain the right of teachers and school officials to administer reasonable corporal punishment for disciplinary purposes. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

§ 115-147. Power to suspend or dismiss pupils.

Constitutionality. — Upon interpretation by the North Carolina courts the vagueness and overbreadth in this section, if any, will be clearly susceptible to a limiting construction that would avoid or modify any constitutional question refuting contention that this section has the effect of classifying some children as uneducable in violation of the Fourteenth Amendment. Webster v. Perry, 512 F.2d 612 (4th Cir. 1975).

Due-Process Requirements, etc. —
Since the State has extended to certain persons rights of public school education, the State cannot rescind the grant because of student misconduct without fundamentally fair procedures. Webster v. Perry, 512 F.2d 612 (4th Cir. 1975).

Challenge to Constitutionality, etc. —
The challenge of procedural due process in a student's dismissal, and the accusation of unequal protection through racial discrimination, are considerations referable to this section's application and not to its constitutional vitality. Webster v. Perry, 512 F.2d 612 (4th Cir. 1975).

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ 115-152. Prerequisites for employment. — All teachers, supervisors, and other professional personnel employed in the public schools of the State or in

schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe: Provided further, that no person shall be employed to teach who is under 18 years of age. (1955, c. 1372, art. 18, s. 1; 1975, c. 731, s. 1.)

Editor's Note. — The 1975 amendment substituted the language beginning "either to hold or be qualified to hold" and ending "Board of Education" for "to hold certificates in accordance with the law, and no contracts for employment shall be valid until the certificate is secured" near the middle of the section.

§ 115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information. — The State Board of Education shall have entire control of certificating all applicants for teaching, supervisory, and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes; provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his or her academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose; provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. An applicant for certification making the required minimum score, and meeting such other requirements as may be established by the State Board, shall be issued a regular certificate. An initial applicant for certification failing to meet the required present minimum score, but meeting such other requirements as may be established by the State Board, shall be issued a probationary certificate, upon the same terms and conditions as regularly certificated personnel with comparable experience, which shall be effective for a period of two years. Any person previously denied certification because of failure to make the present minimum required score, but meeting such other requirements as may be established by the State Board, upon application to the State Board shall be issued a probationary certificate, upon the same terms and conditions as regularly certificated personnel with comparable experience, which shall be effective for a period of two years. The classroom performance of a holder of a probationary certificate, particularly from the standpoint of knowledge of subject matter and the principles and methods of education, shall be regularly and systemically evaluated during the probationary period. Upon completion of the probationary period, the State Board shall review the classroom performance of the probationary teacher and determine whether the teacher has demonstrated that degree of knowledge of subject matter and the principles and methods of education necessary to teach in the public schools of this State. If the teacher has demonstrated sufficient academic competence, the State Board shall issue a regular certificate; if not the probationary certificate shall expire and such teacher shall not be eligible for employment in a teaching position in the public schools. The State Board is hereby authorized, empowered and directed to enact rules and regulations and establish procedures to carry out the purposes of this section.

Upon request the State Board of Education and the State Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1.)

Editor's Note. —
The 1975 amendment added the last seven sentences of the first paragraph.

Session Laws 1975, c. 686, s. 2, provides: "This act shall become effective upon ratification and shall expire July 1, 1977." The act was ratified June 19, 1975.

§ 115-155. Employing persons not holding nor qualified to hold certificate; salaries not paid. — It shall be unlawful for any board of education or school committee to employ or keep in service any teacher, supervisor, or professional person who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

The county or city superintendent, or other official, is forbidden to approve any voucher for salary for any personnel employed in violation of the provisions of this section and the treasurer of the county or of the city schools is hereby forbidden to pay out of the school funds the salary of any such person. (1955, c. 1372, art. 18, s. 4; 1975, c. 731, s. 2.)

Cross Reference. — For requirement that teachers must be certified to be paid, see § 115-64.

Editor's Note. — The 1975 amendment rewrote the first paragraph.

Amendment Effective July 1, 1976. — Session Laws 1975, c. 437, s. 7, effective July 1, 1976, will delete the second paragraph of this section.

Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

§ 115-157. Pay of school officials and other employees. — School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any administrative unit or school district who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

(1) Academic Teachers. — Regular state-allotted teachers shall be employed for a period of 10 calendar months and shall be paid monthly at the end of each calendar month of service. Provided, that any individual teacher may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar months' employment shall be 1.25 days of annual vacation leave for each month of the 10 months' service which shall be designated by each county and city board of education at a time when students are not scheduled to

be in regular attendance. Included within the 10 calendar months' employment each county and city board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Council for State employees. Within policy adopted by the State Board of Education, each county and city board of education shall develop rules and regulations designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave, shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of state-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. County and city boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule.

(2) Occupational Education Teachers. — State-allotted man-months of service to county and city boards of education as provided by the State Board of Education shall be used for the employment of teachers of occupational education for a term of employment as determined by the county and city boards of education and teachers so employed shall be paid on a calendar-month basis at the end of each calendar month of service for the term of their employment. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total work days for a 10-month employee exceed 200 days in a 10-month schedule and the workweek shall constitute five days for all occupational teachers regardless of the employment period.

(3) Supervisors. — State-allotted supervisors shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each calendar month of service for the term of their employment. Included within their term of employment shall be provided the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above, said annual leave to be taken as determined by each county and city board of education, provided that such leave may be cumulated up to 15 days and taken within the first 60 days of the next ensuing fiscal year.

(3a) Classified Principals. — Classified principals shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each calendar month of service for the term of their employment. They shall earn annual leave at the rate of 1.25 days per month employed and shall be provided legal holidays as set out in subdivision (1) above, said annual leave to be taken as determined by each county and city board of education, provided that such leave may be accumulated up to 15 days and taken within the first 60 days of the next ensuing fiscal year.

(4) Superintendents and Other Employees on an Annual Basis. — The salaries of superintendents and others employed on an annual basis shall be paid monthly on the basis of each calendar month of service. Included within their term of employment shall be provided the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above, said annual leave to be taken as determined by each county and city board of education, provided that such leave may be cumulated up to 15 days and taken within the first 60 days of the next ensuing fiscal year.

(5) Other School Employees. — Other school employees paid on an hourly or other basis shall be paid at a time as determined by each county and

city board of education and expenditures from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds. Included within the term of employment shall be provided for full-time employees the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above and said vacation leave shall be taken under policies determined by each county and city board of education.

(6) The provisions for annual vacation leave and holidays referred to in this section shall apply only to such persons employed by the county and city boards of education during the days designated by each county and city board of education as vacation days. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year, except as provided above.

(7) Each county and city board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(8) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year. (1955, c. 1372, art. 18, s. 6; 1961, c. 1085; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, eliminated provisions as to classified principals in subdivision (3) and added subdivision (3a).

The second 1975 amendment, effective July 1, 1975, added the second through fourth sentences in subdivision (1).

The third 1975 amendment, effective July 1, 1975, added the proviso at the end of the second sentence in both subdivisions (3) and (4) and added "except as provided above" at the end of the second sentence in subdivision (6).

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Admissions, Attendance, and Student Records.

§ 115-165: Repealed by Session Laws 1975, c. 678, s. 1.

§ 115-165.1. Student records; maintenance; contents. — The official record of each student enrolled in North Carolina public schools shall be permanently maintained in the files of the appropriate school after the student graduates, or should have graduated, from high school.

The "official record" shall contain, as a minimum, adequate identification data (including date of birth), attendance data, grading and promotion data, and such other factual information as may be deemed appropriate by the local board of education having jurisdiction over the school wherein the record is maintained. (1975, c. 624, ss. 1, 2.)

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. Parent or guardian required to keep child in school; exceptions. — Every parent, guardian or other person in this State having charge or control

of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall encourage, entice or counsel any such child to be unlawfully absent from school.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846; 1975, c. 678, s. 2; c. 731, s. 3.)

Editor's Note. —

The first 1975 amendment deleted at the end of the third paragraph a proviso which provided that children so handicapped as to be unlikely to profit from public school instruction were not required to be enrolled.

The second 1975 amendment deleted "the county or city superintendent of schools or" following "are approved by" near the end of the last sentence of the second paragraph.

Article 20A.

Child Health Program.

§ 115-175.1: Repealed by Session Laws 1975, c. 678, s. 3.

Article 21.

Assignment and Enrollment of Pupils.

§ 115-179.1. Exceptional children; special program; dissatisfaction with assignment; right to appeal. — (a) Right of Appeal. — A child, his parent, his guardian, or his surrogate parent (in the case of a child whose parent or guardian is unknown or unavailable or in the case of a child who is a ward of the State) may obtain review as herein provided of an action or omission by State or local authorities on the ground that the child has been or is about to be:

(1) Denied entry or continuance in a program appropriate to his condition and needs;

(2) Placed in a program which is inappropriate, unsuitable, or inadequate to his condition and needs; or

(3) Assigned to a special program when he is not a child with special need.

(b) The parent or guardian of a child placed or denied placement in a program shall be notified promptly, via parent or guardian conference, or by registered or certified mail, return receipt requested, of his placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent

or guardian that he is entitled to review of the determination and of the procedure for obtaining such review. The notice shall contain information that a hearing may be had before the local school board for educational matters or the Advocacy Council for Human Resource matters, upon written request, no less than 15 days nor more than 30 days from the date on which the notice was received. The parent or guardian of a child may, upon written request, not more than 30 days from the date of a decision, appeal said decision to the State Superintendent of Public Instruction or the Secretary of Human Resources. Any appeal of these decisions to the General Court of Justice must occur within 30 days after notice of such decision.

(b1) A surrogate parent may not be an employee of the State or any local government educational or human-resources agency responsible for or involved in the education or care of the child. In the case of an appeal from action or omission by the State or local government education agency the surrogate parent shall be appointed from a group of people selected by the Superintendent of Public Instruction, and in the case of an appeal from an action or omission by the State or a local government human-resources agency, from a group of people selected by the Secretary of the Department of Human Resources. Both the Superintendent and the Secretary shall upon ratification of this subsection establish procedures, pursuant to their powers under subsection (f) of this section, to ensure that every child in need of a surrogate parent is provided with one. The surrogate parent shall represent the child in the appeal and subsequent proceedings arising therefrom.

(g) The determination of the appeal shall be subject to judicial review in the manner provided for in Article 33, Chapter 143 of the General Statutes.

(1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9.)

Editor's Note. —

The first 1975 amendment inserted "or his surrogate parent (in the case of a child whose parent or guardian is unknown or unavailable or in the case of a child who is a ward of the State)" in the introductory language of subsection (a) and added subsection (b1).

The second 1975 amendment inserted "via parent or guardian conference or" near the beginning of the first sentence of subsection (b) and substituted "Article 33, Chapter 143" for "Article 31, Chapter 134" in subsection (g).

As the rest of the section was not changed by the amendments, only subsections (a), (b), (b1) and (g) are set out.

Access to Records. — As a part of the appeal proceedings authorized by this section, it is required that the parents of the child involved be granted access to medical and mental health records which were considered in the child's educational program placement, assignment or denial thereof. Opinion of Attorney General to Dr. Lenore Behar, 44 N.C.A.G. 231 (1975).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-180. Authority of county and city boards of education.

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

§ 115-181. Authority and duties of State Board of Education.

Cited in Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

§ 115-183. Use and operation of school buses. — Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each county and city administrative unit to supervise the use of all school buses operated by such county or city administrative unit so as to assure and require compliance with this section:

(5) County or city boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. County or city boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Editor's Note. — Subdivision (5) is set out above to correct an error in the replacement volume.

§ 115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.

(d) The superintendent of schools in each county, and in each city administrative unit, shall cause each activity bus which is used for the transportation of students by such county or city administrative unit or any public school system therein to be inspected for mechanical defects, or other defects which may affect the safe operation of such activity bus, at the same time and in the same way and manner as the regular public school buses for the normal transportation of public school pupils are inspected. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed with the principal of the school which uses and operates such activity bus and a copy shall be forwarded to the superintendent of schools or city administrative unit involved. It shall be the duty of the driver of each activity bus to make the same reports to the principal of the school using and operating such activity bus as is required by this section. If any public school activity bus is found to be so defective that the activity bus may not be operated with reasonable safety, it shall be the duty of such principal to cause the use of such activity bus to be discontinued until such defect is remedied to the satisfaction of the person making the inspection and a report to this effect has been filed in the manner herein prescribed. Nothing in this subsection shall authorize the use of State funds for the purchase, operation or repair of any activity bus. (1955, c. 1372, art. 21, s. 8; 1961, c. 474; 1975, c. 150, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "or local tax" preceding "funds" in the last sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 115-188. Purchase and maintenance of school buses, materials and supplies.

(g) All school buses or service vehicles purchased by or for the account of any county or city board of education, except school buses or service vehicles purchased by such board from another county or city board of education of this State, shall be purchased through the Department of Administration.

(1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Division of Purchase and Contract" at the end of subsection (g).

As the rest of the section was not changed by the amendment, only subsection (g) is set out.

City voters' interest in functions performed by the county board for the benefit of it and the city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, does not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

The county board performs some functions for the benefit of the city boards and gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

§ 115-190. Contracts for transportation. — Any county or city board of education may, in lieu of the operation by it of public school buses, enter into a contract with any person, firm or corporation for the transportation by such person, firm or corporation of pupils enrolled in the public schools of such county or city administrative unit for the same purposes for which such county or city administrative unit is authorized by this Subchapter to operate public school buses. Any vehicle used by such person, firm or corporation for the transportation of such pupils shall be constructed and equipped as provided in rules and regulations promulgated by the State Board of Education, and the driver of such vehicle shall possess all of the qualifications prescribed by rules and regulations promulgated by the State Board of Education. Provided, that where a contract for transportation of pupils is entered into between a county and city board of education and any person, firm or corporation which contemplates the use of an automobile or vehicle other than a bus for the transportation of 16 pupils or less, the automobile or vehicle shall not be required to be constructed and equipped as provided for in G.S. 115-181(d), but shall be constructed and equipped pursuant to rules and regulations promulgated by the State Board of Education. In the event that any county or city board of education shall enter into such a contract, the board may use for such purposes any funds which it might use for the operation of school buses owned by the board, and the tax-levying authorities of the county or of the city may provide in the county or city budget such additional funds as may be necessary to carry out such contracts. (1955, c. 1372, art. 21, s. 11; 1975, c. 382.)

Editor's Note. — The 1975 amendment substituted "rules and regulations promulgated" for "this Subchapter and in the regulations promulgated pursuant to this Subchapter" and "rules and regulations promulgated by" for "such rules and regulations of" in the second sentence and added the third sentence.

SUBCHAPTER X. INSTRUCTION.

ARTICLE 24.

Courses of Study.

§ 115-198. Standard course of study for each grade. — Upon the recommendation of the State Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. In the course of study adopted by the State Board, the Board may establish a program of continuous learning based upon the individual child's need, interest, and stages of development, so that the program has a nongraded structure of organization. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The State Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the State Superintendent of Public Instruction, outlines for the teaching of harmful or illegal drugs, including alcohol, and the free enterprise system at the high school level.

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed. (1955, c. 1372, art. 23, s. 1; 1969, c. 487, s. 1; 1971, c. 356; 1975, c. 65, s. 2.)

Editor's Note. — The 1975 amendment, effective beginning with the 1975-76 school year, added "and the free enterprise system at the high school level" at the end of the second sentence of the second paragraph.

§ 115-200: Repealed by Session Laws 1975, c. 678, s. 4.

ARTICLE 24A.

Kindergartens.

§§ 115-205.14 to 115-205.18: Reserved for future codification purposes.

ARTICLE 24B.

Summer Schools.

§ 115-205.19. Summer schools. — Each county and city administrative unit may establish and maintain summer schools. Such summer schools as may be established shall be administered by county and city boards of education and shall be conducted in accordance with standards developed by the State Board of Education. The standards so developed shall specify the requirements for approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by the provisions of Article 21 of this Chapter.

Boards of education of county and city administrative units may provide for summer schools from funds made available for that purpose by the State Board of Education, funds appropriated to the administrative unit by the tax-levying

authority, and from any other revenues available for the purpose. (1975, c. 437, s. 11.)

Editor's Note. — Session Laws 1975, c. 437, s. 19, makes this Article effective July 1, 1976. Session Laws 1975, c. 437, s. 18(a), contains a severability clause. Session Laws 1975, c. 437, s. 18(b), provides: "This act shall apply to pending litigation where such application is feasible and would not work an injustice."

ARTICLE 25A.

Textbooks and Instructional Material.

§§ 115-206.19 to 115-206.23: Reserved for future codification purposes.

ARTICLE 25B.

Librarians.

§ 115-206.24. Librarians for schools. — (a) Each of the county and city administrative units in the State shall employ at least one half-time librarian.

(b) The employment of librarians under authority of this Article shall be supplemental to, and shall not supplant, any previously existing library positions that were funded from locally supported programs for library personnel or funded by the State through the State Board of Education's allocation of teachers and other instructional personnel. Librarians employed under authority of this Article shall not be considered part of the allocation of teachers and other instructional personnel made under the authority of G.S. 115-59(b). The State Board of Education shall require city and county administrative units to provide evidence that the expenditure of local funds and the expenditure of State funds for library personnel are each no less than the amount of State or local funds expended per pupil for such purposes in average daily membership for the prior year. (1975, c. 965, ss. 1, 2.)

Editor's Note. — Session Laws 1975, c. 965, s. 6, makes the act effective July 1, 1976.

ARTICLE 31.

Private Business, Trade and Correspondence Schools.

§ 115-251. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.

Editor's Note. —
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 36.

Training of Mentally Retarded Children.

§§ 115-296 to 115-299: Repealed by Session Laws 1975, c. 678, s. 5.

ARTICLE 37.

Training of Educable Mentally Handicapped Children.

§§ 115-300 to 115-305: Repealed by Session Laws 1975, c. 678, s. 6.

ARTICLE 38.

Education of Exceptionally Talented Children.

§§ 115-306 to 115-315: Repealed by Session Laws 1975, c. 678, s. 7.

ARTICLE 38C.

Section for the Education of Children with Learning Disabilities.

§§ 115-315.16 to 115-315.22: Repealed by Session Laws 1975, c. 678, s. 8.

Cross Reference. — For provisions on Regional Educational Training Centers, see § 115-315.23 et seq.

ARTICLE 38D.

Regional Educational Training Centers.

§ 115-315.23. Creation. — There is hereby established within the Department of Public Instruction a system of Regional Educational Training Centers. Said centers shall be equitably distributed across the State as shall be determined by the Superintendent, provided that such centers are located in reasonable proximity to one of the developmental evaluation centers operated by the Department of Human Resources. (1973, c. 580, ss. 1, 3; 1975, c. 896.)

§ 115-315.24. Functions. — The centers shall have the following functions:

(1) To provide in-service training to all special education teachers and other professionals as defined by the Superintendent.

(2) To develop in kindergarten and primary grade teachers the necessary skills to detect potential special educational needs and the capability to plan special educational programs.

(3) To provide in-service training and consultative services to a parent or guardian of a child with special needs and to appropriate public school administrative and management personnel.

(4) To work in concert with the various local human resources agencies to the end that multiple and duplicative services provided at various times and by various agencies of the State may be obviated.

(5) To conduct an in-depth evaluation of the impact of in-service training on the delivery of services to children with special needs within the public schools on an annual basis in compliance with such rules and regulations as the Superintendent may promulgate. (1975, c. 896.)

§ 115-315.25. Organization of centers. — Employees of the centers shall be employees of the Department of Public Instruction appointed by the Superintendent subject to the approval of the State Board. Employees of those centers now in place and operational shall be employees of the Department, and those centers now in place and operational shall fulfill the functions set forth for new centers. (1975, c. 896.)

§ 115-315.26. Rules and regulations. — The Superintendent shall develop and promulgate appropriate rules and regulations for the operation of the centers subject to the approval of the State Board. Such rules and regulations shall prescribe the precise operational responsibility of the centers and shall include a description of the operational relationship that shall exist with the various local human resources agencies. (1975, c. 896.)

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

Article 40.

Governor Morehead School.

§ 115-321. Incorporation, name and management. — The institution for the education of the blind, located in the City of Raleigh, shall be a corporation under the name and style of the Governor Morehead School, and shall be under the management of the Department of Human Resources and superintendent. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1975, c. 19, s. 39.)

Editor's Note. —
The 1975 amendment corrected an error in the 1973 amendatory act by substituting "the" for "a" preceding "Department of Human Resources."

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

Article 1.

General Provisions for State Administration.

Sec.
115A-3. State Board of Education to establish department to administer system of educational institutions; employment of personnel in community college system.

Sec.
115A-5. Administration of institutions by State Board of Education; extension courses; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.

ARTICLE 1.

General Provisions for State Administration.

§ 115A-3. State Board of Education to establish department to administer system of educational institutions; employment of personnel in community college system. — The State Board of Education is authorized to establish and organize a department to provide state-level administration, under the direction of the Board, of a system of community colleges, technical institutes, and industrial education centers, separate from the free public school system of the State. The Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the department. The personnel of the department shall be governed by the same policies as the personnel of the other departments of the Board of Education and shall be subject to the provisions contained in Article 2, Chapter 143 of the General Statutes; except the position of the director or chief administrative officer of the department shall be exempt from the provisions of the State Personnel Act, and the compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board of Education, subject to approval by the Advisory Budget Commission.

The director of the community college system shall appoint all necessary administrative and supervisory employees who work under his direction in the administration of the community college system, subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with the State Personnel Act.

The State Board of Education shall appoint an Advisory Council consisting of at least seven members to advise the Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. Two members of the Advisory Council shall be members of the Board of Governors of the University of North Carolina or of its professional staff, and two members of the Advisory Council shall be members of the faculties or administrative staffs of institutions of higher education in this State. (1963, c. 448, s. 23; 1971, c. 1244, s. 14; 1975, c. 699, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added the present second paragraph.

Article 2 of Chapter 143, referred to in this section, was repealed by Session Laws 1965, c. 640, s. 1. For present provisions as to the State Personnel System, see § 126-1 et seq.

§ 115A-5. Administration of institutions by State Board of Education; extension courses; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities. — The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Education shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Education may provide by general and uniform regulations for waiver of tuition and registration fees for training courses for volunteer firemen, local fire department personnel and volunteer rescue and lifesaving department personnel, local law-enforcement officers, and prison inmates.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

The State Board of Education is authorized to enter into agreements with county and city boards of education, upon approval by the Governor and the Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this Chapter for other institutions, subject to available funds.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

(1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and

(2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882.)

Editor's Note.—
The 1975 amendment inserted "local fire department personnel and volunteer rescue and lifesaving department personnel" near the end of the last sentence in the second paragraph.

Chapter 115B.

Tuition Waiver for Senior Citizens.

Sec.
115B-1. Definition.
115B-2. Tuition waiver authorized.
115B-3. Rules and regulations.
115B-4. Enrollment computation for funding purposes.
115B-5. Proof of eligibility.
115B-6. Misrepresentation of eligibility.

§ 115B-1. Definition. — As used in this Chapter, "tuition" shall mean the amount charged for registering for a credit hour of instruction and shall not be construed to mean any other fees or charges or costs of textbooks. (1975, c. 606, s. 1.)

§ 115B-2. Tuition waiver authorized. — State-supported institutions of higher education, community colleges, industrial education centers and technical institutes are hereby authorized to permit legal residents of North Carolina who have attained the age of 65 to attend classes for credit or noncredit purposes on a space-available basis without the required payment of tuition; provided, however, that such persons meet admission and other standards deemed appropriate by the educational institution. (1975, c. 606, s. 2.)

§ 115B-3. Rules and regulations. — The Board of Governors of the University of North Carolina and the State Board of Education shall each, with respect to the institutions governed by it, promulgate rules and regulations necessary for the implementation of the provisions of this Chapter. (1975, c. 606, s. 3.)

§ 115B-4. Enrollment computation for funding purposes. — Persons attending classes under the provisions of this Chapter on a space-available basis without payment of tuition shall not be counted in the computation of enrollment for funding purposes. (1975, c. 606, s. 4.)

§ 115B-5. Proof of eligibility. — The officials of such institutions charged with administration of this Chapter may require such proof as they deem necessary to insure that the person applying to the institution is eligible for the benefits provided by this Chapter. (1975, c. 606, s. 5.)

§ 115B-6. Misrepresentation of eligibility. — Any applicant who willfully misrepresents his eligibility for the tuition benefits provided under this Chapter, or any person who knowingly aids or abets such applicant in misrepresenting his eligibility for such benefits, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars ($50.00) or imprisoned for not more than 30 days, or both. (1975, c. 606, s. 6.)

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

Part 2. Organization, Governance and Property of the University.

Sec.
116-15. Licensing of nonpublic educational institutions; regulation of degrees.

Article 3.

Community Colleges.

116-53. Appropriations by State.

Article 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

116-143.1. Provisions for determining resident status for tuition purposes.

Article 18.

Scholarship Loan Fund for Prospective Teachers.

116-174. Fund administered by State Superintendent of Public Instruction; rules and regulations.

Article 19.

Revenue Bonds for Student Housing.

Sec.
116-176. Issuance of bonds.

Article 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

116-191. Issuance of bonds and bond anticipation notes.

Article 23.

State Education Assistance Authority.

116-209.19. Grants to students.

ARTICLE 1.

The University of North Carolina.

Part 2. Organization, Governance and Property of the University.

§ 116-15. Licensing of nonpublic educational institutions; regulation of degrees.

(e) The foregoing provisions of this section shall not apply to any theological seminary established in or chartered by this State prior to January 1, 1953. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3; 1975, c. 268.)

Editor's Note.—
The 1975 amendment added subsection (e).
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.
As the rest of the section was not changed by the amendment, only subsection (e) is set out.

ARTICLE 3.

Community Colleges.

§ 116-53. Appropriations by State.

(b) Appropriations by the State of North Carolina for capital or permanent improvements for community colleges shall, except when the Appropriation Act specifically provides otherwise, be on an equal matching fund basis, the moneys raised by a particular community college from public or private sources being matched by an equal amount of State funds, up to but not in excess of appropriations therefor. The sole purposes for which such appropriations may

be expended shall be to acquire real property and to construct and equip classrooms, laboratories, administration offices, utility plants, libraries, cafeterias, physical education instructional facilities, and auditorium facilities, in such order of priority as the Board of Governors and the Advisory Budget Commission shall determine. Such appropriations shall not be expended for any other purpose, it being expressly intended that the construction of all other facilities and procurement of all other equipment shall be the sole obligation and responsibility of the community college.

Preliminary studies and cost estimates for the construction of all buildings or other capital improvements and proposals for the purchase of all original equipment to be installed or used therein, involving the expenditure of State funds, shall be first submitted to and approved by the Board of Governors and the State Department of Administration.

After approval by the Board of Governors and the Department of Administration, payments shall be made by the State disbursing officer to the community college, within authorized appropriations, according to procedures established by the Department of Administration. (1957, c. 269, s. 1; c. 1098, s. 7; 1961, c. 1099; 1971, c. 1244, s. 14.)

Editor's Note. —

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in the second paragraph of subsection (b) and twice in the last paragraph. See § 143-344(a).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143.1. Provisions for determining resident status for tuition purposes. — (a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges and technical institutes under the jurisdiction of the North Carolina State Board of Education.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such

parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;
(2) No person shall be deemed solely by reason of marriage to a person domiciled in North Carolina to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;
(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any nonresident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436.)

Editor's Note. —
The 1975 amendment rewrote this section.

Article 18.

Scholarship Loan Fund for Prospective Teachers.

§ 116-174. Fund administered by State Superintendent of Public Instruction; rules and regulations. — The Scholarship Loan Fund for

Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of six percent (6%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a teacher's certificate based upon the bachelor's degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of subdivision (3) of this section then such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.

(1975, c. 750, s. 1.)

Editor's Note.—
The 1975 amendment substituted "six percent (6%)" for "four percent (4%)" near the beginning of the first sentence of subdivision (2).

Session Laws 1975, c. 750, s. 2, provides: "This act shall become effective upon ratification and shall apply only to loans made after ratification." The act was ratified June 24, 1975.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-176. Issuance of bonds. — The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the Board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form

or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be in the best interest of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Article, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Article.

Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds. (1957, c. 1131, s. 2; 1969, c. 1158, s. 1; 1971, c. 511, s. 1; 1975, c. 233, s. 1.)

Editor's Note. — The 1975 amendment deleted "not exceeding eight per centum (8%) per annum" following "rate or rates" near the middle of the second sentence of the first paragraph and deleted provisions relating to interest at the end of the last sentence of the first paragraph.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-191. Issuance of bonds and bond anticipation notes. — The Board is hereby authorized to issue, subject to the approval of the Advisory Budget

Commission, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Article, shall be deemed and construed to include the words "bond anticipation notes." (1963, c. 847, s. 5; 1969, c. 1158, s. 2; 1971, c. 511, s. 2; 1973, c. 662; 1975, c. 233, s. 2.)

Editor's Note.—
The 1975 amendment deleted "not exceeding eight per centum (8%) per annum" following "rate or rates" near the middle of the second sentence of the first paragraph and of the third sentence of the seventh paragraph and deleted provisions relating to interest at the end of the last sentences in those paragraphs.

ARTICLE 23.

State Education Assistance Authority.

§ 116-209.19. Grants to students. — The Authority is authorized to make grants to students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Advisory Budget Commission, after consultation with the Secretary of Administration, Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Advisory Budget Commission after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority in determining the needs of students for grants, may give consideration to, among other factors, the amount of other financial assistance that may be available to such students such as nonrepayable awards under the educational opportunity grant program and Health Professions Education Assistance Act. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "State Budget Officer" in the fourth sentence of the first paragraph.

Chapter 116A.

Escheats and Abandoned Property.

Sec.
116A-8. Escheat Fund.
116A-9. Distribution of income of fund.
116A-10. Transfer of Escheat Fund to trust fund of State Education Assistance Authority; administration and use of Escheat Fund.

§ 116A-8. Escheat Fund.

(c) The State Treasurer shall deposit or invest the Escheat Fund in the same manner that the Board of Trustees Teachers' and State Employees' Retirement System may invest and reinvest under the provisions of G.S. 135-7 and 135-7.1. (1971, c. 1135, s. 3; 1975, c. 113.)

Editor's Note. — The 1975 amendment substituted "in the same manner that the Board of Trustees Teachers' and State Employees' Retirement System may invest and reinvest under the provisions of G.S. 135-7 and 135-7.1" for "in his discretion, as provided for State funds generally" at the end of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 116A-9. Distribution of income of fund. — The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 1 to the State Education Assistance Authority for loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. Such loans shall be made upon terms, consistent with the provisions of this section, pursuant to which the State Education Assistance Authority makes loans to other students under G.S. 116-201 to 116-209.23, Article 23. (1971, c. 1135, s. 3; 1975, c. 154, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added the second sentence.

§ 116A-10. Transfer of Escheat Fund to trust fund of State Education Assistance Authority; administration and use of Escheat Fund. — Subject to the State Treasurer's holding, as custodian, such portion of the Escheat Fund as he determines may be subject to refund pursuant to G.S. 116A-11 of this Chapter, the entire corpus of the Escheat Fund, including all future additions thereto, other than said income, is transferred to become, and is made and shall be, a part of the trust fund created under G.S. 116-209 of Article 23; provided that the Escheat Fund in said trust fund shall be accounted for and administered separately from other assets and money in such trust fund. The State Treasurer shall be the trustee of the Escheat Fund in the trust fund and shall have full power to invest and reinvest moneys in the Escheat Fund and to distribute the income derived therefrom to the State Education Assistance Authority as provided in the foregoing G.S. 116A-9.

The Authority, in addition to other powers vested under G.S. 116-201 to G.S. 116-209.23 of Article 23, is authorized to pledge and vest a security interest in all or any part of any such Escheat Fund in said trust fund, by resolution adopted or trust agreement approved by it, as security for or insurance respecting the payment of bonds or other obligations, including principal, interest and redemption premium, if any, under such Article 23; provided such pledge and security interest in the Escheat Fund shall, in the determination of the Authority, constitute a use of the Escheat Fund to aid worthy and needy students who are residents of this State and are enrolled in public institutions

of higher education in this State. Pursuant to any such pledge of and security interest in the Escheat Fund, or any part thereof, the State Education Assistance Authority may submit, from time to time as it deems necessary, to the State Treasurer requisitions for transfers of money in the Escheat Fund, and the State Treasurer is authorized and directed to pay such money so requisitioned to the Authority for the purpose of enabling the Authority to pay any bonds or other obligations, including principal, interest and redemption premium, if any, of the Authority, pursuant to any such pledge of or security interest in the Escheat Fund, or any part thereof, under any such resolution or trust agreement. (1971, c. 1135, s. 3; 1975, c. 154, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

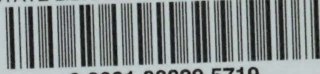
November 1, 1975

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1975 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

North Carolina State Library
Raleigh

6475


STATE LIBRARY OF NORTH CAROLINA
3 3091 00829 5719